



Wind and/or Photovoltaic Test  
and Research Center Development  
Program Opportunity Notice (PON) 1283  
\$4,400,000 Available

**Proposals Due: December 2, 2009 by 5:00 PM Eastern Time<sup>1</sup>**

The New York State Energy Research and Development Authority (NYSERDA) seeks proposals to establish New York-based wind and photovoltaic (PV) test and research centers to address performance of wind and solar PV systems. The Centers will focus on testing and research related to system and component safety, performance, reliability, durability and longevity. Each Center will be made up of a coalition that could include university and private team members with expertise in the appropriate areas. The test center(s) will have physical testing at one or more locations in New York State. Teams may propose to establish a PV test and research center, a wind test and research center, or both. It is anticipated that one PV center and one wind center will be selected for funding.

Phase 1 activities include developing a Phase 2 implementation plan and schedule, developing a business plan for the Centers, finalizing team members and partners, attracting initial business partners, and developing a more detailed Phase 2 budget. Phase 1 results and progress will be evaluated and, if acceptable, Phase 1 awardee(s) will progress to Phase 2. Phase 2 activities include establishing the test laboratory, and conducting performance-based testing and research for PV or wind. Phase 2 also includes managing, marketing, and fund-raising for the Center, as well as communicating with customers and meeting customer needs.

Total funding currently available for this five-year program is \$4,400,000 for both a wind and a PV testing center. Phase 1 awards will be limited to \$50,000 of NYSERDA funding and is expected to take approximately six months. Co-funding is not required, but is highly encouraged and will be an evaluation consideration.

Please see Section 1.4 for information about a pre-bid teleconference that will be held on October 26, 2009 at 10:00am and a web site to facilitate teaming.

**Proposal Submission:** Proposers must submit fourteen (14) copies plus one CD with files compatible with Microsoft Word format 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, PON 1283  
NYS Energy Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399**

If you have technical questions concerning this solicitation, please email to [PON1283@nyserda.org](mailto:PON1283@nyserda.org) or contact Jacques Roeth at (518) 862-1090 ext.3301 or Jennifer Harvey at (518) 862-1090 ext.3264. If you have contractual questions concerning this solicitation, contact Nancy Marucci at (518) 862-1090, ext.3335 or [nsm@nyserda.org](mailto:nsm@nyserda.org).

No communication intended to influence this procurement is permitted except by contacting Jennifer Harvey or Jacques Roeth above. Contacting anyone other than these Designated Contacts (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 offer, and (2) may result in the proposer not being awarded a contract.

<sup>1</sup> 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](http://www.nyserda.org).

## 1. INTRODUCTION

### 1.1 GOALS AND OBJECTIVES

This solicitation's goal is to develop centers to provide qualification and performance testing and research services for PV and wind products and components. The Centers will serve the needs of the users and installers of the technologies by testing products to national standards, providing third-party validation services, providing information on technology performance in real-life situations, and creating more accurate siting and system output prediction tools and methods. The Centers will also serve the needs of the PV and wind industries by providing product testing services in controlled environments as well as in real-life complex resources, and by partnering with industry members on research initiatives.

Another objective of this program is to provide a training ground for highly skilled undergraduate and graduate students with specialties in PV and wind technologies to serve as a clean energy workforce that will help attract PV and wind industries to New York.

In order to meet the goals, it is anticipated that each Center will be made up of a coalition that could include multiple organizations including public and private team members with expertise in the appropriate areas. It is anticipated that proposing teams will include university members. The test center(s) will have physical testing at one or more locations in New York State.

Specific Goals of the Test Centers are as follows:

1. **Financial Sustainability.** Each center should be self-sustaining without additional NYSERDA support after five years.
2. **Quality.** Each center should strive for excellence and be on the cutting edge of wind and/or PV performance testing and research.
3. **Customer-Focus.** Centers should be customer-driven. Proposers will be expected to establish approaches, capabilities and activities that provide value to the industry and other funding customers. Centers should develop approaches to reach out to customers and promptly and effectively meet their needs. Customers include PV or wind product manufacturers wishing to test, improve, or certify products, as well as users or funders of PV and wind systems (government, installers, and end-users) that need accurate performance information and improved siting and output prediction tools.
4. **Product Testing for Certification.** Testing laboratories are expected to acquire the appropriate recognition to test products for certification. Developing the capability to test to both national and international standards is encouraged. Based on available resources and market needs, proposers should select which tests they plan on performing. Because accreditation can be a lengthy and rigorous exercise, proposers are encouraged to partner or work with accredited testing institutions in the United States or worldwide in order to ensure success using a reasonable level of resources. Proposers are also encouraged to become familiar with the ISO 17025 standard for laboratory accreditation.
5. **Laboratory and Field Testing to Meet Market Needs.** Centers are expected to increase the level of knowledge of wind and PV product and system performance by having appropriate laboratory and outdoor testing capability and by developing and implementing an extensive field evaluation program. Market needs may include testing of beta units for manufacturers, monitoring of statistically systems or products at the Center under outdoor conditions, and monitoring of significant samples of installed systems of different sizes, technologies, and end-users for users. Some examples of areas where more information is needed include, but are not limited to:
  1. **PV:** Effect of varying, diffuse, and low incident sun angle on the performance of various types of PV modules and technologies, energy output of different technologies in typical New York State weather conditions, testing to identify failure modes, etc.
  2. **Wind:** Performance-based issues of customer-sited and large-scale wind that are related to real-world operating parameters including gusts, change of wind direction, turbulence, etc. Performance of roof-mounted wind systems (performance, reliability, longevity, vibration, noise, etc.)

6. **Research.** Centers will be expected to identify and prioritize performance-based research needs based on market input and results from laboratory and field evaluations. It is expected that there will be a strong connection between research, laboratory and field testing and that these categories could overlap. Centers will also be responsible for identifying funding sources to meet these needs. The following potential research areas have been identified:
  1. **Both PV and Wind:** Research areas that are applicable to either PV or wind include: develop novel prediction tools and analysis methods that could include the creation of significant databases of information, smart grid integration, strategies that improve communication and control, evaluation of storage and control alternatives to help maximize on-peak and as-needed production of power from intermittent resources, etc.
  2. **PV:** The research conducted by the centers will be broad and range from working with PV industry members to: improve performance of components and systems, develop better techniques for integrating large numbers of systems into utility grids, better understand the effects of snow on performance, perform failure analyses, research long-term degradation mechanisms in northeast climates, etc.
  3. **Wind:** Establish/expand the capability in to address research areas; such as, wind resource prediction in complex environments (including urban), large- or small- turbine design and optimization, advanced data analysis and modeling techniques, and large- or small- turbine control optimization, failure analyses, long-term degradation mechanisms in northeast climates, etc.
7. **Workforce:** Another objective of this program is to provide a training ground for highly skilled undergraduate and graduate students with specialties in PV and wind technologies to serve as a clean energy workforce that will help attract PV and wind industries to New York. While this program does not fund curriculum development, it is expected that the Centers will be used as a tool to stimulate related workforce activities. Coordination with existing workforce practitioner training programs is also encouraged.

