



**“Impact Assessment for the  
Natural Gas Efficiency Program”  
Request for Proposals (RFP) 1285  
Up to \$733,000 Available**

**Proposals Due by March 18, 2009: by 5:00 PM Eastern Time\***

The New York State Energy Research and Development Authority (NYSERDA) requests proposals from organizations or individuals interested in providing assistance in conducting an impact assessment on several Natural Gas Efficiency Programs. Impact assessment shall include measuring and verifying natural gas savings attributable to the programs, quantifying cost-effectiveness of the programs in terms of the total resource cost test, and completing special projects related to energy savings impacts of specific measures and technologies.

The Natural Gas Efficiency Programs covered by this RFP are administered by NYSERDA with funds from the Consolidated Edison Company of New York (Con Edison) and Niagara Mohawk Power Corporation (also known as National Grid). On September 17, 2008, the New York State Public Service Commission (PSC) issued Orders related to gas efficiency programs in these utility territories:

- Order 06-G-1332 (Con Edison) called for continuation through September 30, 2009 of the Natural Gas Energy Efficiency Programs that were established in June 2005. The nine programs in the Con Edison territory include five residential and four commercial offerings.
- Order 08-G-0609 (Niagara Mohawk) adopted an interim energy efficiency program based on modifications to a joint proposal from National Grid, the Department of Public Service (DPS), and various other parties. The two programs offered by NYSERDA in the National Grid territory are EmPower New York<sup>SM</sup> and Assisted Home Performance with ENERGY STAR. Programs were scheduled to begin on October 1, 2008 and continue through May 15, 2009.

Descriptions of the programs for both utilities are included in this RFP.

**Proposal Submission:** Proposers must submit ten (10) copies of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposers will not be reimbursed by NYSERDA for any costs associated with preparation of their proposals. Proposals must be clearly labeled and submitted to:

**Roseanne Viscusi, RFP 1285  
NYS Energy Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399**

If you have technical questions concerning this solicitation, contact Tracey DeSimone at (518) 862-1090 ext. 3452 or [tad@nyserda.org](mailto:tad@nyserda.org). If you have contractual questions concerning this solicitation, contact: Doreen Darling at (518) 862-1090 ext.3216 or [djd@nyserda.org](mailto:djd@nyserda.org).

No communication intended to influence this procurement is permitted except by contacting Tracey DeSimone (Designated Contact) at (518) 862-1090, ext. 3452 or [tad@nyserda.org](mailto:tad@nyserda.org). Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract

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

## I. INTRODUCTION

The goal of the activities described in this RFP is to provide a credible and comprehensive evaluation of the Natural Gas Efficiency Program portfolio for each utility and individual program offerings, consistent with available resources, and to provide timely information to the PSC, DPS, utilities funding the programs, and NYSERDA managers and staff about the impacts and cost-effectiveness of the programs.

The objective of the evaluation is to conduct an impact assessment on programs administered as part of the Natural Gas Efficiency Program portfolio offered by NYSERDA in the Con Edison and Niagara Mohawk service territories. Approximately \$11.2 million is available for programs in the Con Edison territory. Specific programs and funding are reflected in the table below. In addition to program funding, separate budgets also support program administration, marketing and evaluation of the Con Edison programs. This RFP makes \$592,116 available for evaluation of the Con Edison programs.

<b>Con Edison Program Summary</b>		<b>Budget (\$Million)</b>
Commercial/Industrial Programs	Technical Assistance Programs ( <i>FlexTech &amp; Energy Audit</i> )	\$0.15
	Existing Facilities Program	\$1.9
	Loan Fund	\$0.15
Residential and Low Income Programs	Multi-Family Building Program ( <i>Gas Efficiency Performance Program for Non-SBC Firm Gas Customers &amp; SBC Eligible Firm Gas Customers</i> )	\$1.45
	Gas Efficiency Performance Program	\$3.5
	Home Performance with ENERGY STAR®	\$1.5
	New York ENERGY STAR® Homes	\$1.5
	EmPower New York	\$1.0
<b>TOTAL Program Funding</b>		<b>\$11.15</b>

Approximately \$3.06 million is available for programs in the Niagara Mohawk territory. Specific programs and funding are reflected in the table below. In addition to program funding, separate budgets also support program administration, marketing and evaluation of the National Grid programs. This RFP makes \$140,884 available for evaluation of the Niagara Mohawk programs.

