

**Proposals Due: May 26, 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 providing Technical Review Services for NYSEDA's Industrial and Process Efficiency (IPE) Program. Selected contractors will be required to complete several tasks including: reviewing technical studies, providing technical reviews of customer capital project plans, establishing project baselines, completing engineering analysis to determine energy savings, developing measurement and verification plans, performing on-site pre/post construction inspections, responding to customer inquiries, and ensuring program adherence. Approximately 5 to 10 contractors will be selected. The initial contract will be for a one-year period, with 2, two-year, optional contract extensions at NYSEDA's discretion for a maximum of 5 years. Up to \$5.0 million is available for these services. Proposals will be accepted for the following Technical Categories:

- **Industrial/Manufacturing Process Efficiency** - includes the evaluation of facilities/support system efficiency as well as manufacturing process efficiency projects.
- **Data Center Support Systems Efficiency** - includes the evaluation of facilities/support system efficiency for data center and telecom facility projects.
- **Data Center Information Technology Efficiency** – includes the evaluation of information technology and computing efficiency for data center, telecom, and IT infrastructure projects.

**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 also 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, RFP 1909**  
**NYS Energy Research and Development Authority**  
**17 Columbia Circle**  
**Albany, NY 12203-6399**

If you have questions concerning this solicitation, contact the Designated Contact:

- Technical questions: Chris Stump at (518) 862-1090, ext. 3496 or: ces@nyserd.org
- Contractual questions: Venice Forbes at (518) 862-1090, ext. 3507 or: vwf@nyserd.org

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

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

**Existing Technical Review Contractors are not required to apply to this RFP. This RFP is intended to supplement existing technical review services.**

# I. INTRODUCTION

## OBJECTIVE

The objective of this RFP is to hire contractors to provide Technical Review Services to support the NYSERDA programs described below. The scope of the requested Technical Review Services is defined in Section II of this RFP.

NYSERDA's Industrial and Process Efficiency (IPE) Program provides New York State industrial and manufacturing, mining/extraction, agriculture, water/waste water, telecom, and data centers facilities with financial incentives to offset the cost of capital investments in equipment and process efficiency. IPE's primary goal is to increase productivity and economic competitiveness by identifying and encouraging the implementation of cost-effective energy efficiency measures. Applications are accepted on a first come, first served basis for projects that deploy proven technologies and strategies to increase energy efficiency. IPE incentives are performance-based, providing funding based on "per unit of energy saved."

Through the Energy Efficiency Portfolio Standard (EEPS), NYSERDA has been tasked with supporting New York State in achieving its energy efficiency goals. It will be necessary for selected Technical Review Contractors to provide focused assistance relating to electric, and natural gas energy intensive industries to deliver results in the most efficient and cost-effective manner. In order to meet these goals and increased efforts, NYSERDA is expanding existing programs and creating new program offerings to increase opportunities for customer participation throughout New York State. As part of this effort, this RFP is seeking qualified contractors to provide Technical Review Services and expertise to support projects with Industrial and Data Center customers, with 4 fundamental objectives:

1. Customer Service – flexibility and responsiveness to customer needs
2. Objective Technical Expertise – analysis and technical support throughout project installation
3. Measurement & Verification – data collection and analysis supporting verifiable energy saving projects
4. Facilitate Future Projects – success in items 1, 2, & 3 will increase program participation and future projects

**Information Session:** Informational sessions for potential proposers will be held in Syracuse on 04/26/2010 at MACNY's office located at One Webster's Landing, Fifth Floor, Syracuse, NY 13202 and in New York City on 05/04/2010 at NYSERDA's office located at 485 Seventh Avenue, Suite 1006, New York, NY 10018. Additional information is available at [www.nyserda.org](http://www.nyserda.org). Please register for the information sessions by COB April 21, 2010 at [www.nyserda.org/programs/1909IPE.asp](http://www.nyserda.org/programs/1909IPE.asp) if you wish to attend. A conference call dial-in number will be provided to those who register.