## 1.2 PROGRAM PHASES AND FUNDING

This program will be conducted in two phases. Phase 1 develops the plan for the Center and Phase 2 implements the plan. Up to \$50,000 of NYSERDA funding per project is available for Phase 1 activities. The total budget for this solicitation is \$4,400,000. Additional funds may be made available.

Phase 1 is expected to take approximately 6 months. It is anticipated that one wind center and one PV center will be selected for Phase 1 funding. Phase 1 results and progress will be evaluated and, if acceptable, Phase 1 awardee(s) will progress to Phase 2. To be successful in Phase 1 and progress to Phase 2, Phase 1 deliverables must demonstrate a likelihood of success based on the evaluation criteria in Section V, "Proposal Evaluation" of this solicitation.

**If Phase 1 progress is not acceptable, NYSERDA reserves the right to cancel the contract and select another proposal for Phase 1 funding.**

Phase 1 activities and deliverables include:

- Prepare a market and needs assessment.
- Develop Phase 2 implementation plan that identifies the following, at a minimum: testing equipment that will be purchased, equipment purchasing/installation schedules, specific tests that the Center will develop the capability to perform, strategy to become recognized to test products to specified certification standards, initial and long-term performance testing plans, and initial and longer-term research objectives.
- Develop a business plan.
- Finalize team members and partners.
- Attract business partners which can include private and public sectors.
- Develop Phase 2 budget and schedule.
- Develop strategies to measure success of the project. Specify performance goals.

Phase 2 activities include:

- Execution of implementation and business plans developed in Phase 1.

- Establish and install test and research facilities and equipment.
- Achieve recognition to test products for certification to standards identified in Phase 1.
- Program marketing and outreach assistance.
- Performing testing and research as identified in Phase 1 and determined by needs assessment.

### 1.3 COST SHARING

**Cost sharing is not required, but is highly encouraged and the amount of co-funding levels will be considered in proposal evaluation.** The percentage of cost-sharing is expected to increase over the contract term as the center becomes less dependent on NYSERDA support. **Cost sharing can be from the proposer, other team members, or third parties. Third party cost-sharing can come from various sources, including but not limited to user fees, funding from industrial partners, federal, state, or local government funding, etc.** Contributions of direct labor (for which the laborer is paid as an employee) and purchased materials may be considered "cash" contributions. Unpaid labor, indirect labor, or other general overhead may be considered "in-kind" contributions. NYSERDA will not pay for efforts that have already been undertaken. The proposer or proposing team cannot claim as cost-share any expenses that have already been incurred. NYSERDA funding from other programs will not be considered cost-sharing.

### 1.4 BACKGROUND AND RESOURCES

Unlike large power projects financed by project revenues, performance of small power systems is often not guaranteed by the manufacturer or installers. End-users are forced to trust the vendors that their estimates of system performance will be correct. In order to establish and maintain stable, sustainable markets, these systems must perform in a predictable, dependable manner. An independent performance test and evaluation can help ensure that systems perform as expected. As markets for PV and wind systems increase and as the number of product offerings increase, demand for performance testing and evaluation will also increase.

NYSERDA provides incentives for the installation of customer-sited wind and PV systems. In its goal to provide high quality renewable energy options to the residents of New York, NYSERDA supports the development of wind and PV test and research centers to create an independent verification of wind and PV component performance.

#### 1.4.1 PRE-BID CONFERENCE

A pre-bid teleconference will be held on October 26, 2009 at 10:00am:

For the **visual portion**: from your Internet Browser: <http://www.paetec.com/conferencing/index.html>)

Attendees will click "Join a Conference"

Access number: 8005018979

Access code: 8621090

No pass code

The **audio portion** of the conference will be via the phone: (800) 501-8979 Access code 8621090

The goals of the pre-bid conference will be two-fold: 1) to provide a brief overview of PON1283 and 2) and 2) to answer questions about this program. There will be an opportunity for organizations to introduce themselves to and identify partners.

#### 1.4.2 COLLABORATION/PARTNERING

In order to facilitate teaming arrangements, NYSERDA has set up a collaborative on-line workspace. This site, "NYSERDA's eSolve Office", accessible at <http://nyserda.esolveoffice.com>, can be used for collaboration for PON 1283. Within this forum you can identify potential partners and exchange ideas with them via discussion threads, document sharing and other tools. To gain access to NYSERDA's eSolve

Office, please send an email with your name and organization to Jacques Roeth at [PON1283@nyserdera.org](mailto:PON1283@nyserdera.org)

### 1.4.3 RELATED ORGANIZATIONS AND RESOURCES

**Small Wind Certification Council (SWCC)** – An independent certification body, will certify that small wind turbines meet or exceed the performance, durability, and safety requirements of the *Small Wind Turbine Performance and Safety Standard*. <http://smallwindcertification.org/>

**National Renewable Energy Laboratory (NREL) Presentations from the September 2008 Small Wind Testing Workshop** -- These presentations cover the American Wind Energy Association (AWEA) small turbine standard, test facility site assessment, duration testing, design data testing, power performance testing, safety and function testing, acoustic testing, and more. [NREL Regional Test Centers](#)<sup>2</sup>

**New York Business Incubators** – For a list of incubators in New York State, see [www.nystar.state.ny.us/incubators.htm](http://www.nystar.state.ny.us/incubators.htm).

**American Wind Energy Association (AWEA) Draft Small Wind Turbine Standard** – AWEA is drafting United States safety and performance standards for small wind turbines. [http://www.awea.org/smallwind/standard/Small\\_Turbine\\_Standard\\_Draft\\_Document.pdf](http://www.awea.org/smallwind/standard/Small_Turbine_Standard_Draft_Document.pdf)

**International Electrotechnical Commission (IEC)** – The IEC develops international standards for wind turbines. <http://www.iec.ch/>

**Powermark** – Powermark develops test procedures for PV product certification and accredits laboratories to test to perform powermark certification testing. [www.powermark.org](http://www.powermark.org)

**American Association for Laboratory Accreditation (A2LA)** – A2LA is a nonprofit organization that accredits laboratories based on ISO/IEC 17025:2005. [www.a2la.org](http://www.a2la.org)

**National Cooperation for Laboratory Accreditation (NACLA)** – NACLA is a not-for-profit corporation that evaluates US laboratory accreditation bodies. [www.nacla.net](http://www.nacla.net)

**National Voluntary Laboratory Accreditation Program (NVLAP)** – NVLAP provides third-party accreditation to testing and calibration laboratories. <http://ts.nist.gov/standards/accreditation/index.cfm>

**Inventory of New York University Research Expertise** – [www.nystar.state.ny.us/inventories.htm](http://www.nystar.state.ny.us/inventories.htm)

**Application to Access New York's Supercomputers** – Two of the world's fastest supercomputers are at Brookhaven National Lab/Stony Brook University and at Rensselaer Polytechnic Institute. These computers can be accessed for modeling and simulation. This links to the application form to access these supercomputers: [www.nystar.state.ny.us/hpcapp.pdf](http://www.nystar.state.ny.us/hpcapp.pdf)

## 2. PROGRAM REQUIREMENTS

### WHO MAY PROPOSE

Each Center will be made up of a coalition that could include public and private team members with expertise in the appropriate areas. The test center(s) will have physical testing at one or more locations in New York State. Proposers are **encouraged to form teams** to meet project goals and possess the qualifications listed below. Teams must demonstrate expertise, as appropriate to the technology (wind or

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<sup>2</sup> NREL presentations are expected to be posted week of Sept 28, 2009

solar) in resource modeling and evaluation, system and component instrumentation, testing, and measurement, performance-based research, and lab accreditation. Teams must also possess appropriate business expertise to successfully run the center. Where expertise is lacking, proposers must identify a strategy for including this expertise on the team. Proposers are encouraged to partner or work with accredited testing institutions in the United States or worldwide in order to achieve success using a reasonable level of resources.

