

NY-BEST MARKET-DRIVEN RESEARCH PROGRAM

Program Opportunity Notice (PON) No. 1704 \$6,000,000 AVAILABLE FOR PROJECTS

DUE DATE: December 17, 2009, 5:00 pm Eastern Time*

Program Summary. The 'NY-BEST (New York Battery and Energy Storage Technology) Market-Driven Research Program' is designed stimulate world-class, industry-relevant, research and development, and to support industrial activity in New York in the commercialization of advanced battery and energy storage technology. With funding from the Clean Air Interstate Rule (CAIR) program, this program will provide funding for organizations to develop and commercialize battery and energy storage technologies and products.

Eligible energy storage technologies include technologies that store electric energy directly (for example, batteries or ultracapacitors), components of these technologies, and systems or products that incorporate these technologies. For integrated-systems projects or balance-of-systems (BOS) projects, the focus must be on the storage component. BOS component development must address a critical part of an integrated storage system or enable significant improvement in the performance of a storage system.

Project Types. This program has two major project types that are described below:

Funding of up to \$200,000 per project is available for **Category A projects** that: 1) address a specific technology development need or improvement identified by a New York manufacturer, or 2) develop technologies, manufacturing process improvements and concepts that, if successful, could ultimately lead to development of a commercial product, or 3) benefit and add value to a number of New York organizations involved in developing and commercializing energy storage technology, or 4) develop 'transformational' or 'disruptive' technologies that could enable major leaps forward in the technology base, technology components, and/or integrated systems.

Funding of between \$200,000 and \$3,000,000 per project is available for **Category B projects** that are industry-led partnerships of organizations, including universities, that focus on commercializing a specific technology or product within five years and include a number of participants along the value chain.

Proposal Submission. Proposers must submit twelve (12) print copies and one electronic media copy (CD) of the proposal. The printed copies must have a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposals must be clearly labeled and submitted to:

Roseanne Viscusi, PON 1704 NYS Energy Research and Development Authority 17 Columbia Circle Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact the individuals listed below by e-mail or by phoning (518) 862-1090 and selecting the appropriate extension:

Richard Drake Program Manager Jennifer Harvey Sr. Project Manager ext. 3258 rld@nyserda.org ext. 3264 jlh@nyserda.org

Contractual questions should be directed to: Nancy Marucci at (518) 862-1090, ext. 3335, or nsm@nyserda.org.

No communication intended to influence this procurement is permitted except by contacting the Project Managers listed above (Designated Contacts). Contacting anyone other than these Designated Contacts (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

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

I. INTRODUCTION

The New York Battery and Energy Storage Technology (NY-BEST) Consortium was established with \$25 million in seed funding from New York's implementation of the federal Clean Air Interstate Rule (CAIR) program. The mission of NY-BEST is to conduct world-class, industry-relevant, research and development, and to support industrial activity in New York in the commercialization of advanced battery and energy storage technology. The NY BEST Consortium is designed to facilitate a "cluster" of advanced battery/ energy storage research and manufacturing capabilities in New York. This goal will be achieved through coordinating, stimulating and financially supporting energy storage research projects and testing activities in New York organizations.

This solicitation was developed with input from the NY-BEST Market-Driven Research Needs Working Group and from concept papers submitted by NY-BEST collaborators. This solicitation is the first of what is anticipated to be several requests for market-driven research projects under NY-BEST.

In addition to this program, NYSERDA has solicitations to assist in technology and business development and establishing manufacturing facilities (http://www.nyserda.org/Funding/d efault.asp). NYSERDA's Saratoga Technology + Energy Park® (STEP®), a fully integrated knowledge community, also supports the success of cleanenergy and environmental companies by providing an ecofriendly environment in which to build and grow (http://step.nyserda.org/).

On behalf of the NY-BEST Consortium, NYSERDA seeks proposals to support development, demonstration, and commercialization of battery and energy storage components, products and systems. Program objectives are to:

- Accelerate research and development, leading to the commercial introduction of energy storage technology having significant value added in New York State;
- Build the skilled workforce and regional expertise to sustain a vibrant commercial energy storage industry in New York State; and
- Leverage seed resources of \$25 million to create a viable organization that provides value to its members and to New York State.

Proposals may address technologies at varying stages of maturity, from feasibility assessment and requirements definition, through proof-of-concept and early product development, to field evaluation and market introduction.

II. PROGRAM DESCRIPTION AND REQUIREMENTS

Project Funding and Cost Sharing – A total of \$6 million of funding is available in this PON.

□ Category A Projects: Up to \$200,000 of funding per project is available for Category A projects. Category A projects requesting over \$100,000 should be phased so that Phase 1 requests no more than \$100,000 of funding. Projects may be funded at the full amount requested, for Phase 1 only, for one phase at a time, or for a different amount as determined by NYSERDA.

Cost-sharing of at least 25% of the total project cost is preferred for Category A projects. Cost-sharing may be provided by the proposer or by third parties and may be in the form of cash or in-kind labor, materials, equipment, facilities, and other resources, subject to reasonable and verifiable valuation.

	Category B Projects : Between \$200,000 and \$3,000,000 of funding per project is available for Category B projects. Category B projects requesting over \$1,000,000 should be phased so that no phase exceeds \$1,000,000 of NY-BEST funding. Projects may be funded at the full amount requested, for Phase 1 only, for one phase at a time, or for a different amount as determined by NYSERDA.
	Cost-sharing in the amount of 50% or more of the total project cost is required for Category B projects. Cost-sharing in excess of the minimum amounts is preferred. Cost-sharing may be provided by the proposer or by third parties and may be in the form of cash or in-kind labor, materials, equipment, facilities, and other resources, subject to reasonable and verifiable valuation.
<u>Proje</u>	ct Types
_	ory A Projects: Up to \$200,000 of funding per project is available for Category A projects. ory A projects include:
0	Projects that address a specific technology development need or improvement or a manufacturing process improvement identified and sponsored by a New York manufacturer. Projects can address issues related to improving existing technologies, or developing new products. Projects may also address validation, certification or characterization of technologies or products. If successful, projects that develop new products could lead to commercialization by a New York manufacturer.
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	Projects that develop technologies, manufacturing process improvements, or concepts that, if successful, could lead to commercialization by a New York manufacturer.
Ol	र
	Projects that would benefit and add value to a number of New York organizations involved in developing and commercializing energy storage technology (e.g. how do we deal with end-of-life issues, environmental issues, manufacturability issues, prognostics, etc?) These projects should provide letters to support the value claim.
OI	र
	Pre-competitive projects that develop 'transformational' or 'disruptive' technologies. These

Category B Projects: Between \$200,000 and \$3,000,000 of funding per project is available for Category B projects. Category B projects are collaborations that are partnerships of organizations, including universities, that are lead by and sponsored by a New York manufacturer. Each Category B collaboration would focus on commercializing a specific technology or product within five years. Ideally, these projects will include a number of New York participants along the value chain.