<b>Niagara Mohawk Low Income Program Summary</b>	<b>Budget (\$Millions)</b>
Assisted Home Performance with ENERGY STAR	\$1.53
EmPower New York	\$1.53
<b>TOTAL Program Funding</b>	<b>\$3.06</b>

Most of the programs providing natural gas efficiency funding also provide funding for electric efficiency measures under NYSERDA's **New York Energy Smart<sup>SM</sup>** System Benefits Charge (SBC) funded portfolio, so the selected contractor will be expected to collaborate with other NYSERDA evaluation contractors. Process and market evaluations will continue to be conducted on these programs through the ongoing SBC evaluation.

Therefore, separate process and market studies of these short-term gas funding sources are not anticipated and will not be part of the selected contractor's work scope.

The tasks of the selected impact evaluation contractor are to: (1) develop an Action Plan outlining how you intend to implement the impact assessment; (2) implement the Action Plan, including measurement and verification of the energy impacts and an assessment of attribution of impacts to the programs; (3) assist in calculating the cost effectiveness of the programs in terms of the total resource cost; (4) conduct a study of residential heating systems to understand more about the effects of system sizing; and (5) provide other assistance related to impact evaluation of the Natural Gas Efficiency Programs on an ad hoc basis. Implementation of the Action Plan is expected to be accomplished by conducting file reviews and site visits, metering and monitoring equipment installed through the programs, fielding surveys (*e.g.* in person, telephone, e-mail, etc.), analyzing secondary data, analyzing billing data, conducting engineering analysis and modeling, and assisting in gathering inputs for the total resource cost benefit/cost analysis.

## II. PROJECT REQUIREMENTS

### A. Services Requested

The goal of this solicitation is to select a single contractor or a lead contractor with a team of subcontractors, to cost-effectively plan, design, and perform impact assessments of NYSERDA's Natural Gas Efficiency programs offered in the Con Edison and Niagara Mohawk territories. The selected contractor must independently evaluate program impacts for a wide array of end-use energy customers (*e.g.* residential, low-income, commercial, industrial, and municipal) in a manner consistent with accepted engineering standards and protocols (*i.e.*, the International Performance Measurement and Verification Protocol (IPMVP) guidelines as established by the U.S. Department of Energy and the New York DPS *Evaluation Plan Guidance for EEPS Program Administrators*).<sup>1</sup>

General tasks and assistance required by this RFP include, but are not limited to, the following:

- Task 1. Develop an Action Plan detailing the process, timeline and cost for undertaking activities related to Natural Gas Efficiency Program impact evaluation, including, but not limited to:
- Measuring and verifying energy efficiency measure installation and energy impacts (therms saved) with the goal of producing program-specific realization rates
  - Collecting field data by metering and monitoring installed equipment
  - Conducting reviews to assess reasonableness of engineering calculations and protocols
  - Conducting billing analysis to ascertain savings due to measure installation
  - Assessing free-ridership and spillover with the goal of producing program-specific net-to-gross ratios; Collecting data, through surveys or other means, to inform free-ridership and spillover assessment
  - Developing actionable recommendations for improving program implementation
  - Data analysis, report writing and presentation of results in various forums
- Task 2. Implement the impact evaluation Action Plan, and maintain regular communication with NYSERDA on progress.

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<sup>1</sup> <http://www3.dps.state.ny.us/PSCWeb/PIOWeb.nsf>

- Task 3. Provide assistance to NYSERDA staff in conducting benefit/cost analysis of the Natural Gas Efficiency Programs, including:
- Assisting in developing inputs and assumptions for calculating program, sector, and portfolio level benefit/cost ratios. These inputs will include but will not be limited to: savings by measure and review of the incremental and total measure costs, program costs and measure life.
  - Assist in developing inputs and assumptions for calculating program, sector, and portfolio level benefit/cost ratios. These inputs will include but will not be limited to, savings by measure and review of the incremental costs and measure life resources. NYSERDA currently has an in-house cost effectiveness model that these inputs will be used in. The selected contractor will be expected to help gather these inputs as needed for the modeling and be responsible for reviewing the interim results.
- Task 4. Determining if sealed combustion/condensing boilers and furnaces are producing the energy efficiency improvements specified by the manufacturers, and are installed in the proper applications to attain specified efficiencies. This task shall involve metering fuel use and emissions of boilers and furnaces to measure consumption and operating efficiency level, and an assessment of the application of the units and, if necessary, the heating distribution systems. For condensing units, the degree that the units are condensing and conditions that affect efficiencies should be determined.
- Task 5. Provide other assistance related to impact evaluation of the Natural Gas Efficiency Programs on an ad hoc basis.