Each Center must have a physical New York State address and on-site resources as necessary to meet the project goals. In-state team members are preferred; however, out-of-state team members are permitted if necessary to achieve the appropriate expertise. Proposers **must** describe how out-of-state resources are appropriate for the project. If the proposal is selected for funding, the lead proposer will enter into an Agreement with NYSERDA as NYSERDA's contractor.

Include **letters of commitment** from each team member in an appendix to the proposal.

### 3. PROPOSAL REQUIREMENTS

**Format** - Your goal as a proposer should be to **concisely** present the information needed to fully address the objectives (Section I.I, 'Goals and Objectives') and evaluation criteria (Section V, 'Proposal Evaluation').

Proposers must submit 14 (fourteen) copies plus one CD with files compatible with Microsoft Word format of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this Program Opportunity Notice/Request for Proposal. A completed and signed Proposal Checklist must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned.** Faxed or e-mailed copies will not be accepted. Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal. Each page of the proposal should state the name of the proposer, the PON number, and the page number. The proposal must be in the following format and should present the items in the sequence indicated:

- Proposal Checklist
- Disclosure of Prior Findings of Non-Responsibility form
- Proposal sections:
  1. Executive Summary
  2. Test and Research Center Plans
  3. Proposal Team Qualifications and Structure
  4. Statement of Work
  5. Schedule
  6. Cost Proposal and Budget & Contract Pricing Proposal Form
  7. Appendices

Do not include Appendix D – Sample Agreement in your submittal

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

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

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

**Proposal Expectations** – Proposers are not expected to provide a fully detailed and comprehensive implementation plan in their proposal as this will be prepared in Phase 1; however, proposers are expected to provide sufficient information to demonstrate that the proposer understands the scope of the project and to allow reviewers to effectively evaluate the proposal. Each proposal will be evaluated based on the evaluation criteria in Section V. Proposers selected for Phase 1 funding will further develop the business, technical, partnership, and funding aspects of their Center plans during Phase 1 and will be evaluated at the end of Phase 1 based on the evaluation criteria in Section V. Phase 1 results are expected to be significantly more mature than proposals.

**Proposal Section 1: Executive Summary** - Summarize the proposed program. (not to exceed one page). Indicate whether you are proposing to develop a wind test and research center, PV test and research center, or both. The summary should clearly and concisely discuss the business case, problem statement, goals & objectives and project scope of the proposal.

**Proposal Section 2: Test and Research Center Plans** – Based on the guidance below, provide an overview of the Center's activities during the five years of this project. Note that the strategies identified here will be further fleshed out and built upon during Phase 1. Provide enough information in your proposal so that the review team can effectively evaluate your proposal compared to others submitted to this program based on the evaluation criteria in Section V of this solicitation.

## **2.1 Financial Sustainability and Business Plan and Customer Focus**

1. Describe strategies the Center will use to create a long-term program that is sustainable after the NYSERDA funding for the project ends. The successful proposer(s) will present a convincing plan to establish a program that is capable of becoming self-sustaining without additional NYSERDA support. Identify potential funding sources, the potential amount of these sources, and strategies that will be used to secure funding. Testing services could be provided on a proprietary fee-based basis.
2. Develop an initial projection of operating costs and revenues for the first five years of center operation.
3. Describe strategies the Center will use to market its services and attract customers and partners. Indicate the type of customers or partners you anticipate targeting. Partnering or coordinating with renewable energy business incubators should be considered as part of the overall strategy.
4. Describe strategies the Center will use to meet the needs of customers and partners. This should include a description of how the Center will effectively and promptly meet customer needs and get input on testing and research needs. The strategy may include internship/resource-sharing between center and companies. Centers are encouraged to have a designee responsible for outreach and coordination with businesses, clients, and other testing/research centers, to ensure that the center is responsive to customer needs.
5. Discuss outreach and coordination strategies the Center will use. For example, will the Center host industry workshops, and will the Center coordinate with other testing/research institutions and accredited testing laboratories, business incubators, training programs and workforce training sites?
6. Discuss how the Center will help achieve an objective to provide a training ground for highly skilled undergraduate and graduate students with specialties in PV and wind technologies to serve as a clean energy workforce for New York's PV and wind industries.

7. Discuss the Center's approach to intellectual property and how this approach will not hinder business partnerships.

## 2.2 Testing Capabilities and Facilities

1. **Testing for Product Certification.** Discuss (with specifics) your strategy to become recognized to test and certify products and discuss why and how this strategy will meet the goal of becoming an accredited or nationally recognized testing laboratory for product certification. The strategy may include partnering with or become accredited to perform PV or wind testing. Accreditation may include accreditation by the American Association for Laboratory Accreditation (A2LA) or equivalent and (for PV only) PowerMark Corporation (the U.S. representative to the PV Global Approval Program, PV GAP). Identify whether your strategy includes teaming with other accredited or nationally recognized testing laboratories and, if so, describe the status and nature of the teaming arrangements and include letters of support if available. If your strategy includes teaming, describe the benefits you expect to achieve through this teaming arrangement. Identify a time-line for achieving recognition to test products for certification.
2. **PV-Specific Testing Capabilities** (Answer if proposing a PV test and research center.)
  - a. **Testing Capabilities for Product Certification.** This program seeks to develop a PV module testing facility capable of evaluating the safety, performance, reliability and durability of PV modules for product certification. Identify which PV module tests and the relevant associated standards the Center will develop the capability to perform during this project timeframe. Describe your basis for selecting these tests. If you are not going to provide all of the testing services necessary to test to relevant standards (UL 1703 and IEC 61730 for PV module safety; ASTM E 1036 for PV module performance; and IEC 61215 and IEC 61646 for PV module reliability and durability), indicate whether you have or anticipate having partners that can complement your capabilities. Indicate whether the Center will address testing for other PV-related components such as inverters.
  - b. **Other Testing Capabilities.** Identify any additional testing capabilities you plan on developing including other PV system components. For example, are there module testing capabilities that would be attractive to industry that are not required for certification? Describe capabilities that will be developed for controlled outdoor testing.
3. **Wind-Specific Testing Capabilities** (Answer if proposing a wind test and research center.)
  - a. **Testing Capabilities for Product Certification.** This program seeks to develop a small wind testing facility capable of evaluating the safety, performance, reliability and durability of small wind turbines for product certification. Identify which small wind turbine tests and the relevant associated standards the Center will develop the capability to perform during this project timeframe. Describe the basis for selecting these tests. If you are not going to provide all of the testing services necessary to test to relevant standards (i.e. all areas of AWEA Small Wind Turbine Standard (currently in draft form) and/or IEC 61400, indicate whether you have or anticipate having partners that can complement your capabilities. Indicate whether the Center will address testing larger wind turbines or other wind systems or components.
  - b. **Other Testing Capabilities.** Identify any additional testing capabilities you plan on developing for large or small wind turbines. For example, are there turbine testing capabilities that would be attractive to industry that are not required for certification? Do you plan on expanding the Center's capability to test and evaluate other components of wind systems (i.e. towers or inverters?) Explain.
4. **Existing and Planned Facilities.**
  - a. **Existing Facilities and Equipment.** Describe existing facilities and equipment the proposing team has that are relevant to establishing a wind or PV test center. Applicants are expected to leverage existing investments in facilities and equipment. See [www.nystar.state.ny.us/ref/index.htm](http://www.nystar.state.ny.us/ref/index.htm) for a database of equipment at New York's

