TECHNICAL ASSISTANCE SERVICES
TO SUPPORT the **NEW YORK**
ENERGY $MART[sm] New Construction Program

Request for Proposal (RFP) 1523
Available $14.9million

Proposals Due: Monday, March 1, 2010, by 5:00 PM Eastern Time*

PROGRAM SUMMARY:
The New York State Energy Research and Development Authority (NYSERDA) requests proposals from firms interested in assisting NYSERDA with delivering technical assistance services to the **New York Energy $mart**[sm] New Construction Program (NCP).

Multiple firms will be selected to provide regionally focused Technical Assistance (TA) services for NCP across New York State. With cost-share amounts added, the total amount of funding represented is $29.8 million available for these services over a five-year term. Contracts with TA providers will be for an initial one-year period, with two, two-year options for renewal based on performance.

Proposal Submission:
Proposers must submit two (2) paper copies of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, both of which **must** contain an original signature. One (1) electronic copy of the proposal must be submitted on a standard compact disk (CD). This electronic document (pdf format only) must be an exact scanned image of the final paper copy proposal and include all relevant forms and signatures. Proposals must be clearly labeled and submitted to:

Roseanne Viscusi, RFP1523
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

Technical questions should be directed to the Project Manager, Charle-Pan Dawson at (518)-862-1090, ext. 3244, or cad@nyserda.org or Chris Reohr at (518)-862-1090, ext. 3363, cjr@nyserda.org. If you have contractual questions concerning this solicitation, contact: Venice Forbes at (518) 862-1090, ext.3507 or vwf@nyserda.org.

No communication intended to influence this procurement is permitted except by contacting Charle-Pan Dawson at (518) 862-1090, ext.3244 or cad@nyserda.org Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract

*Late proposals and proposals lacking the appropriate completed and signed Proposal checklist may 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 website at www.nyserda.org.

I. INTRODUCTION

A. GOALS

The ultimate goal of the New Construction Program is to produce a permanent improvement in "standard" design practices among building designers and owners, for non-residential new construction and major renovation projects, thus saving energy in New York State and helping to create buildings that are better places to live and work.

B. OBJECTIVES

The objectives of the New Construction Program (NCP) are to provide technical assistance (TA) and financial incentives to building owners, developers and leaseholders. TA services are offered on a cost-shared basis to customers, and include building energy use simulation modeling and specialized green building services. The NCP offers TA services in complying with LEED® (the U.S. Green Building Council's rating system), Executive Order 111, and NY CHPS (New York's High Performance Schools Guideline). Additional information is available about this program on NYSERDA's web site at: (http://www.nyserda.org/programs/New_Construction/default.asp)

In addition, TA services provide incentive calculations based on energy savings of new design improvements, for eligible utility customers who elect to install energy-efficient equipment in new construction or renovation projects. These financial incentives are provided to offset a portion of the incremental cost of implementing energy efficiency measures. By doing so, this accelerates the incorporation of electrical energy efficiency in the design, construction, and operation of commercial, industrial, institutional, and governmental buildings.

II. PROGRAM REQUIREMENTS

A. SERVICES REQUESTED

TA services are sought to support the NCP through this RFP. NYSERDA is seeking TA services from multiple firms to provide assistance to the NCP. TA firms chosen through this RFP will be contracted as NCP-approved providers. A list of NCP TA firms will be made available to customers seeking TA services through the NCP.

B. SCOPE OF SERVICES TO BE PROVIDED

1) Conduct project scoping and screening visits at the discretion of NYSERDA to identify and review energy efficiency opportunities with building design teams. As a result of this visit, develop project scopes that include energy efficient design assistance and other services as described in the NCP.
2) Use generally accepted engineering practices to evaluate energy consumption and energy savings of comparable building components. This may also include the identification, presentation, discussion and analysis of options presented relating to various components of building design, construction and use; and performing other similar engineering support activities to customers and design teams.
3) Conduct evaluations of various types of equipment and systems including but not limited to heating, ventilation and air conditioning systems, lighting, motors, transformers, variable speed drives, insulation, windows, materials, process equipment, productivity improvements, combined heat & power (CHP) applications, industrial process energy consumption improvements and other building components having an effect on electrical or fossil fuel energy efficiencies.