potentially high payoff.

projects develop technologies that could enable major leaps forward in the technology base, technology components, and/or integrated systems and are generally high-risk concepts with

Who May Propose and Collaboration Requirements

in ene	f the goals of NY-BEST is to stimulate collaboration between New York organizations involved rgy storage technologies. In order to further this goal, this program has the following ements:
	NY-BEST funding is intended to directly support the battery and energy storage industry in New York and create economic impact in the State. If NY-BEST funding of specific activities outside of New York is essential to achieving the project goals, include justification in the proposal.
	For Category A projects (up to \$200,000 of funding each), collaborative teams that can accelerate technology development are suggested. Proposers are asked to describe how the project will lead to collaboration in later stages or will benefit other NY-BEST members.
	Category B projects (between \$200,000 and \$3,000,000 of funding each) must be lead by and sponsored by a New York manufacturer and must include significant participation from collaborative team members in New York.
	Teams may include commercial firms, industry associations, research organizations, universities, government agencies, end-users, and other stakeholders. Include letters of interest or commitment from each identified team member in an appendix to the proposal.
Comn	nercialization Requirements - Projects should be market-driven and demonstrate a solution
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☐ For integrated systems projects or balance-of-systems (BOS) projects, the focus must be on the storage component. BOS component development must be a critical part of an integrated storage system or enable significant improvement in the performance of a storage system, e.g. battery management systems, prognostic systems, system- or product-specific controllers or inverters.

<u>Excluded Technologies</u> – The technologies listed below are excluded from this NY-BEST solicitation. Look for other NYSERDA solicitations that may cover these technologies at: http://www.nyserda.org/funding/funding.asp?i=2.

Flywheels.
Primary (disposable or non-rechargeable) batteries.

- ☐ Technologies that are not rechargeable using electricity (e.g., a fuel cell that must be
- Technologies that are not rechargeable using electricity (e.g., a fuel cell that must be recharged by replacing the anode as opposed to being electrically recharged).
- ☐ Storage technologies that store energy in an intermediate substance that is later converted to electricity (e.g. thermal, hydrogen, compressed air energy storage, pumped storage hydro).

<u>Project Schedule</u> – The following guidelines should be considered when developing proposals:

☐ Projects are expected to begin within six months of the proposal due date. The project schedule for Category A projects should not exceed 24 months. Category B projects are expected to take several years to complete, but should not exceed 48 months.

Other Considerations -

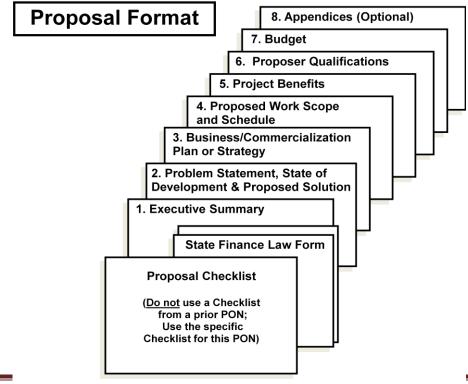
- ☐ A proposal may be considered **non-responsive** if it fails to comply with the requirements above, the Proposal Requirements of Section III, or the General Conditions of Section V.
- Prior to an award being made, potential contractors may be required to demonstrate: access to financial resources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

III. PROPOSAL REQUIREMENTS

Total proposal length should be 20 pages or less for Category A projects and 30 pages or less for Category B projects, not including budget information or appendices containing resumes, letters of interest, or other supporting documentation. Suggested page limits for each section are provided below in parentheses. If you believe additional or proprietary information must be submitted to present an adequate proposal, please bring this to the attention of the Designated Contacts listed at the beginning of this PON and comply with the Section V instructions for submitting proprietary material. Your goal as a proposer should be to concisely present the information needed to fully address the evaluation criteria (see Section IV). Proposals that grossly exceed the page limits or fail to follow the format guidelines may be rejected as non-responsive.

Proposers must submit **twelve (12) print copies and one electronic media copy (CD)** of the completed proposal with files compatible with Microsoft Word or .pdf format **to the attention of Roseanne Viscusi** at the address on the front of this Program Opportunity Notice. A completed **Proposal Checklist, bearing an original signature**, <u>must be attached as the front cover of one of the proposal copies</u>. A photocopy of the completed and signed Proposal Checklist must be attached as the front cover of each of the remaining copies of your proposal. Rigid bindings and other elaborate material should not be used – double-sided copying and a staple in the upper left corner are preferred. In particular, please avoid use of plastic bindings and covers or other materials that are difficult to recycle. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned. Faxed or e-mailed copies will <u>not</u> be accepted.**

Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal. Each page of the proposal should state the name of the proposer, the PON number, and the page number. The proposal must be in the following format and should present the items in the sequence indicated below.



as the	esal Checklist – Complete Proposal Checklist attached as part of this PON, and include it front cover of each copy of the proposal. At least one copy of the Proposal Checklist must an original signature. Do not use a Proposal Checklist from any other NYSERDA Program tunity Notice. Note the following:						
	Project name should be descriptive of the proposed project, not the title of this PON.						
	Mark the Proposal Checklist to indicate whether you accept the standard terms and conditions as contained in the attached Sample Agreement. If you do not accept the standard terms and conditions, provide alternate terms with justification based on the risk and benefit to NYSERDA and New York State.						
	Be sure the individual signing the Proposal Checklist is authorized to commit the proposer's organization to the proposal as submitted.						
compl at: http propose estima (1) a s Law a	<u>Procurement Lobbying Requirements</u> – State Finance Law sections 139-j and 139-k In compliance with §139-j and §139-k of New York's State Finance Law (Text of the laws are available at: http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html), for proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of \$15,000, the following 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.						
Propo	esal Sections – Sections of your proposal should be as follows:						
1. Ex	ecutive Summary (maximum one page) – Briefly summarize your proposal, and include the ng:						
	A description of the problem or opportunity being addressed, and how your solution will solve the problem or exploit the opportunity. A description of the technology or product improvements or developments that you are proposing. A brief summary of your business strategy. Benefits to New York and NY-BEST if the project is successful. Key project team members and their qualifications to do the work.						
2. Pro	blem Statement, State of Development, and Proposed Solution (three to five pages) – the:						
	Problem Statement and Value Proposition - Identify the opportunity or problem that this technology will address. Describe how this solution will provide value and would change or improve the status quo. Briefly describe in generic terms the customer(s) for this product or technology (i.e., who would be the purchaser of this product or technology: component manufacturer, cell manufacturer, system integrator, end-user, etc.) and why the technology or product would be valuable enough to them to purchase or use the technology.						