colleges, universities, and research centers. If facilities or equipment are not owned by the lead team member, provide letters that support the use of the facilities or equipment for the wind or PV test center.

- b. **Planned Facilities and Equipment.** Describe any facilities or equipment that you anticipate acquiring in order to carry out the objectives of your center. Note that at the proposal stage a detailed list is not required, but proposers should demonstrate an understanding of the type of equipment that will be purchased. Please provide the level of information that you have.
- c. **Wind Test Center Site.** For proposers of Wind Test and Research Centers, identify a site or potential sites in New York for wind turbine certification testing and indicate whether you have site control, and if not, provide information on how you will get site control. If a site has not been identified, the strategy to secure a test center site. Provide location, size, estimated wind speed, and a topographic map identifying the site boundaries. Describe the characteristics of the site and why the site would be a good test site. Identify anticipated issues with regard to permitting the site and why turbine manufacturers will choose to have turbines tested at this site. For information on test site requirements, see: [NREL Regional Test Centers](http://www.nrel.gov/wind/regions/). A New York State wind map is available at: <http://windexplorer.awstruwind.com/>.

### 2.3 Testing and Research Plans and Projects

Present a preliminary 5-year testing and research plan for the Center and include a brief description and budget for each project. Specific testing and research needs are identified in Section I.I 'Goals and Objectives' under numbers 5 'Laboratory and Field Testing to Meet Market Needs' and 6 'Research'. Center(s) will be expected to identify and prioritize research and testing needs based on market input and results from laboratory and field evaluations. Centers will also be responsible for identifying funding sources to meet these needs.

The testing and research plan should include an extensive multi-year field evaluation program. To the extent possible, field evaluation programs should evaluate systems that have been funded by third parties in order to maximize funding available for the Center's testing and research activities. Describe plans to implement such a program.

**Proposal Section 3: Proposing Team Qualifications and Structure** - Proposers should demonstrate how they are qualified to carry out each of the tasks in the Statement of Work and describe existing facilities that are relevant to the work. The proposal should clearly demonstrate how the proposer has the experience, skills, abilities, and facilities necessary to effectively develop and implement this Program. The proposal will be evaluated on how well the proposer details their qualification to meet all of the goals of this Program. It is preferred that teams are established by the time that the proposal is submitted; however, where vacancies exist, identify qualifications and strategies to populate those vacancies through partnerships or hiring. It is strongly recommended personnel for key positions be identified in the proposal.

- **Introduction and Information About Proposing Organization(s)** - Proposers should identify relevant information about each organization in the proposing Team. Given the wide variety of skills and expertise needed to complete some elements of these tasks, the proposers should describe ideas or strategies to augment their capabilities with external resources. Responding proposers or proposing teams must include the following information for each team member with his or her response:
  - Firm name, address, telephone number and fax number, an e-mail address and contact person.
  - Summary of each teaming organization's size, capabilities, and length of operation.

Proposers should describe why they are qualified to perform and complete the services requested under this PON. Proposers should describe any current activities that this proposal may build upon.

- **Management Structure and Staffing Plan** - The proposal shall identify the program director who

will be responsible for ensuring that the tasks within the project are carried out properly and in a timely manner. The proposer should provide a clear description of the roles and responsibilities of each key person in completing project. An organization chart should be included in the proposal. Proposals that include teaming arrangements must specify one party as the Prime Contractor. The Prime Contractor will have overall responsibility for the administration of the Agreement and completion of Project. The proposer should also describe how coordination with NYSERDA will be accomplished. The proposal should also include a staffing plan that identifies the key personnel, including any subcontractors or other resources, responsible for completing each task and major subtask. Provide a table showing the number of hours each key person or subcontractor will spend on each task and the total hours per task.

- **Industry Advisory Board** – An Industry Advisory Board to help guide Center activities is highly recommended. Industry Advisory Board members should provide New York, national, and possibly international perspectives on performance-based testing and research needs. To the extent that Industry Advisory Board members have been identified, provide information on these members. To the extent that vacancies exist, provide information on the qualification requirements for potential Board members and strategies to attract these Board members.
- **Qualifications of Individuals** – Describe qualifications of individual team members as they relate to this project. Identify experience and education team members have related to achieving the goals of the Center. Identify the organization individual team members work for and include their city and state. Proposers should, at a minimum, address technical qualifications, as appropriate to the technology (wind or solar) in resource modeling and evaluation, system and component instrumentation, testing, measurement, evaluation, performance-based research, and lab accreditation. Proposers should also address business and management qualifications as appropriate to manage, provide outreach, and raise funding for the center. Provide additional information for the program director that describes formal business training, previous experience in establishing and running organizations, working with businesses on technical matters, and being responsive to business needs. If the team lacks experience in a specific area, identify a strategy for including this expertise on the team. Include resumes of team members as attachments.
- **Related Work Examples** – Proposals should include examples of related work and experience completed by members of the proposing team that would demonstrate their qualifications to develop and implement this Program. Each proposer should include the name and telephone number of at least three references for whom its organization has completed projects. Resumes of all team members should be provided in an appendix.

**Proposal Section 4: Phase 1 Statement of Work** – Prepare a Statement of Work (SOW) for Phase 1 that addresses, at a minimum, the following tasks (you may add additional tasks) and includes duration, deliverables and budget for each task:

- Develop Phase 2 implementation plan that identifies the following, at a minimum: testing equipment that will be purchased, specific tests that the Center will become qualified to perform, initial and long-term performance testing plans, initial and longer-term research objectives, Phase 2 milestone budget and schedule, strategies to measure success of the project, and performance goals.
- Develop business plan. This should include:
  - A description of the proposing organization's history, size, and business model
  - An analysis of the markets and needs assessment for the test center's services
  - A description of the value proposition of the test center
  - The test center's marketing and sales strategy over the 5 years
  - The test center's plan to expand operations over the 5 years
  - A financial plan describing anticipated capital needs and sources
  - A five year forecast of sales, profits and losses, and cash flows
  - An assessment of business risks
- Develop evaluation plan.
- Finalize team members and partners.