4) Conduct energy analysis and whole building energy performance studies using computer-assisted building modeling tools such as TRACE or DOE-2.1E or other NYSERDA-approved computer modeling software. These models may include energy code-compliant designs, base building designs (design prior to NYSERDA involvement), and improved building designs. The NCP may require firms that provide building energy modeling services to achieve Building Energy Modeling certification, or other industry training and/or certification.
5) Coordinate with customers and their design teams on a continual basis throughout the project design process to ensure that all parties are educated on the benefits of incorporating energy-efficiency technologies and green features into their building project(s).
6) Prepare or review cost estimates to determine and verify costs differences between "standard design" and the "proposed energy-efficient design" based on measures considered for all electrical and fossil fuel upgrades. This should be accomplished, at a minimum, by a combination of past experience, direct vendor quotes and through cost data publications (*e.g.*, R.S. Means Company, Inc.)
7) Provide Green Building services, as they relate to optimizing building performance and assessing conformance with standards such as the U.S. Green Building Council's third party certification, LEED®, NYCHPS, The Advanced Buildings Core Performance Guide, or other similar TA green buildings services requested by NYSERDA.
8) Calculate energy savings opportunities and NCP incentives to be presented in a preliminary meeting with the customer and support team. Produce a final report for the project in a timely manner to be reviewed and approved by NYSERDA.
9) Assist NYSERDA on an as needed basis in related areas, including but not limited to Charrette facilitation, participating in or conducting training activities, gathering building performance data for benchmarking, and assessing environmental impacts of funded measures pursuant to the State Environmental Quality Review Act (SEQRA).
10) Assist NYSERDA in establishing workflow systems that help reduce the costs of delivering services to customers. Delineate cost effective delivery strategies.
11) Provide other services as directed by NYSERDA .

C. GEOGRAPHICAL/ REGIONAL COVERAGE

To ensure adequate coverage throughout the State, each firm must identify which Region(s) they are proposing to serve (Regions are defined in Table 1.). Customers, in need of TA services, will choose from the NCP list of TA firms available in their area. In addition, NCP TA firms will be encouraged to bring projects from their coverage area into the NCP for cost-shared TA services and incentives.

Firm(s) proposing to provide TA Services to support the NCP must specify in their proposal which Region(s) they are proposing to serve and demonstrate that they have the ability to serve the Region(s). A TA firm may elect to propose to serve more than one Region if practical and cost effective to the NCP.

Table 1. Regional Areas and Zones (by County)

Western Region	Zone 1 - Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, and Wyoming
	Zone 2 - Chemung, Livingston, Monroe, Ontario, Yates, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne,
Upstate/Southern Tier Region	Zone 3 - Broome, Cayuga, Chenango, Cortland, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, and St. Lawrence
	Zone 4 - Albany, Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Washington, and Warren
Downstate Region	Zone 5 - Columbia, Delaware, Dutchess, Greene, Orange, Putnam, Rockland, Sullivan, Westchester, and Ulster
	Zone 6 - Bronx, Kings, New York, Richmond, Queens

D. PROPOSER QUALIFICATIONS

Firms must be able to

1) Demonstrate experience in providing energy efficiency engineering services in New York State, including demonstrated experience in providing services to the building construction community.
2) Demonstrate that principals of the firm have 10 or more years experience in the energy field.
3) Demonstrate that they have sufficient staff and resource capabilities to provide the range of engineering services outlined within this proposal.
4) Demonstrate experience in a range of projects for which they have provided whole building and custom measure energy modeling services.
5) Demonstrate having sufficient staffing resources to maintain the capacity to cover varying workloads and the ability to commit staff to projects on short notice.
6) Evidence the ability to complete projects on schedule, demonstrating a record of well-organized project management, and delivery of reports and other materials in a timely manner.
7) Demonstrate that key personnel interacting with customers are LEED® accredited or receive LEED® accreditation by the US Green Buildings Council within 90 days of contract approval.
8) Provide examples of the ability to establish good communication channels with customers and the ability to build lasting relationships. Demonstrate that TAs can speak effectively, conveying technical and complex concepts to customers in an easy-to-understand manner.
9) Provide flexibility to commit senior level staff to complex technical studies as well as use technicians or junior engineers, under the supervision of a P.E. or licensed architect, to provide rudimentary energy surveys or support for more complex technical analyses.
10) Demonstrate competency and willingness to work on small and large projects.