The Natural Gas Efficiency Program portfolio includes different types of market transformation and resource acquisition programs, so the individual programs may not be evaluated in the same way. The selected contractor will need to credibly and expertly employ a variety of approaches to determine the key impacts attributable to NYSERDA's efforts. The use of sub-contractors and/or teaming arrangements to meet the requirements of this RFP is allowed and encouraged.

Below is a listing of natural gas efficiency programs offered by NYSERDA in the Con Edison and Niagara Mohawk utility territories. The contractor will be required to develop a separate impact evaluation report for each utility portfolio, not each program.<sup>2</sup> At a minimum, an overall evaluation of the portfolio of programs in each utility territory will be required. Not all of the programs listed will receive the same amount of attention and some programs may not be fully assessed. The final list of programs that would be assessed will be determined through discussions among NYSERDA staff and the selected contractor after contract award. Emphasis will be placed on measuring and verifying savings attributable to the programs with the largest expected therm savings.

**Con Edison:**

*Low-Income and Residential Multi-Family Building Performance Program Portfolio:*

1. Multi-Family Building Program: This program funds building-specific incentives, energy assessments, financial packaging, construction monitoring, commissioning, and data collection for Gas Program buildings. The new construction portion of the multi-family program also provides technical assistance and incentive funding to owners and developers of new multi-family buildings. Technical assistance is

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<sup>2</sup> The selected contractor will be expected to blend their results with results developed through an earlier contract covering measurement and verification on Con Edison natural gas funded projects installed through the end of 2008. Additionally, projects from the prior round of program funding in the Con Edison area may serve as the basis of spillover estimates given that some time needs to elapse following

provided in the form of modeling the new building and comparing the model to a building that meets the energy efficiency requirements of ASHRAE 2004.

2. Gas Efficiency Performance Program for Non-SBC Firm Gas Customers: This program is open to owners of multi-family buildings who are Con Edison firm gas customers but do not contribute to the SBC, or have conducted whole-building energy efficiency improvements and require additional gas efficiency measures. Owners follow a process whereby a simple application form will be completed and an energy assessment of the proposed gas efficiency improvement will be required.
3. SBC Eligible Firm Gas Customers: The existing building portion of the program provides technical assistance, financial packaging and incentive funding to owners of existing multi-family buildings. Technical assistance is provided in the form of benchmarking the energy efficiency of buildings and development of an energy reduction plan, wherein engineers assess the condition of the building and make recommendations for installation of energy efficiency measures. Costs of installation are estimated, and compared to an estimated energy performance target; buildings must strive for a 20% minimum performance improvement.

*Low-Income and Residential One-to-Four Family Homes Program Portfolio:*

1. Home Performance with ENERGY STAR: This is a market transformation program that is designed to change not only the way home improvement contractors deliver their services, but also the types of services that customers demand. Emphasis is on the development of a robust energy efficiency service infrastructure, balanced with mechanisms for ensuring consumer awareness and demand. Contractor training, certification, accreditation, and robust quality assurance procedures ensure that high-quality services are delivered.
2. New York ENERGY STAR Homes: Through this Program, NYSERDA works with residential home builders and Home Energy Rating System (HERS) raters to encourage the construction of homes that are tested to be 30% more energy efficient than homes built to current energy codes. The program has a minimum installed electric savings requirement (currently 600 kWh) and these savings can be accomplished through the installation of ENERGY STAR appliances and lighting.
3. EmPower New York: Provides energy efficiency services to low-income households with income below 60% of State median income, at no cost to the eligible participant. Using a comprehensive energy assessment, the installation of non-electric home performance measures, including blower door assisted air sealing, attic and side-wall insulation, and heating system service and replacement are eligible. Measures will be selected in priority order based on the cost-effectiveness of the measures in accordance with the comprehensive energy assessment.