## PROGRAM DESCRIPTIONS

Firms selected under this RFP will provide Technical Review Services for the Industrial and Process Efficiency (IPE) Program and the FlexTech Program. The following are brief descriptions of those programs. Additional tasks and programs may be added to meet NYSERDA goals and changing customer needs.

### Industrial and Process Efficiency (IPE) Program

The IPE Program is offered through the Existing Facilities Program (EFP) and New Construction Program (NCP) solicitations. It is a custom program offering performance-based incentives to industrial and data center customers to offset the capital costs of implementing cost-effective electrical efficiency and natural gas efficiency measures. Typical IPE customer sectors will include manufacturing, mining/extraction, agriculture, water/wastewater, telecom, and data center facilities. Incentives are given for productivity-based energy savings. Industrial projects will reduce energy consumed per unit of production. Eligible projects include: increased productivity and throughput, increased process efficiency, reduced waste, and compressors, motors, VSDs, cooling, and lighting efficiency improvements. Data Center projects will reduce energy consumed per unit of productive computing. Eligible projects include: virtualization, next-generation servers, cooling and UPS system efficiency improvements, improved air-flow management, and applications management strategies. Measurement and verification of savings are required for large projects.

To obtain more information on the IPE Program, please visit NYSERDA's website:

[http://www.nyserdera.org/programs/Existing\\_Facilities/industrial.html](http://www.nyserdera.org/programs/Existing_Facilities/industrial.html)

Applications for the IPE Program are received through the Existing Facilities Program (EFP) and New Construction Program (NCP) solicitations. The EFP solicitation offers incentives for a variety of energy projects related to upgrades to current operations. To obtain more information, please visit NYSERDA's website:

[http://www.nyserdera.org/Programs/Existing\\_Facilities/default.html](http://www.nyserdera.org/Programs/Existing_Facilities/default.html)

The New Construction Program (NCP) solicitation can provide assistance to incorporate energy-efficiency measures into the design, construction, and operation of new and substantially renovated buildings. To obtain more information, please visit NYSERDA's website.

[http://www.nyserdera.org/programs/New\\_Construction/default.asp](http://www.nyserdera.org/programs/New_Construction/default.asp)

### FlexTech Program

The FlexTech Program provides cost-sharing for customized engineering studies including: energy feasibility, energy operations management, retro-commissioning (RCx) and combined heat & power (CHP) and renewable generation feasibility studies. Eligible facilities include industrial and commercial facilities, State and local government, not-for-profits and private institutions, public and private K-12 schools, colleges and universities, multifamily buildings, and health-care facilities. This program also provides guidance for process improvements, waste minimization opportunities, and improved environmental performance through capital improvements. The primary goal is to improve electrical and gas efficiency, reduce electrical demand and increase productivity and economic competitiveness, by identifying and encouraging the implementation of cost-effective measures. To obtain more information, please visit NYSERDA's web site:

<http://www.nyserdera.org/programs/flextech.asp>

## **II. SERVICES REQUESTED**

Technical Review Services are sought for the Industrial and Process Efficiency (IPE) Program across New York State.

These services will fall into three Technical Categories:

1. Industrial/Manufacturing Process Efficiency
2. Data Center Support System Efficiency
3. Data Center Information Technology Efficiency

Proposers may respond to more than one Technical Category and must clearly indicate which categories they are submitting to on Attachment C, Areas of Expertise Checklist. Proposals submitted for more than one Technical Category will be evaluated, and selected separately. Firms may respond as a partnership to provide the breadth of services requested. Clearly indicate the lead contractor and sub-contractors that make up the proposing partnership.

The type and level of services will be identified, approved and supervised by NYSERDA staff. All selected firms will be expected to complete the tasks outlined in the General Services section below.