- Attract business partners.

The SOW is the primary document that outlines work activities and required performance for payment by NYSERDA. It is an action document that specifically delineates each step or procedure required to accomplish objectives of each task. The tasks should describe the actions that will be taken to complete each task and what the anticipated outcome of each task is. Therefore, each action shall be identified, indicating who will perform it, how it will be performed and its intended result. Be clear and specific; concentrate on "how" and not "why". Include quantifiable milestones as deliverables where possible. In order to effectively evaluate a proposer's Statement of Work, there must be concrete and specific ideas presented in the proposal for each element of all tasks. Proposers are expected to demonstrate their understanding of each task and what it entails by elaborating on how they would carry it out.

**Proposal Section 5: Schedule** - The proposers shall include a time line for completing each task and major subtask identified in their Statement of Work for Phase 1. This time line should be in bar chart form showing anticipated starting and completion times for each task, in terms of weeks or months after execution of the Agreement. Phase 1 is expected to take approximately six months.

Provide a preliminary Phase 2 schedule. The preliminary Phase 2 schedule should provide the reviewers with an overview of when major Phase 2 activities will occur and be completed. The entire project (including Phases 1 and 2) is anticipated to be five years.

#### **Proposal Section 6: Cost Proposal and Budget –**

**Contract Pricing Proposal Form** - The Contract Pricing Proposal Form (CPPF) is included as an attachment to this PON. The proposal must include a completed CPPF for each of the following:

- The total proposal
- Phase 1
- Phase 2 (preliminary budget)

Note that the cost elements identified on the Phase 2 budget and CPPF are preliminary and are expected to be refined during the Phase 1 work; however, the overall Phase 2 NYSERDA funding request developed in Phase 1 may not exceed the amount requested in this proposal.

Attach detailed budget breakdowns (using the CPPF Supporting Schedule) for subcontractors, equipment, material, and travel.

If you are proposing to establish both a PV and wind test and research center, prepare a separate CPPF for the wind test and research center and for the PV test and research center. If there are cost savings due to efficiencies of operating both a wind and a PV test and research center, prepare a CPPF for the combined center so the savings may be evaluated.

**Budget Breakdown –** Provide a breakdown of anticipated costs for PV Test Center, Wind Test Center or combined Wind and PV Test Centers, each Task in Phase 1 and Phase 2. Proposers must provide a summary table of milestone payments, indicating the task number, deliverable, proposed payment, and number of deliverables, if repeating (e.g., quarterly reports.) An example of a summary table of milestone payments is provided in Table 1.

**Table 1 Example Budget and Milestone Summary Table**

<b>PHASE 1 Develop Test Center (add tasks or lines as needed)</b>	<b>Labor &amp; labor overhead</b>	<b>Subcontracts (list each separately)</b>	<b>Deliverables</b>	<b>Total NYSERDA funding</b>
Develop Phase 2 implementation plan				\$x,xxx
Develop business plan				\$x,xxx
Develop evaluation plan				\$x,xxx
Finalize Team Members				\$x,xxx
Secure Business Partners				\$x,xxx
<i>You may add additional tasks</i>				\$x,xxx
Total Phase 1				Max \$50,000

<b>PHASE 2 Implement Test Center (example tasks below; add tasks or lines as needed)</b>	<b>Equipment , materials</b>	<b>Labor &amp; labor overhead</b>	<b>Subcontracts (list each separately)</b>	<b>Deliverables (Examples)</b>	<b>Total NYSERDA Funding</b>
<i>Test Center establishment, Including Equipment</i>				<i>Report &amp; inspection of centers</i>	\$xxx,xxx
<i>Achieving national recognition or accreditation to test and certify products</i>				<i>Accreditation certificate(s)</i>	\$xx,xxx
<i>Test Center Operation (breakout in to subtasks ) (5-year)</i>				<i>Equipment to be tested in-house with project testing plan</i>	\$x,xxx per project
<i>Testing and Research Projects Completed (use one line per project area)</i>				<i>Project Reports for each test.</i>	\$xx,xxx per project
Total Phase II					

**Cost Sharing** - Identify non-NYSERDA funding. There is no minimum level of cost sharing, but cost sharing is highly recommended and the level of cost sharing proposed and the value of the proposal compared to the NYSERDA funding requested are evaluation factors. In addition, the percentage of cost-sharing is expected to increase over the contract term as the center should be self-sufficient without additional NYSERDA support in five years.

Cost sharing can be from the proposer, other team members, and other government or private sources. Third party cost-sharing can come from various sources, including but not limited to, user fees, funding from industrial partners, federal, state, or local government funding, etc. Contributions of direct labor (for which the laborer is paid as an employee) and purchased materials may be considered "cash" contributions. Unpaid labor, indirect labor, or other general overhead may be considered "in-kind" contributions. NYSERDA will not pay for efforts that have already been undertaken. The proposer or proposing team cannot claim as cost-share any expenses that have already been incurred. Show the cost-sharing plan in the following format (expand table as needed):

	Phase 1 Cash	Phase 1 In-Kind Contribution	Phase 2 Cash	Phase 2 In-Kind Contribution	Total
<b>NYSERDA</b>	\$	\$ 0.00	\$	\$ 0.00	\$
<b>Proposer</b>	\$	\$	\$	\$	\$
<b>Others</b> (identify each source of funding and list each individually)	\$	\$	\$	\$	\$
<b>Total</b>	\$	\$	\$	\$	\$

Attach supporting documentation to support indirect cost (overhead) rate(s) included 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 rate(s) is approved by an independent organization, such as the federal government, provide a copy of such approval.
3. 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.

**FACILITIES AND EQUIPMENT** - Funding is available under this PON for developing facilities and purchasing equipment and resources required for institution certification and for other testing and research needs. Only equipment that can be justified as directly necessary for PV or wind testing and research will be approved. Make sure that costs for facility upgrades and equipment is broken down to the extent possible on the CPPF.

- Funding not available for constructing or purchasing buildings, however, funding is available for facility upgrades necessary to develop the test and research facility. If funding for facility upgrades is requested, clearly identify the level of funding requested for facility upgrades.
- Funding is not available for facilities or equipment that will be located outside of New York State.

**Proposal Section 7: Appendices** - Include any resumes, company qualifications, financial statements, or ancillary information which is deemed necessary to support your proposal. If appropriate, also include:

- **Letters of Interest or Commitment** – If you are relying on any other organization to do some of the work, provide services or equipment, or share in the non-NYSERDA cost, include a letter from that organization describing their planned participation and signed by a person authorized to contractually obligate the organization. Also include letters of interest or commitment from businesses or other organizations critical to the future commercialization, demonstration, or implementation of the project. Absence of letters of interest or commitment will be interpreted as the proposer not having support from the identified parties.