*Commercial Program Portfolio:*

1. FlexTech Program: Provides objective, cost-shared analysis of cost-effective efficiency improvements, energy-related process improvements, waste minimization opportunities, and improved productivity. Projects can include feasibility, energy operations management, retro-commissioning, and energy procurement investigations. In addition, the evaluation of load shaping, aggregation, and other gas cost savings opportunities are eligible.
2. Energy Audit Program: Provides walkthrough energy audits to small businesses and other facilities to help them make informed energy decisions and implement energy-efficiency strategies. Audits provide a standardized approach to help identify economically viable improvements that yield energy savings.
3. New Construction Program: Formerly known as the High Performance Building Program, this commercial new construction program provides technical and financial assistance to improve the energy efficiency of new buildings and substantial renovation projects. Incentives will be made available to all building types and eligible customers. Under the whole-building approach, the interactive effects of improvements on

both the heating and cooling energy use will be analyzed, and incentives provided based on the overall energy improvement of the design.

4. Existing Facilities Program: This program consists of three tiers: prescriptive incentives for pre-qualified measures, custom path-technical study, and performance-based incentives for energy efficiency (formerly the Enhanced Commercial/Industrial Performance Program).
5. Loan Fund: This program provides interest rate reductions on loans for energy-efficiency improvements, gas CHP upgrades, and renewable technologies. Customers choose from a network of participating lenders including banks, credit unions, and community development financial institutions. The program offers loans at 6.5 percent below the interest rate normally available.

#### **Niagara Mohawk:**

1. EmPower New York: Households with income levels at or below 60% of the State median income are eligible for this program. The estimated number of households to be served is 550. The measures included in this program are attic and wall insulation, blower door assisted air sealing, heating system repair and replacement, water heating and clothes dryer conversions from electric to gas, and related health and safety measures.
2. Assisted Home Performance with ENERGY STAR Program: This program targets households with income levels between 60%-80% of State median income. The estimated number of households to be served is 260. The program measures include attic and wall insulation, blower-door assisted air sealing, heating system and water heater repair or replacement, and related health and safety measures.

Several of the Natural Gas Efficiency Programs are also offered under the Systems Benefits Charge program which provides incentives for electric efficiency measures. Some customers may receive both Natural Gas Efficiency and SBC program funding for their projects. Therefore, the selected contractor hired to conduct impact evaluation on the Natural Gas Efficiency Programs shall be required to coordinate with the other NYSERDA evaluation contractors charged with assessing SBC-funded programs in the following ways: collecting and exchanging data, coordinating samples to prevent or minimize survey fatigue, analyzing data, and developing surveys. The selected contractor shall make themselves fully aware of other SBC-program data collection efforts planned or underway and consider ways to coordinate with any primary data collection needs of NYSERDA staff, and other NYSERDA contractors to prevent duplicative efforts. The selected contractor will be responsible for coordinating with NYSERDA on the design and development of impact evaluation survey instruments. The selected contractor shall also recommend and implement ways to ensure accurate evaluation of the impacts attributable to the Natural Gas Efficiency Programs in this joint funding environment.

#### **B. Contractor's Responsibility**

The selected contractor will be responsible for timely completion of the requirements described in Section A, Services Requested. The selected contractor must assume overall responsibility for coordinating and conducting field work and surveys (whether done by the contractor or one or more subcontractors), act as liaison with participating NYSERDA programs and external organizations, and have responsibility for completing the deliverables under the resultant contract. The contractor must complete final impact assessment evaluation reports by February 28, 2010.

The selected contractor shall keep NYSERDA informed either by telephone, in-person meetings, or e-mail, weekly, on the progress of the impact evaluation. Periodic meetings with NYSERDA program staff will be

required. The Contractor must commit to begin delivery of services within 30 days of contract execution. The contractor must complete the Action Plan (Task 1) no more than 60 days after contract execution.

The use of sub-contractors and or teaming arrangements as needed to fulfill the requirements of this RFP is appropriate. If a team is proposed, respondents to this RFP must be able to demonstrate that they have or can create a teaming arrangement that is directly applicable and consistent with the evaluation needs of this RFP. The primary contractor of the team shall be responsible for maintaining continuous correspondence with NYSERDA and ensuring all deliverables applicable to the contract are provided to NYSERDA according to an approved timeline.

**Coverage Requirements:** The following requirements must be fulfilled by respondents to this RFP:

**Geographic Coverage**

- Must have and must be able to demonstrate in the proposal the capability to provide qualified, efficient and cost-effective field services across the Con Edison and National Grid territories within New York State.

**Customer Coverage**

- Must have the experience and ability to work with, and conduct analysis for, a wide variety of energy users including, but not limited to: residential customers (homeowners, renters, low-income households, etc.), commercial buildings, municipal buildings and facilities, and industrial buildings and facilities.
- Due to language barriers multilingual translators are a welcome addition, albeit not a necessity.