		Existing state of research & development - Describe the current state of development of the product or technology. Include a description of technological achievements that your team has achieved in this area.
		Next Steps in Development (this proposed effort) - Describe new product or technology concepts or improvements that would be developed and that could benefit from collaborative development. Identify whether it is a transformational technology (i.e., technology that disrupts the status quo and has the potential to change the way we address challenges in science and engineering), or an incremental improvement to a technology. Note that a need for both transformational and incremental improvement projects is anticipated. Identify the anticipated state of technology development after the work described in this proposal is completed (e.g., feasibility demonstrated, bench-scale demonstrated, pilot-scale demonstrated, etc.) Identify technical performance goals or metrics that you expect to achieve by the end of this proposed effort.
		Future Development Steps (steps beyond the time frame of this proposed effort) - If the proposed effort will not result in a commercial product, provide a description of future steps necessary to bring the product to commercialization. This should include a multi-year timeline (e.g., graph or table) summarizing the paths, activities, milestones, resources, cost sharing, and timing to take the technology from the expected stage of development at the end of the proposed effort to commercialization.
will are tech sho acc	be app nno uld om	siness/Commercialization Plan or Strategy (two to five pages) – Describe how project results commercialized. Category A projects should have business/ commercialization strategies that propriate for the stage of development of the technology or product. The more mature the logy or product, the more mature the business progress is expected to be. Category B projects have a detailed commercialization plan, whereas an early-stage concept should be panied by at least a rough outline of how the concept may ultimately be commercialized. Cover owing topics:
		Market Analysis - Identify target markets and their relevant characteristics, e.g., size, competition, and trends (regulatory, technological, etc.) Include the rationale for the analysis. Briefly explain the customer's economic motivation for buying the new product or service, versus alternatives. Category A projects that are near commercialization and all Category B projects should describe proposed marketing strategies, explain why they should be successful, and provide sales estimates. Category B projects should provide an estimate of the price of the product or service that eventually will be commercialized, including an explanation of how the price was estimated, and provide a comparison of that price to competing products or services.
		Commercialization Strategy - Indicate when you expect commercial sales to begin. Provide a discussion of the commercialization path that is appropriate to the stage of development of the proposed technology. Discuss whether the strategy is for one of the team members to manufacture the product, to identify a manufacturing partner, to license the technology, or another strategy. Note that, even in early stage projects, initial projections of commercialization paths and challenges are essential to assessing benefits, risks, and future resource requirements. Category A projects that are near to commercialization and all Category B projects should identify any potential strategic partners who could reduce your costs by providing access to marketing/distribution channels, manufacturing facilities or other assets.

.	after this proposed effort is finished to bring the project to commercial deployment. Identify potential strategies to access these funding sources. Category B projects should provide more detail and specifics on efforts taken and results achieved in securing necessary funding.
	Technology Outreach - Describe any other activities to promote the new technology, such as the presentation of technical papers, attending conferences or trade shows, targeted customer outreach, etc. and how these activities will be reported to NYSERDA.
	Production Plan (required for Category B projects only) - Describe plans for setting up facilities to manufacture the proposed product. Discuss any key issues such as: need for specialized production equipment or strategic alliances; critical make/buy decisions or cost/volume issues; and, plans for ancillary activities such as service support functions.
	Organization Plan (required for Category B projects only) - Describe staffing plans for transitioning from R&D stage to commercialization stage; include all organizational functions, such as management, administration, engineering, marketing/sales, and manufacturing.

Future Funding/Payonus Sources - Identify potential funding sources that could be used

- **4. Proposed Work Scope and Schedule** (four to eight pages) Category A projects requesting over \$100,000 of funding should be phased so that Phase 1 requests no more than \$100,000. Category B projects requesting over \$1,000,000 of funding should be phased so that no phase exceeds \$1,000,000. The proposed work scope and schedule should include:
 - □ A Statement of Work that includes:
 - Technical or performance goals that you expect to achieve by the end of this proposed effort.
 - A list of major tasks to be accomplished in this proposed effort and a description of each. Complicated tasks can be broken down into 'subtasks'. Typical task titles may include, but are not limited to, the following: "Project Management and Reporting", "Requirements Definition", "Preliminary Design", "Device Fabrication", "Testing and Characterization", "Final Design", and "Demonstration."
 - While the focus of this program is technology and product development, proposers are encouraged to include business tasks, when appropriate, to ensure that progress in business activities occurs in parallel with progress in technology development. Business tasks should not require excessive funding, should be appropriate for the stage of technology development, and should be directly related to bringing the product to market (i.e., developing a business plan, attracting funding, developing strategic partnerships, etc.)
 - For phased projects, identify specific milestones that will be delivered or accomplishments that will be achieved by the end of each phase. Milestones or accomplishments will be used to measure success of the phase and determine whether to move on to the next phase.
 - NYSERDA will expect to receive written progress reports and a final report, and have occasional project meetings, as part of the project management task. These activities should be considered when developing your cost estimates.
 - In order to measure success of NY-BEST efforts NYSERDA will require the reporting of project metrics, as appropriate for each project, on an annual basis during the project and after project

completion. Measurement, documentation, and dissemination of success of NY-BEST efforts are expected to help NY-BEST attract funding for itself and its members. Reporting of metrics should be considered when developing your cost estimates. Examples of project metrics are presented below.

- Earlier-stage research projects: bibliometrics, patents and licenses, awards, and outside funding received.
- Projects near commercialization: capital investment, customer market(s) and market penetration, product sales, dealers, licensees, mid-market actors, jobs created and retained, and energy, economic, and environmental benefits.
- Projects with technology transfer components: teleconferences, symposiums, workshops, seminars, publications, presentations, etc.
- ☐ A work schedule with a starting point and duration for each task. Presentation of the schedule in a bar chart is preferred starting with "Month 1," "Month 2," etc.... Include timing of major milestones and reports on the work schedule.
- **5. Project Benefits** (one to three pages) Outline benefits as outlined below. All projects should address the benefits below. Category B projects are expected to provide more detail and quantification of benefits than Category A projects.
 - ☐ Benefits to New York State Explain the applicability of the technology to New York markets. Describe how this technology will provide energy (e.g., efficiency improvements), environmental benefits (i.e. emission reduction, elimination of hazardous materials, etc.) and economic benefits (i.e. jobs and company success/growth).
 - ☐ Benefits to NY-BEST Describe how this project will help NY-BEST and New York organizations involved in developing and commercializing energy storage technology achieve the following goals and objectives:
 - Accelerate the commercial introduction of energy storage technology in New York State;
 - Build the skilled workforce and regional expertise to sustain a vibrant commercial energy storage industry in New York State; and
 - Leverage seed resources of \$25 million to create a viable organization that provides value to its members and to New York State.
 - □ **Collaboration Potential** Collaboration is an important element of NY-BEST and often improves the outcome of research and development efforts. Describe the potential for collaboration in developing the technology or product and identify potential collaboration partners (by name, by type of organization, and/or by skillset).
 - ☐ Benefits Measurement Identify which of the metrics listed below are appropriate to measure success of your project both during the project and following completion of the project. For each metric identified, provide annual goals that you expect to achieve for the year of project completion, and for 3 and 5 years after project completion.
 - Earlier-stage research projects: bibliometrics, patents and licenses, awards, and outside funding received.