- **Exceptions to the Terms and Conditions** – If you do not accept the standard terms and conditions as contained in the attached Sample Agreement, provide alternate terms with justification based on the risk and benefit to NYSERDA and New York State.
- **Potential Conflicts of Interest** – Identify the nature of any potential conflicts of interest among team members in providing services to NYSERDA under this PON. Fully discuss possible conflicts of interest, actual and perceived, which could arise in connection with performance by team members of the proposed contract. Describe how your firm would resolve conflicts of interest. In the event that NYSERDA determines that a team member may have a conflict of interest or the appearance of such, NYSERDA may: (1) take this into consideration in evaluating the proposal; (2) exclude the proposer from consideration for an award; (3) adjust the scope of work to avoid the conflict of appearance of conflict; or (4) negotiate other appropriate actions with the team member to avoid the conflict or appearance of conflict.

#### 4. PROPOSAL EVALUATION

Proposals that meet Proposal requirements will be reviewed by a Technical Evaluation Panel (TEP) using the Evaluation Criteria below. Proposals for wind testing centers will be evaluated compared to other wind testing center proposals and proposals for PV testing centers will be evaluated compared to other PV testing center proposals. If a proposal includes both wind and PV testing centers, the wind portion will be evaluated compared to wind testing center proposals and the PV portion will be evaluated compared to PV testing center proposals.

##### Overall and New York Benefits

- What is the likelihood of the proposal achieving its stated goals?
- How likely is it that the benefits will be realized?
- Have the risks been identified and addressed?
- Does the proposal provide good value for the level of NYSERDA funding?
- Does the proposal leverage existing facilities and equipment?
- Will a substantial amount of Center activity occur in New York State and are a substantial number of team members located in New York State?
- What is the likelihood of the proposal to stimulate New York-based wind and solar business?
- Does the proposal include adequate resources and an appropriate strategy for outreach and coordination?
- What is the potential for expanding New York's highly-qualified workforce suitable for the PV or wind industries?

##### Financial Sustainability and Business Plan

- What is the likelihood of the center operating beyond the 5-year project operational period without additional NYSERDA support?
- Has the Proposer demonstrated sufficient markets and demand for its services to justify the forecasted revenues?
- Does the proposer understand market, customer, and technology performance-related testing and research needs necessary to further the technology, its performance, and the industry?
- Has the proposer contacted industry members to identify their needs as related to the Center and solicit interest in participating in an Industry Advisory Board?
- Will the Centers be customer-focused and meet customer and market needs?
- Are the Proposer's approaches to attracting customers and partners likely to be successful?
- Does the proposal include an adequate strategy to measure success of the Center?
- Are intellectual property provisions reasonable and not likely to pose barriers to business participation in the center?

**Testing Capabilities and Facilities**

- What is the expected accredited testing capability of the center?
- Is the proposal's strategy to gain laboratory accreditation appropriate?
- Will the Center have appropriate performance testing and research capability to meet industry and market needs?
- Does the proposer understand and have the ability to overcome challenges associated with gaining laboratory accreditation?
- Is the proposer likely to achieve efficiency improvements, cost reductions, and increased quality by partnering with other testing organizations? Does the proposer have a well-thought-out approach for partnering with other testing organizations?
- For proposers of wind centers only:
  - o Are the physical and wind characteristics of the wind test site appropriate for testing wind turbines to national and international standards? Will the wind speed distribution and other characteristics of the site make it likely that industry will choose to have tests performed at the test center?
- Are the existing and proposed facilities and equipment adequate to achieve the goals of the program (identified in Section I.I of this solicitation)?

**Testing and Research Plans and Projects**

- How well does the preliminary testing and research plan meet market and customer needs?
- Does the preliminary testing and research plan adequately address the goals of this program (identified in Section I.I of this solicitation)?
- Are the scope and approach of the proposed field evaluation program adequate and will the field evaluation program provide useful information?
- Does the proposer plan to provide a range of testing and research services that are likely to meet the test center goals identified in Section I.I?

**Experience, Qualifications, and Organizational Plan**

- Does the proposer possess the expertise and experience to complete all aspects of the program successfully? Specifically:
  - o Does the program manager have appropriate business, management, and technical experience?
  - o Does the proposing team have documented experience in developing accredited laboratories?
  - o Does the proposing team have appropriate technical experience to address the testing and research goals of this program?
  - o Does the proposing team have appropriate business and financial expertise to set up, manage, and run a sustainable test and research center?
- Does the proposal include letters of commitment or support from all team members?
- What is the quality of the proposing team members' performance on past programs or their achievements related to proposed work?
- What is the proposer's previous experience with NYSERDA, if any?
- Is the Center's organizational structure suitable to meet the goals of the project? Is the staffing plan and schedule, appropriate and of high quality?
- Are sufficient resources (staff, facilities, and equipment) being devoted to the program?
- Is management oversight and control adequate?
- Is the coordination of other participants (proposing team subcontractors, partners, and other programs) well developed?

**Statement of Work (SOW)**

- Is the SOW thorough, specific, logical, and consistent with the PON's objectives?
- Does the SOW reflect an understanding of all the issues involved and their interrelationships?
- Is the SOW appropriate in its approach to develop, market, and deliver testing and research services?
- How much additional elaboration was provided for each task in the SOW?
- Does the proposer include creative suggestions to achieve the goals of this PON?

- Are there any suggestions that broaden or deepen the scope of this PON that might not have been requested?
- How well does the evaluation plan and strategy accommodate and address Program current and future needs?
- How well does the proposal incorporate input from original equipment manufacturers and industry experts who can bring useful information to program?

#### **Cost Criteria**

- How well does the proposer's budget accurately reflect potential implementation costs associated with completing the tasks in the SOW?
- Does the cost breakdown provide sufficient resources for each of the tasks?
- Is the Contract Pricing Proposal Form (CPPF) clear and responsive to the PON?
- Does the proposer have adequate financial resources to perform the proposed work?
- Are billing rates current, reasonable, appropriate, and clearly identified or itemized?
- Is the proposer's total cost appropriate when compared to the cost of other comparable proposals and their projected results?
- Is the milestone schedule of tasks, deliverables and associated payments appropriate, achievable and realistic?
- What is the level of proposed cost sharing?

## **5. GENERAL CONDITIONS**

**Proprietary Information** - Careful consideration should be given before confidential information is submitted to NYSEDA 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 NYSEDA 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 NYSEDA 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](http://www.nyserda.org/nyserda.regulations.pdf). However, NYSEDA 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 that 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](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](http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf)). The Department has developed guidance for contractors which is available at [http://www.tax.state.ny.us/pdf/publications/sales/pub223\\_606.pdf](http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf).

**Contract Award** - NYSERDA anticipates making multiple awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA expects to notify proposers in approximately eight (8) weeks from the proposal due date whether your proposal has been selected to receive an award.