**Technical Support Requirements:**

The selected contractor must have proficiency in the following software applications:

- MS Excel, MS Access, MS PowerPoint, MS Word, and SPSS or SAS.

**Reporting Requirements:**

Key deliverables to be completed by the selected contractor include, but may not be limited to:

- Draft and final impact assessment Action Plan.
- Draft and final survey instruments.
- Final, cleaned evaluation data files resulting from the evaluation.
- Draft and final impact assessment evaluation reports describing goals and objectives of the studies, activities and methods undertaken, results, analysis of findings and recommendations for program improvements or future study.
- Weekly reporting to NYSERDA of all activities conducted under the contract.

**C. NYSERDA's Responsibility**

The NYSERDA Project Manager will be responsible for overseeing and managing all tasks undertaken by the selected contractor, including but not limited to assisting in the development of a Statement of Work; reviewing, commenting and approving work plans and subsequent deliverables; coordinating with program staff; promoting coordination between the selected contractor and NYSERDA's other evaluation contractors; approving invoices promptly; and reviewing and preparing work products for reports. To fulfill the requirements from the Commission

Orders and Memoranda of Understanding, NYSERDA's Project Manager will be responsible for compiling and delivering quarterly and final evaluation reports on the Con Edison and National Grid programs based on the selected contractor's work.

#### **D. Available Funds**

The initial term of this contract will be for one year up to a maximum amount of \$733,000. Of this total \$592,116 is available for the evaluation of the Con Edison programs and \$140,884 is available for the evaluation of the National Grid programs.

### **III. PROPOSAL REQUIREMENTS**

Proposers must submit ten (10) copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this RFP. A completed and signed Proposal Checklist (attached to this RFP) 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.** Be sure that the individual signing the checklist is authorized to commit the proposer's organization to the proposal as submitted. Proposals that include teaming arrangements must designate one party as the lead contractor. 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 RFP number, and the page number. The proposal must be in the following format:

#### **Section 1. Introduction (Maximum 2 pages)**

Proposers shall summarize their understanding of the objectives and requirements of this RFP. Proposers shall briefly identify key information about their organization and other organizations that are part of the proposer's team. Proposers shall describe how the organization or team is qualified to perform and complete the services requested under this RFP.

#### **Section 2. Statement of Work (10 pages maximum)**

Provide a general description of how the proposer will assess the impact of NYSERDA's programs consistent with the specific items listed in Section II A through: (1) measurement and verification (M&V), (2) attribution of energy savings achieved from both market transformation and resource acquisition programs, (3) performing cost/benefit analysis and (4) performing an assessment of residential heating systems to understand the effects of system sizing. Describe your approach and methodology, and define your rationale.

#### **Section 3. Management Structure. (3 pages maximum)**

Proposers shall identify all team members, including the Principal or Lead contact, who will be responsible for ensuring that the project is timely and of good quality. Provide a clear description of the roles and responsibilities, and anticipated hours allocated to all key personnel. Note that hours allocated in the work schedule must be consistent with those in the budget. Provide the names and addresses of subcontractors. Provide an organization chart. Describe how you plan to coordinate the design of the impact evaluation plan and implementation services

among all subcontractors and with NYSERDA and its other evaluation contractors. Discuss how you would manage and maintain flexibility to accommodate potentially short notification times and tight deadlines.

**Section 4. Qualifications. (6 pages maximum)**

Describe specific experience pertaining to this type of energy program impact evaluation. Discuss proposed teaming arrangements, if applicable. State the team's individual and combined expertise that would enable successful completion of the project. List and briefly describe relevant projects that have been completed by the proposer and team. Indicate which team members were responsible for each project described. Indicate the name and telephone number of at least three references for whom your organization has similar relevant completed projects. Provide resumes of all team members in an appendix.

**Section 5. Potential Conflict of Interest. (1 page maximum)**

Identify the nature of any potential conflicts of interest among team members in providing services to NYSERDA under this RFP. 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 a conflict of interest, 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 or appearance of conflict; or (4) negotiate other appropriate actions with the team member to avoid the conflict or appearance of conflict.

**Section 6. Cost for the total project and proposal (10 pages)**

Provide CPPFs for each of the tasks requested under the Statement of Work in Section 2 above.