III. PROPOSAL REQUIREMENTS

A. DELIVERY OF SERVICES

NYSERDA is seeking assistance from multiple firms to provide TA Services to the NCP. It is anticipated that at least eight (8), but no more than twenty (20) firms will be selected to fulfill the estimated needs of the NCP.

All actual billing for services will remain on a Task Work Order basis at the agreed upon hourly rates (Attachment C)

B. COMPENSATION

Firms must be able to begin work within 10 days of execution of the contract.

Compensation for each Task Work Order will be based upon the applicant's direct and indirect personnel services costs at the agreed upon hourly rates identified in Attachment C plus allowable expenses to an upset maximum dollar amount. All work assignments will be managed by NYSERDA. After an initial scoping visit and meeting with prospective customers on specific projects, the TA firm will prepare a scope of services and fee proposal for that project. Travel expenses may be included at a reasonable cost of generally no more than 3% of total budget for each project. After NYSERDA's review, TA providers will perform services based on an approved Task Work Order. TA providers will not be compensated for time spent on initial scoping visits and preparation of a scope of services. This will be considered part of the proposal to the customer.

Payments will be tied to satisfactory completion and acceptance of the specified deliverables set forth in each Task Work Order. NYSERDA will withhold payment of 10% of the approved maximum amount of Task Work Order until satisfactory completion and acceptance of the particular final deliverables. Satisfactory completion means that the NYSERDA Project Manager approves the deliverables as complete and delivered on time.

C. TASK WORK ORDERS AND WORK DISTRIBUTION

Each TA project will be defined by a written Task Work Order, which will become a binding agreement for all parties. A Task Work Order Plan with a Not-to-Exceed Budget will be prepared by the contractor for NYSERDA's review and approval. Then NYSERDA will issue an official Task Work Order and Notice to Proceed. The actual amount of work each TA contractor receives and ultimately conducts, will largely depend on customer preference, contractor networking and marketing efforts, the geographic area in which it is selected to conduct services, the amount of work requested based on customer applications, and indirectly on the reputation of the contractor to consistently provide high-quality, cost-effective services.

NCP TA firms will be encouraged to bring customers with building projects to the NCP.

NYSERDA reserves the right to monitor workflow and make adjustments to project distribution if needed. However, NYSERDA will not typically assign customers to TA firms or control work distribution. If requested, NYSERDA will provide customers with a short list of NCP TA firms for particular projects that require special skills. Each firm will be expected to provide TA services to a range of projects, both small and large.

Firms must provide the required assistance within a reasonable specified time frame and provide required documentation of expenditures by task based on the approved Task Work Order Plan when seeking reimbursement from NYSERDA.

D. PROPOSAL FORMAT

Total length of proposals, excluding appendices, may not exceed 35 pages. Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. EACH section should begin on a separate page and each page should clearly state the name of the applicant. Firms will not be reimbursed by NYSERDA for any costs associated with the preparation of their proposals. Proposals may be either single or double sided, but a page is considered one side of an 8-1/2" x 11" piece of paper. The font size shall not be smaller than 10 point. Each page of the proposal should state the name of the proposer, the RFP number, and the page number.

To facilitate comparison of proposals, firms must submit proposals in a format that corresponds to the following outline:

RFP 1523 Proposal Outline
Section 1: Introduction and general information about the applicant
Section 2: Staffing Plan
Section 3: Qualifications of key personnel
Section 4: Statement of Work including Corporate Qualifications and references to similar projects

RFP 1523 Proposal Contents:
Section 1. Introduction: In this section, firms must summarize their understanding of NYSERDA's requirements, the general approach to fulfilling them, and why NYSERDA should select the firm.

Provide a general description of the firm and the TA services that can be offered. Included in this section must be a one-page description of the firm and the services that will be provided. This section shall not be longer than six pages; additional pages will not be considered in the review process.