- Projects near commercialization: capital investment, customer market(s) and market penetration, product sales, dealers, licensees, mid-market actors, jobs created and retained, and energy, economic, and environmental benefits.
- Technology transfer: teleconferences, symposiums, workshops, seminars, publications, presentations, etc.

Pro	Proposer Qualifications (two to five pages, depending on team size) - Identify:				
	Proposing Organization(s) - Include a brief description of organization(s) involved in the proposing team. Include date founded, history, size, product portfolio, and location. Also include an explanation of why the proposed organization or team is the best qualified to perform/implement the project. Identify any other organizational qualifications relevant to the proposed work. Category A projects that are near commercialization and all Category B projects should include examples of previous successful commercialization projects and the current status of those successes. (Note: <u>Subcontracts of \$25,000 or more are subject to competitive bid procedures except where the proposal identifies a specific subcontractor as an integral participant in the proposed work; see Article V of the Sample Agreement).</u>				
	Organizational Chart - Prepare an organizational chart listing all team members, including the project manager and any subcontractors and other sponsors involved in the project, showing their roles and responsibilities.				
	Qualifications of Key Individuals – Identify key individuals that will be involved in the project and its success. Identify specific technical and business expertise of these individuals. If appropriate for the stage of technology development (ALL Category B projects and some Category A projects), proposing teams are expected to include individuals with business experience. Submit resumes (as attachments) of all key project team members. Include education and experience that are relevant to the proposed work.				
	Previous Experience - Describe the proposing team's experience that is relevant to the proposed effort. List related projects that have been undertaken and successfully completed by the Proposer and/or subcontractors. List NYSERDA contracts awarded to the proposer, if				

7. Budget – A Contract Pricing Proposal Form (CPPF), with associated instructions, is provided as an attachment to this PON. Each proposal must include a completed CPPF for each project phase and a CPPF for the total project cost, and also a cost-sharing table for the total project identifying the allocation of funding by task.

Project Funding and Cost-Sharing:

any, in the past five years.

6.

□ Category A Projects: Up to \$200,000 of funding per project is available for Category A projects. Category A projects requesting over \$100,000 of funding should be phased so that Phase 1 requests no more than \$100,000. Projects may be funded at the full amount requested, for Phase 1 only, for one phase at a time, or for a different amount as determined by NYSERDA.

Cost-sharing of at least 25% of the total project cost is preferred for Category A projects. Cost-sharing may be provided by the proposer or by third parties and may be in the form of cash or

in-kind labor, materials, equipment, facilities, and other resources, subject to reasonable and verifiable valuation.

□ Category B Projects: Between \$200,000 and \$3,000,000 of funding per project is available for Category B projects. Category B projects requesting over \$1,000,000 should be phased so that no phase exceeds \$1,000,000. Projects may be funded at the full amount requested, for Phase 1 only, for one phase at a time, or for a different amount as determined by NYSERDA.

Cost-sharing in the amount of 50% or more of the total project cost is required for Category B projects. Cost-sharing in excess of the minimum amounts is preferred. Cost-sharing may be provided by the proposer or by third parties and may be in the form of cash or in-kind labor, materials, equipment, facilities, and other resources, subject to reasonable and verifiable valuation.

□ All Projects - Cost sharing can be from the proposer, other team members, and other government or private sources. Contributions of direct labor (for which the laborer is paid as an employee) and purchased materials may be considered "cash" contributions. Unpaid labor, indirect labor, or other general overhead may be considered "in-kind" contributions. NYSERDA will not pay for efforts that have already been completed. The proposer or proposing team cannot claim as cost-share any expenses that have already been incurred.

The quality of the proposer's co-funding is examined during the proposal evaluation process. Cash, labor, and materials are considered superior to other types of co-funding. The level of co-funding should be appropriate for the amount of funding requested and will be considered an indicator of the proposer's commitment to the success of the project and the type of co-funding offered should be appropriate for the proposer's financial condition and the product's stage of development.

☐ All Projects - Show the cost-sharing plan in the following format (expand table as needed):

PROPOSAL COST-SHARING TABLE							
Proposed Fund	Project Total (\$)						
Funding Source	Task 1 (\$)	Task 2 (\$)	Task Total (\$)		Cash (\$)	In-Kind (\$)	
NYSERDA						///////////////////////////////////////	
Proposer							
Co-Funder (identify)							
Co-Funder (identify)							
Totals							

Indirect Costs: Indirect Costs: NYSERDA prefers that indirect costs (overhead or general and administrative costs; see Attachment C, Item # 10) funded by NYSERDA are less than 25 percent. Indirect cost rates greater that 25 percent may be used for in-kind cost share contribution.

follows: Describe the basis for the rates proposed (e.g., based on prior period actual results; based on projections; based on federal government or other independently-audited and approved rates). If rate(s) is approved by an independent organization, such as the federal government, provide a copy of such approval. ☐ 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 may require rate adjustments. NYSERDA may require proposers to provide financial statements or other needed financial information prior to awarding a contract. **8. Appendices** – Include any resumes, descriptions of company qualifications, or ancillary information that is deemed necessary to support your proposal. If appropriate, also include: Letters of Interest or Commitment – If you are relying on any other organization to do some of the work, provide services or equipment, or share in the non-NYSERDA cost, include a letter from that organization describing their planned participation. Also include letters of interest or commitment from businesses or other organizations critical to the future commercialization, demonstration, or implementation of the project. Absence of letters of interest or commitment will be interpreted as the proposer not having support from the subject parties. Exceptions to the Terms and Conditions – If you do not accept the standard terms and conditions (including recoupment provisions) as contained in the attached Sample Agreement, provide alternate terms with justification based on the risk and benefit to NYSERDA and New York State.

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

IV. PROPOSAL EVALUATION

Proposals that meet Proposal requirements will be reviewed by a Technical Evaluation Panel (TEP), comprised of business and technical experts from within and outside NYSERDA, using the Technical Evaluation Criteria below. As part of the evaluation process, proposers may be invited to attend an interview in Albany, NY prior to final selection.

The level of expectations for each of these criteria increases with the level of funding requested. Expectations for Category B proposals are significantly higher than those for Category A proposals.

1. **Problem/Proposed Solution/Scope** – How significant is the problem or opportunity and how pertinent is it to New York State and NY-BEST? Does the proposal address an eligible technology? Will the proposed technology enable a significant improvement in the

performance of an electric energy storage system? Is the proposed project likely to solve the problem or exploit the opportunity? Is the proposed work technically feasible, innovative, and superior to alternatives? Is the work strategy sound? Are the technical risks identified, appropriately addressed, and balanced by project benefits? Is the Statement of Work well-organized, clear, complete, and include adequate detail?