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

1. Describe the basis for the rates proposed (*i.e.*, based on prior period actual results; based on projections; based on federal government or other independently approved rates).
2. If rate(s) is 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. Financial statements or other needed financial information may be requested.

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.

*Appendices:* Materials to be submitted include:

- Resumes of key personnel that will complete the tasks described in the Section II A.
- Letters of commitment from any subcontractors

#### **IV. PROPOSAL EVALUATION**

All proposals received by the due date and meeting the requirements established in this RFP will be reviewed and ranked by a Technical Evaluation Panel consisting of NYSERDA staff and selected outside reviewers. Final rankings and the contract award will be based on the following criteria:

*Responsiveness to the Work Scope of the RFP.* Does the proposer present a sound approach for accomplishing the objectives of this proposal? Is there a sound rationale or justification for the proposed approach(es)? Has the proposer demonstrated a clear understanding of the project goals and objectives? Does the proposer appear to have the flexibility to accommodate potentially short notification times and tight deadlines? Has the proposer demonstrated a thorough understanding of the programs to be evaluated? Is there clear evidence that the proposer possesses the ability to evaluate these programs? Is the Statement of Work for each task thorough, specific, and consistent with the stated objectives?

*Relevant Experience and Qualifications.* Are key personnel's education and experience relevant to project needs? Is the project staff's overall capability appropriate? Does the proposing team have experience in conducting similar work? What is the quality of the project staff's performance on past projects or their achievements related to the proposed work?

*Comprehensiveness of Approach and Management Plan.* Does the proposer demonstrate the ability to complete all aspects of the project? Has the proposer demonstrated the ability to institute appropriate data collection and field monitoring procedures? Are appropriate management and coordination strategies articulated? Are sufficient resources being devoted to the project and each individual task? Is the project organization, including the staffing plan and schedule, clear and well defined? Is the staffing plan sufficient to provide timely deliverables?

*Cost.* How cost-effective is the proposal? Are hourly rates, overhead rates, and total hours reasonable and appropriate for completing each task? Is the proposer's cost allocation appropriate when compared to the cost allocation of other comparable proposals and their projected results?

*Other.* Is the proposal well-organized, well-written, and complete? Does the proposal offer economic benefits to New York? (A local office, while not required, would be considered favorably.)

#### **V. PROCUREMENT LOBBYING REQUIREMENTS**

##### **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 texts 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, an additional form (or 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.

## VI. GENERAL CONDITIONS

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

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

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

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

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

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

### **State Finance Law sections 139-j and 139-k**

NYSERDA is required to comply with State Finance Law sections 139-j & 139-k. State Finance Law §139-j (6) requires that NYSERDA incorporate a summary of its policy and prohibitions regarding permissible communications during a covered procurement.

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between NYSERDA and a Proposer/Offerers during the procurement process. A Proposer/Offerers is restricted from making contacts from the earliest notice of intent to solicit offers [such as a "Program Opportunity Notice", "Invitation for Bid" or "Request for Proposal", etc.] through final award of the Procurement Contract (the "restricted period") to other than Designated Staff unless it is a contact that is included

among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated Staff, as of the date hereof, are identified on the first page of this solicitation.

NYSERDA employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Proposer/Offerers pursuant to this law. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period; the Proposer/Offerers is debarred from obtaining governmental Procurement Contracts.

Additional guidance regarding these procurement lobbying requirements and can be found at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>.

**Tax Law Section 5-a** - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires contractors, prior to entering an agreement with NYSERDA, to certify whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the New York State Department of Taxation and Finance to collect New York State and local sales and compensating use taxes. The Department of Taxation and Finance has developed guidance and a certification form (ST-220) for contractors which are available at [www.nystax.gov/sbc/nys\\_contractors.htm](http://www.nystax.gov/sbc/nys_contractors.htm). The completed Form ST-220 (which is available upon request or at <http://www.nyserda.org/Funding/stdforms.asp>), will be incorporated in the agreement between NYSERDA and the contractor.

**Contract Award** - NYSERDA anticipates making one award under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA expects to notify proposers in approximately 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.