Section 2. Staffing Plan: In this section, firms must provide a staffing plan including full time equivalents (FTEs) for completing the identified tasks and deliverables (a "full-time equivalent" or "FTE" is a unit of measurement representing the commitment of personnel resources equal to one person working full-time for one year). Include a detailed organizational chart and a clear description of each key person's responsibilities in executing the proposed tasks, including any subcontractors.

TA services will typically be accomplished with a weighted combination of staff (*e.g.*, principal, senior, junior, technical, administrative and clerical staff). The applicant must identify the number of FTEs from the firm dedicated to providing TA services for the NCP. The FTE commitment per region must be stated for each region it is proposing to serve. Firms may also propose to commit a fraction of one FTE if they desire. Proposals must include a list of billing rates for all applicable listed positions.

Firms must address their ability to provide Regional or statewide services. Include a listing of the applicant's offices from which services will be provided and the services to be provided from each office. If the applicant does not have offices within New York State, a description of the applicant's ability to economically perform work in the State must be included.

The firm and principals of the firm must be free from any financial interest in any product or service which may conflict with or appear to conflict with the objectivity of the technical service provided to NYSERDA and its customers. TA firms will not be allowed to provide TA services to projects that have the same firm providing outreach services under another contract to NYSERDA. TAs must describe all

product, manufacturer, or service-related affiliations that may relate to the NCP. If any affiliations exist, a statement verifying that these affiliations do not conflict with or appear to conflict with the objectivity of providing services to NYSERDA and its customers, must be provided.

Examples of such affiliations include, but are not limited to: a manufacturer's representative of energy-consuming or energy-efficient equipment, financial interest in equipment that potentially may be specified or recommended in a TA report, ability to provide construction services, or affiliation with or service provider to an energy service or similar company providing services in New York State. Non-disclosure of any affiliation or failure to comply can result in the termination of a contract, if awarded.

Section 3. Qualifications of key personnel: Identify the individual who will be the main contact for the contract with the NCP. This individual should be experienced in client relations, program and project management, and project development. The description of the main contact's expertise should highlight these abilities, including qualifications and experience in providing services.

Include a one-page resume that highlights recent experience of the personnel who will be directly involved in providing the requested services. If additional pages are provided, only the first page of each resume will be evaluated. NYSERDA may request an in-person interview with designated key personnel as part of the selection process.

Section 4. Statement of Work

The Statement of Work must fully specify how selected firms will provide the requested services through this RFP. The Statement of Work must describe an internal quality assurance protocol that will be implemented to deliver services to customers and NYSERDA. The Statement of Work must list the responsibilities of the specific personnel who will provide TA services as described in Section II, and the range of services to be provided. If subcontractors are intended to be a part of the applicant's team, information about the subcontractor must be included as well.

Each applicant should include a description of projects (at least five, but no more than 10 projects) completed by the proposing firm within the specified program area. A mix of small and large projects is preferred. The project descriptions should specify the level of involvement of the proposing firm and the results of the project. Include customer contact names and phone numbers for these projects and list the key personnel who worked on the project. The project descriptions shall not exceed a total of 10 pages.

Liability Insurance/Bonding

The response must include information on the liability insurance coverage or bonding which the applicant carries applicable to work performed under this program.

Procurement Lobbying Requirements - State Finance Law sections 139-j and 139-k

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

IV. PROPOSAL EVALUATION AND CONTRACTOR SELECTION

Proposals submitted for this RFP will be reviewed and assigned scores based on the criteria highlighted in the Evaluation Guide included below.

NYSERDA reserves the right to contract fewer TA firms than stated as an anticipated minimum in the event that there is insufficient response to this RFP.

NYSERDA, through its Technical Evaluation Panel (TEP), will review each Statement of Work, TA firm qualifications and experience, and may contact selected references to determine whether an applicant has the necessary technical resources to successfully provide services requested through this RFP.