- 2. Commercial Potential Is the product likely to be commercially successful? Is the business/commercialization plan appropriate and acceptable for the state of development of the technology? Is the market characterization reasonable and supported? Are the strategies to bring the product to commercialization adequately identified for the state of development of the technology? Does the proposal identify competing technologies and alternate solutions, and clearly show why this product is superior to or provides value compared to alternatives? If the project will not lead to commercialization as a next step, have necessary follow-on activities been identified? If additional money is required for commercialization, is the approach to obtain this funding appropriate?
- 3. Project Benefits Will a significant part of the work on the project take place in New York? To what extent will there be economic benefits in New York State in the form of subsequent commercial activity? Does the project provide benefits to NY-BEST and its members? How significant are the energy, environmental, and economic benefits to New York State? Are there additional significant benefits? Are the metrics identified appropriate for the proposed effort?
- 4. Proposer(s) To what degree does the team have relevant and necessary technical and business background and experience? For Category B projects, and Category A projects that are close to commercialization, does the team include a business that will manufacture the product in New York State? Does the proposal include a promising collaboration (required for Category B projects) or the strong potential to form a promising collaboration between NY-BEST members? How firm are the commitments and support from essential participants, cofunders, and related businesses and other organizations?
- 5. Project Cost and Value Is the overall project cost justified and reasonable based on the level of effort proposed and the expected benefits? How appropriate are the proposer's cofunding contributions (sources and amounts) with respect to the degree of risk, potential to benefit from the work, and financial status of the organization? Are equipment, facility, material, and travel costs based on reasonable estimates? Are the labor rates reflective of the industry? Are indirect costs funded by NYSERDA reasonable?

<u>Other Considerations</u> – Proposals will be reviewed to determine if they reflect NYSERDA and NY-BEST's overall objectives, including: risk/reward relationships, similar ongoing or completed projects, the general distribution of NY-BEST projects among industries and other organizations, and the distribution of projects within New York State.

V. GENERAL CONDITIONS

PROPRIETARY INFORMATION

Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and

whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(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 exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 www.nyserda.org/nyserda.regulations.pdf. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

OMNIBUS PROCUREMENT ACT OF 1992

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

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

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

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

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

State Finance Law sections 139-j and 139-k - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at

http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html

The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

Tax Law Section 5-a - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at

http://www.nystax.gov/pdf/2007/fillin/st/st220td_507_fill_in.pdf). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a

prospective contractor prior to contacting and filed with NYSERDA. *See*, ST-220-CA (available at http://www.nystax.gov/pdf/2007/fillin/st/st220ca_507_fill_in.pdf). The Department has developed guidance for contractors which is available at http://www.tax.state.nv.us/pdf/publications/sales/pub223_606.pdf.

CONTRACT AWARD

NYSERDA anticipates making multiple awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA expects to notify proposers in approximately 10 weeks from the proposal due date whether your proposal has been selected to receive an award.

RECOUPMENT

For any new product development projects requesting NYSERDA funding over \$200,000, NYSERDA will require a royalty based on sales of the new product developed for products produced outside of New York State. Royalties will be collected by NYSERDA and will be directed to NY-BEST to support future research investments. Royalty terms are 5% of sales for products produced outside of New York State by the Contractor or by a licensee (for a period of fifteen years or until the Contractor pays NYSERDA an amount equal to five times the amount of funds paid by NYSERDA to the Contractor, whichever comes first).

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.

Attachments

Attachment A - Proposal Checklist

Attachment B - Disclosure of Prior Findings of Non-responsibility (mandatory)

Attachment C - Contract Pricing Proposal Form (CPPF)

Attachment D - Sample Agreement with Exhibits



NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

ATTACHMENT A - PON No. 1704 PROPOSAL CHECKLIST (MANDATORY)

Proposal Title (Not the name of the PON)			Due Date			
Primary Contact (Prime Contractor)			Title			
Company			Phone	Fax		
Address City			State/Province & Zip	e-Mail		
Secondary Contact			Title			
Company			Phone	Fax		
Address	City		State/Province & Zip	e-Mail		
THE PRIME CONTRACTOR MUST SIGN T	HIS FORM BE	LOW a	and ANSWER THE FOLLO	WING QUESTIONS:		
Do you accept all Terms & Conditions in the Sam	ple Agreement?	(if no, e	explain on separate page)	Yes No		
Have you been indicted/convicted for a felony wit	hin the past 5 ye	ears? (if	yes, explain on separate page	e) Yes No		
Are you a Minority or Women-Owned Business E	interprise?		Yes No			
Does your proposal contain Minority or Women-C	Owned Business	enterpr	enterprises as subcontractors? Yes No			
Are you submitting the required number of copies	s? (See proposa	al instru	ctions.)	Yes No		
Is other public funding pending/awarded on this a (if yes, explain on separate page)	and/or very simila	ar topic	r topic (prior and/or competing proposals)? Yes No			
ON WHAT PAGE IN YOUR PROPOSAL CA	N THESE ITE	MS BE	FOUND?			
Disclosure of Prior Findings Form (mandatory) 1. Executive Summary 2. Problem Statement 3. Business/Commercialization Plan 4. Proposed Work Scope and Schedule 5. Project Benefits 6. Proposer Qualifications 7. Budget 9. Resumes 10. Commitment Letters from Participating Organizations 11. Indictment/Conviction of Felony (if applicable) 12. NYSERDA Contracts Awarded (if applicable) 13. Prior and/or Competing Proposals (if applicable) 14. Exceptions to Terms & Conditions (if applicable)						
AUTHORIZED SIGNATURE & CERTIFICAT	ΓΙΟΝ:	•				
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	me (Type or Print)					
Title	ganization					
Phone Date						

NOTE: This completed form <u>MUST</u> be signed and attached to the front of all copies of your proposal.



NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

Attachment B – PON 1704 Disclosure of Prior Findings of Non-responsibility Form

(Mandatory)

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

Basis of Finding of Non-responsibility: (Add additional page 1)	ages as necessary)					
Has any Government al Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the	Yes					
intentional provision of false or incomplete information ? (Please indicate with an "X") (Please indicate with an "X")	No					
If you answered yes, please provide details below.						
Government Agency or Authority:						
Date of Termination or Withholding of Contract:						
Basis of Termination or Withholding: (Add additional pages as necessary)						
Offerer certifies that all information provided to NYSERDA with respect to State Finance Law §139-k is complete, true, and accurate.						
By: Date:_						
Name: Title:_						



NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY Attachment C: PON 1704 Contract Pricing Proposal Form

New York State Energy Research and Developme Contract Pricing Proposal Form	Solicitation/Contract No.		Page		
Contractor:	Name of Proposed Project:				
Address:	_				
Location (where work is to be performed):			NYSERDA fu	nding:	
			Total Project C	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	x:			
3. Direct Labor (specify names/titles)	Hours	Rate/hr			
Total Direct Labor				1	
4. Labor Overhead	Rate %	\$ Base			
Total Labor Overhead					
5. Outside Special Testing					
6. Equipment					
7. Travel				Î	
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 acc	ordance with the i	nstructions to propose	ers.	U	1
Typed Name and Title:		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 Sch	nedule - 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.
 - 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 & ADMINISTRAT	ΓIVE (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.