\*\*\*\*\*

## **VII. ATTACHMENTS**

Attachment A - Proposal Checklist

Attachment B - Disclosure of Prior Findings of Non-responsibility

Attachment C - Intent to Propose

Attachment D - Project Personnel and Rates

Attachment E - Contract Proposal Pricing Form and Instructions

Attachment F - Sample Agreement

Endnotes



**ATTACHMENT A – RFP 1285 PROPOSAL CHECKLIST (MANDATORY)**

Proposal Title		Due Date		March 11, 2009	
<b>Primary Contact</b> (Prime Contractor)		Title			
Company		Phone		Fax	
		e-mail			
Address		City	State or Province		Zip
<b>Secondary Contact</b>		Title			
Company		Phone		Fax	
		e-mail			
Address		City	State or Province		Zip
<p>THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:</p> <p>Do you accept all Terms &amp; Conditions in the Sample Agreement? (if no, explain on separate pg) <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 pg) <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)? <span style="float:right">__ Yes __ No</span> (if yes, explain on separate page)</p>					
PLEASE CHECK IF INCLUDED					
Disclosure of Prior Findings of Non-responsibility Form _____		Indictment/Conviction of Felony (if applicable) _____			
Introduction and General Information _____		NYSERDA Contracts Awarded (if applicable) _____			
The Proposal Checklist with original signature _____		Exceptions to Terms & Conditions (if applicable) _____			
Statement of Work _____		Completed and Signed Contract Pricing _____			
Management Structure _____		Proposal Form(s) _____			
Qualifications _____		Prior and/or Competing Proposals _____			
Cost Proposal _____					
AUTHORIZED SIGNATURE & CERTIFICATION					
I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA's procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I the undersigned am authorized to commit my organization to this proposal.					
Signature			Name		
Title			Organization		
Phone					

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



**Attachment B**  
**Disclosure of Prior Findings of Non-responsibility Form**  
**(Mandatory)**

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

Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information ? (Please indicate with an "X")		Yes
		No

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding: (Add additional pages as necessary)

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_ Title: \_\_\_\_\_



Attachment C

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

INTENT TO PROPOSE

Please submit the following information to NYSERDA two weeks before the proposal due date to:

Roseanne Viscusi – RFP 1285
New York State Energy Research and Development Authority
17 Columbia Circle, Albany, NY 12203-6399
fax (518) 862-1091 e-mail rdv@nyserda.org

Form with fields for Name, Title, Organization, Address, City, County, State, Zip +4, E-mail Address, Phone No., Web Site, Fax No., Authorized signature, Date.

Form with checkboxes for 'Please check all that apply' and 'How did you receive information about this solicitation?'.

Form with text: 'If you plan to submit a proposal, please provide the title and a brief abstract:'



Attachment C

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

**Attachment D**



**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY  
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
1. Direct Materials					
a. Purchased Parts					
b. Other					
Total Direct Materials					
2. Materials Overhead	Rate:				
3. Direct Labor (specify names/titles)	Hours	Rate/hr			
Total Direct Labor					
4. Labor Overhead	Rate %	\$ Base			
Total Labor Overhead					
5. Outside Special Testing					
6. Equipment					
7. Travel					
8. Other Direct Costs					
9. Subcontractors/Consultants					
Total Subcontractors/Consultants					
10. General & Administrative Expense	Rate %	Element(s)			
11. Fee or Profit (If allowable) Rate:					
12. Total Estimated Project Cost					

This proposal reflects our best estimates as of this date, in accordance with the instructions to proposers.

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

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

**INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE**

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

**A. GENERAL**

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

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

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

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

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

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

**1b. OTHER DIRECT MATERIALS**

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

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

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

3. DIRECT LABOR

a. Commercial Enterprises

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

b. Educational Institutions

Provide the following for each calendar year of the contract:

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

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

5. OUTSIDE SPECIAL TESTING

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

6. EQUIPMENT

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

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

7. TRAVEL

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

8. OTHER DIRECT COSTS

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

9. SUBCONTRACTORS/CONSULTANTS

- a. Explain the specific technical area in which such service is to be used and identify the contemplated consultants.

b. State the number of days and the hours per day of such service estimated to be required and the consultant's quoted rate per day. Document when/where the consultant has received the proposed rate in performing similar services for others.

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

11. FEE OR PROFIT

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

ATTACHMENT E – SAMPLE AGREEMENT

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

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

This Agreement consists of this form plus the following documents:

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

9. ACCEPTANCE

**[CONTRACTOR]**

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

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Jeffrey J. Pitkin  
Treasurer

Title \_\_\_\_\_

STATE OF            )  
                          ) SS.:  
COUNTY OF        )

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

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

## EXHIBIT B

### GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

#### Article I

##### Definitions

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

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

Budget: The Budget set forth in Exhibit A hereto.