NYSERDA will negotiate contracts for services in fulfillment of the needs of this RFP on the basis of demonstrated competence and qualifications. Contract negotiations may include the selected applicant's fee schedules to ensure the work is accomplished at fair and reasonable rates. These contracts will not guarantee any specific amount of work. The amount of work will depend on experience, amount of work requested in the geographic area in which the firm is awarded,, and the ability of the contractor to provide high quality, cost effective, and timely services.

NYSERDA recognizes the cost premium associated with providing TA services for small projects. Competitive proposals will evidence the TA firm's willingness to work with smaller projects and will outline a strategy to deliver these services cost effectively.

NYSERDA reserves the right to negotiate among finalists to ensure statewide coverage, and to ensure access to specific expertise. NYSERDA also reserves the right to negotiate among finalists to ensure that services are provided at fair and reasonable fees, and are adequately available in all service areas.

Evaluation Guide - Technical Assistance Services to Support The New Construction Program

1. Technical and/or Customer Service Capability

Evaluate the applicant's technical capability to provide the services requested in the RFP. Has the applicant provided examples of documentation which demonstrate the applicant's competence and qualifications to deliver the professional services required by the RFP? How responsive is the proposal to the scope of work requested in the RFP?

Evaluate the approach described by the applicant for each of the services to be provided. Firms who demonstrate effective approaches should be rated higher.

2. Time Line, Staffing Plan, and Cost Summary by Task

Evaluate the ability of the applicant's key personnel to provide the services requested in the RFP. Has the applicant provided all of the resumes of the personnel who will be directly involved in providing the proposed services?

The applicant's listed staff must show evidence of experience in providing the services proposed. Firms who perform a large percentage of work in-house should receive a higher rating.

Evaluate the appropriateness and reasonableness of the estimated mix of key personnel to provide cost-effective services, including billing rates.

3. Experience

Evaluate the applicant's experience at providing the services requested in the RFP. Has the applicant provided examples of past work that is similar to that being proposed in the RFP? Consider the number and magnitude of projects, number of years the applicant has provided these services, and the variety of clients for whom these services were provided. Has the proposer worked well in collaboration with other teams? This experience may be from projects located outside New York.

4. Regional Knowledge

Evaluate the cost and timesaving advantages and ability to service the designated area in a cost-effective manner. Evaluate ability to identify customers and customer needs.

5. Clarity of Proposal

Evaluate the applicant's understanding of the major objectives of the RFP. Is the proposal well written, clear, concise, and well organized?

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 except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 www.nyserda.org/nyserda.regulations.pdf. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

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

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

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

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

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

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between NYSERDA and a Proposer/Offerer during the procurement process. A Proposer/Offerer is restricted from making contacts from the earliest notice of intent to solicit offers [such as a “Program Opportunity Notice”, “Invitation for Bid” or “Request for Proposal”, etc.] through final award of the Procurement Contract (the “restricted period”) to other than Designated Staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated Staff, as of the date hereof, are identified on the first page of this solicitation.

NYSERDA employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Proposer/Offerer pursuant to this law. Certain findings of non-responsibility can result in rejection for contract award and in the event of

two findings within a 4-year period, the Proposer/Offerer is debarred from obtaining governmental Procurement Contracts.
Additional guidance regarding these procurement lobbying requirements and can be found at http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html.

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

Contract Award - NYSERDA anticipates making 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 12 weeks from the due date whether your proposal has been selected.

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 Check List
Attachment B - Disclosure of Prior Findings of Non-responsibility Form (Mandatory)
Attachment C - Project Personnel and Rate Form
Attachment D - Sample Agreement

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

ATTACHMENT A – RFP 1523 PROPOSAL CHECKLIST (MANDATORY)

Proposal Title		Due Date	
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
Federal Tax Identification #/Social Security			
Address	City	State or Province	Zip
Secondary Contact		Title	
Company		Phone	Fax
		e-mail	
Address	City	State or Province	Zip

THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:

Do you accept all Terms & Conditions in the Sample Agreement? (if no, explain on separate pg) __ Yes __ No
(NYSERDA anticipates considering only specifically listed exceptions in negotiations.)

Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) __ Yes __ No

Are you a Minority or Women-Owned Business Enterprise? __ Yes __ No

Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? __ Yes __ No

Are you submitting the required number of copies? (See proposal instructions.) __ Yes __ No

Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? __ Yes __ No
(if yes, explain on separate page)

ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?