Agreement No.: Amount: Type: Cost-Sharing

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

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

Article I

Definitions

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

(a) General Definitions:

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

Budget: The Budget set forth in Exhibit A hereto.

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

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

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

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

<u>Progress Reports</u>: The Progress Reports required by the Statement of Work hereof.

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

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

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

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

(b) Data Rights and Patents Definitions:

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

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

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

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

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

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

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

(c) Payments to NYSERDA Definitions:

Product: [PRODUCT OR TECHNOLOGY DEFINITION]

New York State Manufacturer: Any manufacturer which provides in excess of 50% value added to the manufacture of the Product, and/or any manufacturer which provides in excess of 50% value added to the manufacture of a Subject Invention, as developed in this Project, within the geographical boundaries of the State of New York. Such value added shall be capable of being proven by an audit conducted in accordance with generally accepted auditing standards. "Value added" means any separable component of the Product or a Subject Invention, paid for by the Contractor to others, for parts, components, and services, and all manufacturing costs, including but not limited to labor, labor overhead, materials, and G&A, but excluding profit.

Sale: A sale or lease of the Product or a Subject Invention.

<u>Sale Price</u>: Gross revenue, excluding returns and allowances such as sales tax, freight, and insurance, if applicable, derived from a Sale.

<u>Seller</u>: The Contractor, or any parent, subsidiary, affiliate, franchisee, licensee or assignee thereof.

Article II

Performance of Work

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

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

notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days.

Article III

Deliverables

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

Article IV

Compensation

Section 4.01. Cost-Sharing. It is understood and agreed that NYSERDA and the Contractor are sharing the costs for the Work to be performed. In consideration for this Agreement and as full compensation for NYSERDA's share of the costs for the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor a maximum amount of \$______for the cost elements identified in the Budget to be funded with NYSERDA funds, subject to the provisions and restrictions contained herein. Such amount shall be paid only to the extent that costs are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement, the Budget and the following:

- (a) <u>Staff Charges</u>: The Contractor shall be compensated for the services performed by its employees under the terms of this Agreement at the employee's actual wage rate.
- (b) <u>Direct Charges</u>: The Contractor shall be reimbursed for reasonable and necessary actual direct costs incurred (e.g., equipment, supplies, travel and other costs directly associated with the performance of the Agreement) to the extent required in the performance of the Work in accordance with the provisions of the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs should generally not exceed the daily per diem rates published in the Federal Travel Regulations. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate.
- (c) <u>Indirect Costs</u>: The Contractor shall be reimbursed for fringe benefits, overhead, general and administrative (G&A), and other indirect costs included in the Budget at such rates as the Contractor may periodically calculate, consistent with appropriate federal guidelines or generally accepted accounting principles.
- Section 4.02. <u>Title to Equipment</u>. Title shall vest in the Contractor to all equipment purchased hereunder.

[OR, if specific equipment has been identified by the Project Manager for NYSERDA to retain title in, then use the following:]

Section 4.02. <u>Title to Equipment</u>. Title shall vest in NYSERDA to all of the following equipment purchased hereunder:

- 1)
- 2)
- 3)
- 4)

Upon the request of NYSERDA, the Contractor shall execute, acknowledge, deliver and perform, or cause to be executed, acknowledged, delivered or performed, all such bills of sale, assignments, conveyances or other documents or acts as NYSERDA may reasonably request in order to assure the better vesting in and confirming to NYSERDA, its successor and assigns, of title to and possession of such equipment. If, after six months following the completion of the Work or the termination of this Agreement, NYSERDA has not removed any such equipment, it will be deemed abandoned and become the property of the Contractor. Any such removal of equipment by NYSERDA shall be at NYSERDA's expense.

Section 4.03. <u>Progress Payments</u>. The Contractor may submit invoices for progress payment no more than once each month or no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable." Such invoices shall make reference to the Agreement number shown on the upper right hand corner of page one of the Agreement. Invoices shall set forth total project costs incurred. These shall be broken down into NYSERDA's Funding share and into the Cost-Share and other Cofunding share, and they shall be in a format consistent with the cost categories set forth in the Budget. Invoices shall provide reasonable documentation for the above to provide evidence of costs incurred, including:

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

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

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

Section 4.04. <u>Final Payment</u>. Upon final acceptance by NYSERDA of the Final Report and all other deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. An invoice for final payment shall include, in addition to the material required pursuant to Section 4.03 hereof, a statement as to whether any invention or patentable devices have resulted from the performance of the Work. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six months

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

Section 4.06. <u>Maintenance of Records</u>. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to the performance of the Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance. Further, the Contractor shall keep, maintain, and preserve at its principal office until such time as the Contractor's payment obligations to NYSERDA pursuant to Section 8.03 of the Agreement have been met, full and detailed books, accounts, and records in connection with Sales, and shall require licensees to maintain records of Sales.

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

Section 4.08. <u>Audit</u>. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.06 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder. Further, the Contractor shall provide to NYSERDA, on a reasonable basis, access to its books and records and those of any parent, subsidiary, affiliate, franchisee, licensee, or assignee to assure compliance with the payment provisions contained in Section 8.03 of the Agreement.

Article V

Assignments, Subcontracts and Purchase Orders

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

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

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

Article VI

Schedule; Acceptance of Work

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

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

Article VII

Force Majeure

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

Article VIII

Technical Data; Patents; Payments to NYSERDA

Section 8.01. Rights in Technical Data

- (a) <u>Technical Data</u>: 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:

[CASE I: If there are no pre-existing patents -- Sections (i), (ii) and (iii)]:

- (i) the right to withhold Proprietary Data except as otherwise provided in paragraph (ii) below;
- (ii) the right to make, use and sell the Product. If the Contractor fails to make, use, and sell the Product within five years from the Contractor's receipt of Final Payment as described in Section 4.04 hereof, under conditions which indicate that the benefits of the Product are available to the public on reasonable terms, NYSERDA shall have a royalty-free, exclusive, worldwide license sufficient in scope to allow NYSERDA to make, use or sell the Product and to allow others to do so, including a non-exclusive right in Proprietary Data incorporated into or necessary for use in connection with the making, use, or sale of the

Product by NYSERDA or its sublicensees. The Contractor agrees to disclose such Proprietary Data to NYSERDA, and NYSERDA may disclose such Proprietary Data to its sublicensees who have agreed to keep such Proprietary Data confidential; and

(iii) 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.