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

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

## 6. ATTACHMENTS

- Attachment A - Proposal Checklist (mandatory)
- Attachment B - Disclosure of Prior Findings of Non-responsibility (mandatory)
- Attachment C - Contract Pricing Proposal Form (CPPF - mandatory) & Instructions
- Attachment D - Sample Agreement



**ATTACHMENT A - PON No. 1283 PROPOSAL CHECKLIST (MANDATORY)**

Proposal Title (What product/concept will be focus of proposed work?)		Due Date															
<b>Primary Contact</b> (Prime Contractor)		Title															
Company		Phone	Fax														
Address	City	State/Province & Zip	e-Mail														
<b>Secondary Contact</b>		Title															
Company		Phone	Fax														
Address	City	State/Province & Zip	e-Mail														
<p><b>THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:</b></p> <p>Do you accept all Terms &amp; Conditions in the Sample Agreement? (if no, explain on separate page) <span style="float:right">___ Yes ___ No</span></p> <p>Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate page) <span style="float:right">___ Yes ___ No</span></p> <p>Are you a Minority or Women-Owned Business Enterprise? <span style="float:right">___ Yes ___ No</span></p> <p>Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? <span style="float:right">___ Yes ___ No</span></p> <p>Are you submitting the required number of copies? (See proposal instructions.) <span style="float:right">___ Yes ___ No</span></p> <p>Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? (if yes, explain on separate page) <span style="float:right">___ Yes ___ No</span></p>																	
<p><b>ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?</b></p> <table border="0" style="width:100%"> <tr> <td style="width:50%">1. Disclosure of Prior Findings (mandatory) <span style="float:right">___</span></td> <td style="width:50%">8. Cost-Sharing Chart <span style="float:right">___</span></td> </tr> <tr> <td>2. Executive Summary <span style="float:right">___</span></td> <td>9. Resumes <span style="float:right">___</span></td> </tr> <tr> <td>3. Test and Research Center Plans <span style="float:right">___</span></td> <td>10. Commitment Letters from Participating Organizations <span style="float:right">___</span></td> </tr> <tr> <td>4. Proposing Team Qualifications and Structure <span style="float:right">___</span></td> <td>11. Indictment/Conviction of Felony (if applicable) <span style="float:right">___</span></td> </tr> <tr> <td>5. Statement of Work <span style="float:right">___</span></td> <td>12. NYSERDA Contracts Awarded (if applicable) <span style="float:right">___</span></td> </tr> <tr> <td>6. Schedule <span style="float:right">___</span></td> <td>13. Prior and/or Competing Proposals (if applicable) <span style="float:right">___</span></td> </tr> <tr> <td>7. Cost Proposal and Budget <span style="float:right">___</span></td> <td>14. Exceptions to Terms &amp; Conditions (if applicable) <span style="float:right">___</span></td> </tr> </table>				1. Disclosure of Prior Findings (mandatory) <span style="float:right">___</span>	8. Cost-Sharing Chart <span style="float:right">___</span>	2. Executive Summary <span style="float:right">___</span>	9. Resumes <span style="float:right">___</span>	3. Test and Research Center Plans <span style="float:right">___</span>	10. Commitment Letters from Participating Organizations <span style="float:right">___</span>	4. Proposing Team Qualifications and Structure <span style="float:right">___</span>	11. Indictment/Conviction of Felony (if applicable) <span style="float:right">___</span>	5. Statement of Work <span style="float:right">___</span>	12. NYSERDA Contracts Awarded (if applicable) <span style="float:right">___</span>	6. Schedule <span style="float:right">___</span>	13. Prior and/or Competing Proposals (if applicable) <span style="float:right">___</span>	7. Cost Proposal and Budget <span style="float:right">___</span>	14. Exceptions to Terms & Conditions (if applicable) <span style="float:right">___</span>
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<p><b>AUTHORIZED SIGNATURE &amp; CERTIFICATION:</b></p> <p>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.</p>																	
Signature		Name (Type or Print)															
Title		Organization															
Phone		Date															

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



Attachment B – PON 1283
Disclosure of Prior Findings of Non-responsibility Form
(Mandatory)

Form with fields for: 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; Three Yes/No questions regarding non-responsibility findings; 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: \_\_\_\_\_



**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**  
**Attachment C: PON 1283 Contract Pricing Proposal Form**

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

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

Supporting Schedule - Contract Pricing Proposal Form

Element No.	Item Description	Amount

**INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE**

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

**A. GENERAL**

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

**B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL**

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

**1a. DIRECT MATERIALS - PURCHASED PARTS**

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

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

**1b. OTHER DIRECT MATERIALS**

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

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

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

**3. DIRECT LABOR**

**a. Commercial Enterprises**

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

grouping, etc.) Also identify any proposed labor escalation and the bases for it.

b. Educational Institutions

Provide the following for each calendar year of the contract:

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

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

5. OUTSIDE SPECIAL TESTING

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

6. EQUIPMENT

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

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

7. TRAVEL

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

8. OTHER DIRECT COSTS

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

9. SUBCONTRACTORS/CONSULTANTS

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

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

11. FEE OR PROFIT

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

## ATTACHMENT D – SAMPLE AGREEMENT

Agreement No.:

Amount:

Type: **Cost-Sharing**

### Agreement

**Agreement** dated this \_\_\_ day of \_\_\_\_\_, 2\_\_\_ by and between the **NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY** ("NYSERDA"), a New York public benefit corporation having its principal office and place of business at 17 Columbia Circle, Albany, New York 12203-6399, and \_\_\_\_\_ having its principal office and place of business at \_\_\_\_\_ (the "Contractor").

In consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties do hereby agree as follows:

#### Article I

##### Definitions

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

(a) General Definitions:

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

Budget: The Budget set forth in Exhibit A hereto.

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

Effective Date: The effective date of this Agreement shall be the date in the first paragraph of page one, above.

Final Report: The Final Report required by the Statement of Work hereof.

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

Progress Reports: The Progress Reports required by the Statement of Work hereof.

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

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

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

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

(b) Data Rights and Patents Definitions:

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

Practical Application: To manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system, and under conditions which indicate that the benefits of the invention are available to the public on reasonable terms.

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

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

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

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

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

Technical Data: Recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental or developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to

procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer software programs, computer software data bases, and computer software documentation). Examples of Technical Data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical Data as used herein does not include financial reports, cost analyses, and other information incidental to contract administration.

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

## Article II

### Performance of Work

Section 2.01. Manner of Performance. Subject to the provisions of Article XII hereof, the Contractor shall perform all of the Work described in the Statement of Work, or cause such Work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Contractor shall perform the Work in accordance with the current professional standards and with the diligence and skill expected for the performance of work of the type described in the Statement of Work. The Contractor shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the Work in accordance with this Agreement.

Section 2.02. Project Personnel. It is understood and agreed that Mr./Ms. \_\_\_\_\_ shall serve as Project Director and as such shall have the responsibility of the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the requested change in Project Director shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days.

## Article III

### Deliverables

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

## Article IV

### Compensation

Section 4.01. Cost-Sharing. It is understood and agreed that NYSERDA and the Contractor are sharing the costs for the Work to be performed. In consideration for this Agreement and as full compensation for NYSERDA's share of the costs for the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor a maximum amount of \$\_\_\_\_\_ for the cost elements identified in the Budget to be funded with NYSERDA funds, 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) Staff Charges: 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) Direct Charges: 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) Indirect Costs: 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.