Introduction Staffing Plan Qualifications of Key Personnel Statement of Work	Indictment/Conviction of Felony (if applicable) NYSERDA Contracts Awarded (if applicable) Prior and/or Competing Proposals (if applicable) Exceptions to Terms & Conditions (if applicable) Completed and Signed Contract Pricing Proposal Form(s) Disclosure of Prior Findings of Non-responsibility Form

Proposal Submitted for Services in one or more of the following regions:

☐ Western Region (Zones 1 and 2)	☐ Upstate/Southern Tier Region (Zones 3 & 4)	☐ Downstate Region (Zones5&6)

AUTHORIZED SIGNATURE & CERTIFICATION

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

Signature	Name
Title	Organization
Phone	

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

Attachment B
Disclosure of Prior Findings of Non-responsibility Form

(Mandatory)

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

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

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

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

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

By:_____ Date:_____
Signature

Name:_____ Title:_____

ATTACHMENT C

PROJECT PERSONNEL & RATES

DIRECT PERSONNEL COSTS:

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

MULTIPLIER (Including Profit/Fixed Fee):

Profit / Fixed Fee: _____%

Multiplier _____

DIRECT NON-PERSONAL SERVICE COSTS:

Direct non-personal service costs will be allowed and reimbursed at cost for project related expenses. Items not listed but necessary to complete the work must be pre-approved by NYSERDA:

Travel	Laboratory Tests	Overnight Mail
Supplies	Test Equipment Rentals	Report Reproduction/Outside Printing
Postage	Computer Services	Subcontracts

New York State Energy Research and Development Authority
RFP 1523 – SAMPLE AGREEMENT

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

This Agreement consists of this form plus the following documents:

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

9. ACCEPTANCE

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By _____

Name _____

Title _____

By _____
Jeffrey J. Pitkin
Treasurer

STATE OF)
) SS.:
COUNTY OF)

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

Notary Public

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

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

Budget: The Budget set forth in individual Task Orders consistent with the rates set forth in Exhibit A hereto.

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

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

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

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

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

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

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

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

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

Statement of Work: The Statement of Work attached hereto as Exhibit A, including Work defined in individual Task Orders.

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

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

Task Order: A written Task Order issued by NYSERDA pursuant to Exhibit A of this Agreement, specifically an approved work scope and budget.

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.

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

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

Article II

Performance of Work

Section 2.01. Manner of Performance. Subject to the provisions of Article XII hereof, the Contractor shall perform all of the Work described in the Statement of Work, or cause such

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

Section 2.02. Project Personnel. It is understood and agreed that the "Contact Person" identified in Item 3 of page one of the Agreement shall serve as Project Director and as such shall have the responsibility of the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. NYSERDA shall be notified in writing of any change of Project Director by the Contractor.

Article III

Deliverables

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

Article IV

Payment

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

(a) Compensation. Compensation will be based on the Contractor's Rate Schedule for NYSERDA set forth in Exhibit E. Contractor fees for a Task Order assignment must be fully set forth in each Task Order budget and must be approved by NYSERDA. The Task Order budget must state a not-to-exceed cost cap or ceiling amount for each Task Order assignment. The Contractor shall not accrue billable costs beyond the not-to-exceed cost cap in the Task Order without approval in writing by NYSERDA.

Section 4.02. Progress Payments. The Contractor may submit invoices for progress payment no more than once each month or no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable". Such invoices shall make reference to the Agreement number shown in Item 1 of page one of the Agreement. Invoices shall set forth total project costs incurred. They shall be in a

format consistent with the cost categories set forth in the Task Order Budget. Invoices shall provide reasonable documentation for the above to provide evidence of costs incurred.

The Contractor shall be notified by NYSERDA in accordance with Section 5.04.4 (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, the amount so requested, unless NYSERDA should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement or the Budget.