[CASE II: If there are pre-existing patents -- Sections (i), (ii) and (iii)]:

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

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

Section 8.02. Patents.

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

for or on their behalf the Subject Invention throughout the world, exclusively for their own use of the Subject Invention.

- (b) Within six months of the time a Subject Invention is made, or as part of the request for final payment, whichever shall occur first, the Contractor shall submit to NYSERDA a written invention disclosure. Within twelve months of the time a Subject Invention is made, or as part of the request for final payment, whichever shall occur first, the Contractor shall advise NYSERDA in writing whether the Contractor elects to retain principal rights in the Subject Invention. The Contractor shall file the patent application for a Subject Invention within two years of the date of election. If the Contractor fails to disclose a Subject Invention, fails to elect to retain principal rights thereto, or to file a patent application within the time specified in this paragraph, or if the Contractor elects not to retain principal rights in a Subject Invention, the Contractor shall convey to NYSERDA title to the Subject Invention unless NYSERDA shall waive in writing its right to take title. In the event the Contractor elects not to retain principal rights in a Subject Invention, the Contractor shall retain a non-exclusive, royalty-free license throughout the world in such Subject Invention transferable only with the written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the requested transfer shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days.
- (c) The Contractor shall submit to NYSERDA, not less frequently than annually, written reports which indicate the status of utilization of Subject Inventions in which the Contractor retains principal rights. The reports shall include information regarding the status of development, date of first commercial sale or use, and gross royalties received by the Contractor. Such report shall be furnished to NYSERDA not later than February 1 following the calendar year covered by the report. The Contractor may include the information required by this Section in the Annual Report required by Section 8.03 of this Agreement. In the event the Contractor fails to demonstrate that the Contractor has taken effective steps within three years after a patent is issued to bring the Subject Invention to the point of Practical Application, then NYSERDA shall have the right to grant a non-exclusive or exclusive license to responsible applicants under terms that are reasonable under the circumstances, or to require the Contractor to do so.
- (d) The Contractor shall include the foregoing patent clauses, suitably modified to identify the parties, in all subcontracts which involve the performance of Work under this Agreement. The Subcontractor shall retain all rights provided for the Contractor, and the Contractor shall retain all rights provided for NYSERDA, as set forth above.

Section 8.03. <u>Payments to NYSERDA</u>.

- (a) <u>Payments to NYSERDA</u>: The Contractor agrees to pay to NYSERDA the following amounts:
 - (1) When a Sale is made by a Seller when the Seller is not a New York State Manufacturer: 5% of the Sale Price.

The Contractor's obligation to make payments to NYSERDA shall commence from the date of the first Sale and shall extend for a period of time as follows:

in the event of Sales made by a Seller when the Seller is not a New York State Manufacturer, for a period of fifteen years thereafter, or until the Contractor pays NYSERDA an amount equal to five times the amount of funds actually paid by NYSERDA to the Contractor under this Agreement, whichever comes first.

Such payments shall be payable in annual installments and shall be paid by the first day of March in the calendar year immediately following the year during which the Contractor receives revenues as described above (the "Due Date"). Any payment not received by the applicable Due Date shall be deemed delinquent. A delinquent payment shall be made with interest with such interest computed commencing with the Due Date of such payment. The interest rate payable shall be the "Prime Rate" existing as of the Due Date of such payment plus five (5) percentage points. Such interest shall be compounded monthly.

- (b) Annual Reports. The Contractor shall provide NYSERDA an annual report detailing, by manufacturer, the number of items sold or leased, or the payment or other receipts received, and the resultant amount earned by, and paid to, NYSERDA in accordance with paragraph (a) hereof. Such report shall be furnished to NYSERDA not later than February 1 following the calendar year covered by the report. The Contractor's obligation to provide Annual Reports shall commence on February 1 of the calendar year following either the Contractor's receipt of Final Payment pursuant to Section 4.04 hereto, or upon the first Sale, whichever event occurs first. In the event that, for a period of five consecutive years, the annual reports indicate that no Sales are made and no payment is due to NYSERDA, the Contractor may cease submittal of annual reports. If, however, Sales are made in subsequent years, the Contractor's obligation to submit annual reports shall resume.
- (c) <u>Licensing or Franchise Agreements</u>. The Contractor shall not enter into any agreement with any party with respect to the licensing, franchising, or assignment of rights in the Product or any Subject Invention which contains provisions inconsistent with the Contractor's obligation as set forth in this Section. The Contractor shall provide copies of any proposed licensing or franchise agreements to NYSERDA and shall not execute any such agreements without the prior written consent of NYSERDA. Such consent shall not be unreasonably withheld, and, in the event that notice of consent or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, such licensing or franchise agreement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days.

Article IX

Warranties and Guarantees

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

- (a) it is financially and technically qualified to perform the Work;
- (b) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

- (c) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted scientific standards and engineering practices;
- (d) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted scientific standards and engineering practices;
- (e) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;
- (f) there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or NYSERDA's rights hereunder;
- (g) it has no actual knowledge that any information or document or statement furnished by the Contractor in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading, and that all facts have been disclosed that would materially adversely affect the Work;
- (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; and
- (i) during the time the Contractor has obligations to NYSERDA pursuant to Section 8.03 the Contractor will not permit its current or future principals to engage in any competing activities for so long as such principals are employed by the Contractor and for a period of three years thereafter (excluding teaching and research.) Also, during the time the Contractor has obligations to NYSERDA pursuant to Section 8.03 the Contractor will not, and it will not permit its current or future principals to loan monies to entities competing in the development, enhancement, or revision of the Product or any Subject Invention.

Article X

Indemnification

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

Article XI

Insurance

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

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

 Section 11.02. <u>Types of Insurance</u>. The types and amounts of insurance required to be maintained under this Article are as follows:
- (a) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and
- (b) Commercial automobile liability insurance in respect of motor vehicles owned, licensed or hired by the Contractor and the Subcontractors for bodily injury liability, including death and property damage, incurred in connection with the performance of this Agreement, with minimum limits of \$500,000 in respect of claims arising out of personal injury, or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$500,000 in respect of claims arising out of property damage in any one accident or disaster.
- (c) Upon commencement of marketing of the Product, product liability insurance for bodily injury liability, including death, and property damage liability, arising out of the use of the Product 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. Product liability insurance naming the NYSERDA and State of New York as additional insureds required under this Agreement shall remain in effect for as long as the payment obligation pursuant to Section 8.03 of this Agreement is in effect.

Section 11.03. <u>Delivery of Policies; Insurance Certificates</u>. 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 Sections 11.02 (a) and (b) hereof and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to

NYSERDA. Upon commencement of marketing of the Product, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Section 11.02 (c) hereof 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. <u>Termination</u>.