Section 4.02. Title to Equipment. Title shall vest in the Contractor to all equipment purchased hereunder.

Section 4.03. Progress Payments. The Contractor may submit invoices for progress payment no more than once each month or no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable." Such invoices shall make reference to the Agreement number shown on the upper right hand corner of page one of the Agreement. Invoices shall set forth total project costs incurred. These shall be broken down into NYSERDA's Funding share and into the Cost-Share and Other Cofunding share, and 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 4.04. Final Payment. Upon final acceptance by NYSERDA of the Final Report and all other deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. An invoice for final payment shall include, in addition to the material required pursuant to Section 4.03 hereof, a statement as to whether any invention or patentable devices have resulted from the performance of the Work. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six months following Acceptance of Work pursuant to Section 6.02 hereof. 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 of \$\_\_\_\_\_ set forth in Section 4.07 hereof.

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

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

Section 4.07. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor hereunder is \$\_\_\_\_\_. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.08. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.06 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

## Article V

### Assignments, Subcontracts and Purchase Orders

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

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a Subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any Subcontract or order for equipment, supplies or materials from a single Subcontractor or supplier totaling under \$25,000, the Contractor shall select all Subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a Subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a Subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the Subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a Subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a Subcontractor or supplier, and those set forth in Exhibit B to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any Subcontract(s) specified in the Statement of Work as requiring NYSERDA approval.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action which would impair its rights thereunder. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of the Contract Administrator as long as this Agreement remains in effect. Such approval shall not be unreasonably withheld and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the requested assignment, cancellation, or termination of the Subcontract shall be considered approved by NYSERDA. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days.

## Article VI

### Schedule; Acceptance of Work

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in the Statement of Work. The draft and final versions of the Final Report shall be submitted by the dates specified in the Exhibit A Schedule. It is understood and agreed that the delivery of the draft and final versions of such reports by the Contractor shall occur in a timely manner and in accordance with the requirements of the Exhibit A Schedule.

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

## Article VII

### Force Majeure

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

## Article VIII

### Technical Data; Patents

#### Section 8.01. Rights in Technical Data

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

(1) NYSERDA shall have:

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

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

(2) The Contractor shall have:

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

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

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

#### Section 8.02. Patents.

(a) The Contractor may elect to retain the entire right, title and interest throughout the world to each Subject Invention of the Contractor conceived or first actually reduced to practice in the performance of the Work under the Agreement; except, that with respect to any Subject Invention in which the Contractor elects to retain title, NYSERDA shall have a non-exclusive, non-transferrable, irrevocable, paid-up license for itself, the State of New York and all political subdivisions and other instrumentalities of the State of New York, to practice or have practiced for or on their behalf the Subject Invention throughout the world, exclusively for their own use of the Subject Invention.

(b) Within six months of the time a Subject Invention is made, or as part of the request for final payment, whichever shall occur first, the Contractor shall submit to NYSERDA a written invention disclosure. Within twelve months of the time a Subject Invention is made, or as part of the request for final payment, whichever shall occur first, the Contractor shall advise NYSERDA in writing whether the Contractor elects to retain principal rights in the Subject Invention. The Contractor shall file the patent application for a Subject Invention within two years of the date of election. If the Contractor fails to disclose a Subject Invention, fails to elect to retain principal rights thereto, or to file a patent application within the time specified in this paragraph, or if the Contractor elects not to retain principal rights in a Subject Invention, the Contractor shall convey to NYSERDA title to the Subject Invention unless NYSERDA shall waive in writing its right to take title. In the event the Contractor elects not to retain principal rights in a Subject Invention, the Contractor shall retain a non-exclusive, royalty-free license throughout the world in such Subject Invention transferable only with the written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the requested transfer shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days.

(c) The Contractor shall submit to NYSERDA, not less frequently than annually, written reports which indicate the status of utilization of Subject Inventions in which the Contractor retains principal rights. The reports shall include information regarding the status of development, date of first commercial sale or use, and gross royalties received by the Contractor.

Such report shall be furnished to NYSERDA not later than February 1 following the calendar year covered by the report. In the event the Contractor fails to demonstrate that the Contractor has taken effective steps within three years after a patent is issued to bring the Subject Invention to the point of Practical Application, then NYSERDA shall have the right to grant a non-exclusive or exclusive license to responsible applicants under terms that are reasonable under the circumstances, or to require the Contractor to do so.

(d) The Contractor shall include the foregoing patent clauses, suitably modified to identify the parties, in all subcontracts which involve the performance of Work under this Agreement. The Subcontractor shall retain all rights provided for the Contractor, and the Contractor shall retain all rights provided for NYSERDA, as set forth above.

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

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

## Article X

### Indemnification

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

## Article XI

### Insurance

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

- (a) name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;
- (b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (c) be reasonably satisfactory to NYSERDA in all other respects.

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

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

minimum limits of \$500,000 in respect of claims arising out of personal injury, or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$500,000 in respect of claims arising out of property damage in any one accident or disaster.

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

## Article XII

### Stop Work Order; Termination

#### Section 12.01. Stop Work Order.

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

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

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

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

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

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

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

#### Section 12.02. Termination.

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon 30 days prior written notice to the Contractor. In such event, compensation shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Compensation 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) Nothing in this Article shall preclude the Contractor from continuing to carry out the Work called for by the Agreement after receipt of a Stop Work Order or termination notice at its own election, provided that, if the Contractor so elects, (i) any such continuing Work after receipt of the Stop Work Order or termination notice shall be deemed not to be Work pursuant to the Agreement and (ii) NYSERDA shall have no liability to the Contractor for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

(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 State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

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

## Article XIII

### Independent Contractor

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

## Article XIV

### Compliance with Certain Laws

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

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

Section 14.03. Other Legal Requirements. The references to particular laws of the State of New York in this Article, in Exhibit B 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

### Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. 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 15.02. 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.

Section 15.03. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

## Article XVI

### Publicity

#### Section 16.01. Publicity.

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

(b) It is recognized that during the course of the Work under this Agreement, the Contractor or its employees may from time to time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, the Contractor shall credit NYSERDA's funding participation in the Project, and shall state that "NYSERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York." Notwithstanding anything to the contrary contained herein, the Contractor shall have the right to use and freely disseminate project results for educational purposes, if applicable, consistent with the Contractor's policies.

(c) Commercial promotional materials or advertisements produced by the Contractor shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Contractor do not agree on the wording of such credit in connection with such materials, the Contractor may use such materials, but agrees not to include such credit.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month and year first above written.

NEW YORK STATE ENERGY RESEARCH  
AND DEVELOPMENT AUTHORITY

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_

Jeffrey J. Pitkin  
Treasurer

STATE OF            )  
                          ) SS.:  
COUNTY OF        )

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

\_\_\_\_\_  
Notary Public

## EXHIBIT B

REVISED 9/06

### STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **EXHIBIT C**

### **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

New York State Energy Research and  
Development Authority  
Technical Communications  
17 Columbia Circle  
Albany, New York 12203-6399

February 2000

## 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.