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

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

Contractor: The Contractor identified in Item 2 of page one of the Agreement.

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

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

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

- (i) are not generally known or available from other sources without obligation concerning their confidentiality;
- (ii) have not been made available by the owner to others without obligation concerning its confidentiality; and

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

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

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

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

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

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

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

## Article II

### Performance of Work

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

Section 2.02. Project Personnel. It is understood and agreed that the "Contact Person" identified in Item 3 of page one of the Agreement shall serve as Project Director and as such shall have the responsibility of the

overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA.

### Article III

#### Deliverables

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

### Article IV

#### Payment

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

(a) 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.

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

Section 4.02. 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 in Item 1 of page one of the Agreement. Invoices shall set forth total project costs incurred. They shall be in a format consistent with the cost categories set forth in the Budget. Invoices shall provide reasonable documentation for the above to provide evidence of costs incurred, including:

(a) Staff charges: for each employee, the name, title, number of hours worked, hourly rate and labor extension;

(b) Direct charges: all direct costs shall be itemized on the invoice and supported by documentation, such as vendor invoices, travel vouchers or other documentation; and

(c) Indirect charges: indirect cost rates and method by which rates are applied.

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

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

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

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Item 7 of page one of the Agreement.

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

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

related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance.

Section 4.07. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor hereunder is the amount shown in Item 7 of page one of the Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

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

## Article V

### Assignments, Subcontracts and Purchase Orders

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

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

shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit B to the extent required by law, and all other provisions now or hereafter required by law to be contained therein.

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

## Article VI

### Schedule

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

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

## Article VII

### Force Majeure

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

## Article VIII

### Technical Data

Section 8.01. Rights in Technical Data.

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

(1) NYSERDA shall have:

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

(2) The Contractor shall have:

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

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

## Article IX

### Warranties and Guarantees

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

- (a) it is financially and technically qualified to perform the Work;
- (b) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any that may in any way affect the performance of this Agreement;
- (c) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted construction and design standards and best engineering practices;
- (d) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted construction and design standards and best engineering practices;

(e) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

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

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

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

## Article X

### Indemnification

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

## Article XI

### Insurance

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

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

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

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

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

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

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

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

## Article XII

### Stop Work Order; Termination

Section 12.01. Stop Work Order.

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

health and safety. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

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

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

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

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

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

#### Section 12.02. Termination.

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

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

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

### Article XIII

#### Independent Contractor

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

### Article XIV

#### Compliance with Certain Laws

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

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

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

## Article XV

### Publicity, Notices, Entire Agreement, Amendment

#### Section 15.01. Publicity.

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

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

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

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

## EXHIBIT C

REVISED 9/06

### STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- b. Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- c. Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.
- d. Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.

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

## EXHIBIT D

### PART 504

#### PROMPT PAYMENT POLICY STATEMENT

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

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

- (1) under the Eminent Domain Procedure Law;
- (2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;
- (3) to the Federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;
- (4) if the Authority is exercising a legally authorized set-off against all or part of the payment; or
- (5) if other State or Federal law or rule or regulation specifically requires otherwise.

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

- (a) "Authority" means the New York State Energy Research and Development Authority.
- (b) "Contract" means an enforceable agreement entered into between the Authority and a contractor.
- (c) "Contractor" means any person, partnership, private corporation, or association:
  - (1) selling materials, equipment or supplies or leasing property or equipment to the Authority pursuant to a contract;

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

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

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

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

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

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

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

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

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

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

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

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

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

holidays, before the date so specified or predetermined.

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

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

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

#### Section 504.4 Payment procedures.

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

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

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

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

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

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution

of a defect or suspected impropriety, the Authority shall make payment, consistent with any such correction or resolution and the provisions of this Part.

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

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

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

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

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

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

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

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

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

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

Section 504.11 Court action or other legal processes.

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

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

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

promulgate nonmaterial amendments of these regulations.

## EXHIBIT 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](mailto:dlw@nyserda.org)

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Albany, New York 12203-6399

February 2000



EXHIBIT F

PROJECT PERSONNEL & RATES

1. DIRECT PERSONNEL COSTS:

Title Classification	Not to Exceed Hourly Rate Range	
	Year 1	
	Minimum	Maximum

2. MULTIPLIER (Including Profit/Fixed Fee):

- a. Profit / Fixed Fee: \_\_\_\_\_%
- b. Multiplier \_\_\_\_\_

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