- (a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon 30 days prior written notice to the Contractor. In such event, compensation shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Compensation and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor). Articles VIII, IX, and X shall survive any termination of this Agreement, and Article XVI shall survive until the payment obligations pursuant to Article VIII have been met.
- (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.
- (d) In the event of termination, the Contractor's payment obligations set forth in Section 8.03 of the Agreement shall be adjusted as of the effective date of termination, with such payment obligations being calculated as follows:

X

Total NYSERDA funds
actually paid to
the Contractor
NYSERDA total maximum
commitment set forth
in Section 4.07 of
the Agreement

Payments defined in Section 8.03 of the Agreement (e) Nothing in this Article shall preclude the Contractor from continuing to carry out the Work called for by the Agreement after receipt of a Stop Work Order or termination notice at its own election, provided that, if the Contractor so elects, (i) any such continuing Work after receipt of the Stop Work Order or termination notice shall be deemed not to be Work pursuant to the Agreement and (ii) NYSERDA shall have no liability to the Contractor for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

Article XIII

Independent Contractor

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

Article XIV

Compliance with Certain Laws

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

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

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

Article XV

Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. <u>Notices</u>. All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be deemed to have been sufficiently given for all purposes hereunder when delivered or mailed by registered or certified mail, postage prepaid, return receipt requested, (i) if

to NYSERDA, at 17 Columbia Circle, Albany, New York 12203-6399 or at such other address as NYSERDA shall have furnished to the Contractor in writing, and (ii) if to the Contractor, at , or such other address as the Contractor shall have furnished to NYSERDA in writing.

Section 15.02. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

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

Article XVI

Business Reorganizations

Section 16.01. <u>Business Reorganizations</u>. In the event the Contractor proposes to consolidate or merge into or with another corporation or entity, or to sell or dispose of all or a majority of the assets of the Contractor, or to otherwise undertake a reorganization which alters or changes the rights of NYSERDA as provided in this Agreement, before any such action shall be taken, the Contractor shall either:

- (a) buy out its obligation to make payments to NYSERDA as described in Section 8.03 of this Agreement by paying NYSERDA an amount equal to three times the amount of funds actually paid by NYSERDA to the Contractor under this Agreement; or
- (b) assign or otherwise transfer to a new entity the Contractor's obligations under this Agreement, including, but not limited to, the obligation to make payments to NYSERDA as described in Section 8.03 of this Agreement. Such assignment or transfer shall be subject to the prior written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the assignment or transfer shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days.

Article XVII

Publicity

Section 17.01. Publicity.

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

- (b) It is recognized that during the course of the Work under this Agreement, the Contractor or its employees may from time to time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, the Contractor shall credit NYSERDA's funding participation in the Project, and shall state that "NYSERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York." Notwithstanding anything to the contrary contained herein, the Contractor shall have the right to use and freely disseminate project results for educational purposes, if applicable, consistent with the Contractor's policies.
- (c) Commercial promotional materials or advertisements produced by the Contractor shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Contractor do not agree on the wording of such credit in connection with such materials, the Contractor may use such materials, but agrees not to include such credit.

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

NEW VODE STATE ENERGY DESEARCH

	AND DEVELOPMENT AUTHORITY
Ву	Ву
	Jeffrey J. Pitkin
Name	Treasurer
Title	

STATE OF))
COUNTY OF			_)) SS.:
On the	day of	in the year	, before m	ne, the undersigned, a
Notary Public	in and for said Sta	ate, personally appeared		,
personally kno	wn to me or prove	ed to me on the basis of s	atisfactory ev	idence to be the
individual(s) w	hose name(s) is/a	re subscribed to the with	in instrument	and acknowledged to me
that he/she/the	y executed the sar	me in his/her/their capacit	ty(ies), and th	at by his/her/their
signature(s) on	the instrument, the	ne individuals(s), or the p	erson upon be	ehalf of which the
individual(s) a	cted, executed the	document.		
				Notary Public

New York State Energy Research and Dev	Solicitation/Contract No.		Page		
Contract Pricing Proposal Form					
Contractor:			Name of Proposed Project:		
Address:			1		
Location (where work is to be performed):			NYSERDA funding:		
		Total Project			
			Total	Funding &	Cost-sharing
			Project	Co-funding	& Other
Cost Element			Cost	via NYSERDA	Co-funding
Direct Materials					
a. Purchased Parts				WORK	
b. Other					
Total Direct Materials			<u> </u>		<u> </u>
2. Materials Overhead	Rate:	T	T	T	T
			.		
Direct Labor (specify names/titles)	Hours	Rate/hr			
Total Direct Labor					
4. Labor Overhead	Rate %	\$ Base	<u> </u>		
4. Labor Overnead	Nate 70	ψ Dase			-
Total Labor Overhead					
		<u> </u>	<u> </u> 		
Outside Special Testing					
6. Equipment	<u> </u>	<u>-:-:-:-:-:-:-:</u>	<u> </u>	<u> </u>	
		·.·	<u> </u>		<u> </u>
7. Travel					
8. Other Direct Costs	·.·.·.	<u></u>	T	· · · · · · · · · · · · · · · · · · ·	
			<u> </u>	<u> </u>	 - - - - - - - - - - -
Subcontractors/Consultants					
Total Subcontractors/Consultants					
10. General & Administrative Expense	Rate %	Element(s)		<u> </u>	<u> </u>
10. Conordi di Administrativo Exponeo	11010 70	Zioinoni(o)			
	<u></u>	<u> </u>	<u> </u>	<u></u>	<u> </u>
11. Fee or Profit (if allowable) Rate:					
12. Total Estimated Project Cost	<u> </u>	<u> </u>	I #VALUE!	<u> </u>	<u>. 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1</u> T
•			1	_ļ	ļ
This proposal reflects our best estimates as of this da	ite, in accordance v		s to proposers.		ID-4:
Typed Name and Title:		Signature:			Date:
		<u> </u>			<u> </u>
Has any executive agency of the U.S. gove				ds in connection v	vith any prime
contract or subcontract within the past twelver	ve months?	Yes	No		
If yes, identify:					

ement No.	chedule - Contract Pricing Proposal Form Item Description	Amount
	·	
		
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	1	



NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY Attachment C: PON 1704 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 fu	nding:	
	Total Project Cost:				
Cost Element			Total Project Cost	Funding & Co-funding via NYSERDA	Cost-sharing & Other Co-funding
1. Direct Materials				4	
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)			
				1	
11. Fee or Profit (If allowable) Rate:		ı		,,	ı
12. Total Estimated Project Cost					
This proposal reflects our best estimates as of this date, in acc	ordance with the in	nstructions to propose	ers.	ш	1
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 Sch	nedule - 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.
 - 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. GENE	RAL & ADMINISTRAT	.VE (G&A	A) EXPENSE	(Same as instructions for	2. MATERIALS	OVERHEAD)
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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.