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

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

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

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

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

Section 4.08. Audit Adjustment. Any payment made hereunder shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and Purchase Orders

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

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

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

Article VI

Schedule

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

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

Article VII

Force Majeure

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

Section 8.01. Rights in Technical Data

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

(1) NYSERDA shall have:

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

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

(2) The Contractor shall have:

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

(ii) the right to use for its private purposes subject to patent, or other provisions of this Agreement, Contract Data it first produces in the performance of this

Agreement provided the data requirements of this Agreement have been met as of the date of the private use of such data.

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

Article IX

Warranties and Guarantees

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

(a) it is financially and technically qualified to perform the Work;

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

(c) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted construction and design standards and best engineering practices;

(d) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted construction and design standards and best engineering practices;

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

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

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

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

Article X

Indemnification

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

Article XI

Insurance

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

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

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

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

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

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

(b) Commercial automobile liability insurance in respect of motor vehicles owned, licensed or hired by the Contractor and the Subcontractors for bodily injury liability, including

death and property damage, incurred in connection with the performance of this Agreement, with minimum limits of $500,000 in respect of claims arising out of personal injury, or sickness or death of any one person, $1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and $500,000 in respect of claims arising out of property damage in any one accident or disaster.

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

Article XII

Stop Work Order; Termination

Section 12.01. Stop Work Order.

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

(i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or

(ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

(b) If a Stop Work Order issued under this Section is cancelled or the period of the order or any extension thereof expires, the Contractor shall resume Work. An equitable adjustment

shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

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

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

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

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

Section 12.02. Termination.

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

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

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

Article XIII

Independent Contractor

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

Article XIV

Compliance with Certain Laws

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

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

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

Article XV

Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Publicity.

(a) The Contractor shall collaborate with NYSERDA's Director of 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) The Contractor shall not use NYSERDA's corporate name, logo, identity, any affiliation, or the service mark **New York Energy $mart**, and any related logo, without NYSERDA's prior written consent.

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

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

EXHIBIT C

REVISED 9/06

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).

b. Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).

c. Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

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

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

EXHIBIT D

PART 504

PROMPT PAYMENT POLICY STATEMENT

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

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

(1) under the Eminent Domain Procedure Law;

(2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;

(3) to the Federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;

(4) if the Authority is exercising a legally authorized set-off against all or part of the payment; or

(5) if other State or Federal law or rule or regulation specifically requires otherwise.

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

(a) "Authority" means the New York State Energy Research and Development Authority.

(b) "Contract" means an enforceable agreement entered into between the Authority and a contractor.

(c) "Contractor" means any person, partnership, private corporation, or association:

(1) selling materials, equipment or supplies or leasing property or equipment to the Authority pursuant to a contract;

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

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

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

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

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

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

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

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

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

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

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

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

(ii) if a contract provides that a payment will be made on a specific

date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

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

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

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

Section 504.4 Payment procedures.

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

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

(1) any defects in the delivered goods, property or services;

(2) any defects in the invoice; and

(3) suspected improprieties of any kind.

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

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

effect shall be that the payment due date shall be calculated using the original date of receipt of an invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, the Authority shall make payment, consistent with any such correction or resolution and the provisions of this Part.

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

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

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

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

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

Section 504.6 Interest eligibility and computation. If the Authority fails to make prompt payment, the Authority shall pay interest to a contractor on the payment when such interest computed as provided herein is equal to or more than ten dollars. Interest shall be computed

and accrue at the daily rate in effect on the date of payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a payment shall be computed for the period beginning on the day after the payment due date and ending on the date of payment.

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

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

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

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

Section 504.11 Court action or other legal processes.

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

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

court, and shall be paid from any source of funds available for that purpose.

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

EXHIBIT E

PROJECT PERSONNEL & RATES

DIRECT PERSONNEL COSTS:

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

MULTIPLIER (Including Profit/Fixed Fee):

Profit / Fixed Fee: _____%

Multiplier _____

DIRECT NON-PERSONAL SERVICE COSTS:

Direct non-personal service costs will be allowed and reimbursed at cost for project related expenses. Items not listed but necessary to complete the work must be pre-approved by NYSERDA:

Travel Laboratory Tests Overnight Mail
Supplies Test Equipment Rentals Report Reproduction/Outside Printing
Postage Computer Services Subcontracts