### **General Services**

Proposers must be capable of providing Technical Review Services that include, but are not limited to:

- Developing and reviewing scopes of work, engineering reports, and energy feasibility studies
- Providing verification of project energy savings and costs related to performance-based incentives
- Developing, implementing, and reviewing energy savings measurement and verification plans
- Providing metering and data collection services

Work will be assigned to selected providers through Task Work Orders for each project. Generally, this work may include (but not limited to) the following tasks and deliverables:

- Provide pre-application support which includes, but is not limited to: meetings with potential program applicants, assisting with the development of marketing materials, coordination of technical symposiums, and conducting training seminars.
- Review applications for compliance with program rules and procedures, including eligibility of service providers, customers, projects, and measures; completeness of the application; and the reasonableness of the overall project scope, savings estimates, and proposed approach to measurement and verification (M&V) if applicable.
- Review scopes of work to ensure the projects are appropriate, the language is clear, that they comply with program requirements, and the costs are commensurate with the work outlined. Recommend scope of work approvals to NYSERDA program staff.
- Review draft reports for compliance with the scope of work and program. Review engineering calculations for accuracy and determine if measurers are appropriate and the implementation costs are reasonable.
- Provide report comments to customers and service providers and recommend report approvals to NYSERDA program staff.
- Develop engineering analysis to quantify expected energy savings of the proposed project measures.
- Develop measurement and verification (M&V) plans. This includes establishing baseline measurements and identification of required metering to document achieved energy savings.
- Conduct pre-installation site inspections with the service provider and customer to verify existing conditions and determine if the proposed measures are capable of achieving the estimated savings and/or demand reduction.
- Conduct post-installation site inspections. This includes executing the M&V plan, installation of temporary or permanent metering, and analysis of collected data to verify and document achieved energy savings.
- Review of progress reports applicable to the NYSERDA program being served.
- Coordinate with program participants and their service providers as they proceed through the program, answering any questions that arise. Ensure that project schedules are maintained and that changes in the projects are noted in the project files.
- Provide assistance to NYSERDA in the assessment of environmental impacts of funded measures pursuant to the State Environmental Quality Review Act (SEQRA).
- Conduct information gathering and analysis to determine possible program improvements and develop incentive levels for future iterations and offerings.
- Provide general program support activities as assigned by NYSERDA, including but not limited to; custom measure analysis, development of educational materials, project case studies, sample measurement and verification plans, assistance to energy service companies in complying with program requirements, and meetings with customers and/or service providers.

The experience and expertise required for each Technical Category is described below:

### **Industrial/Manufacturing Process Efficiency**

Manufacturing facilities and processes require customized approaches to energy efficiency. Production lines and processes often have unique characteristics and functions. Manufacturing process equipment and associated facility systems have complex interactions. Site and sector specific approaches will be used to ensure that the best energy efficiency opportunities are identified and addressed. This approach will maximize process and energy reliability, productivity and energy savings. Through this RFP, NYSERDA seeks to increase its engagement of service providers who are experts in particular manufacturing processes. Credibility and quality of technical support are essential to program success as well as customer and stakeholder engagement.

NYSERDA will have an increased focus on industrial process improvements that increase the efficiency of energy or material use. Projects may also focus on improving productivity, increasing capacity, improving quality, or minimizing waste. In addition to strong general industry experience, NYSERDA is seeking contractors with expertise and experience in process improvement methodologies (Lean Manufacturing, Six Sigma, etc.), and demonstrated project experience with specific sub-sectors and processes (e.g. ceramics, pulp and paper, chemicals, microelectronics chip fabrication, pharmaceuticals, separations/purification). Engineering Analysis, baseline definition, and M&V plans will predominantly focus on defining and reducing energy use per unit of production.

### **Data Center Support System Efficiency**

Data Center facilities require customized approaches to energy efficiency. These facilities typically support mission critical operations within the technology, communications, financial, government, medical, and university sectors, representing different computing work load types. The facility systems have complex interactions with the Information Technology (IT) equipment they support. Site and sector specific approaches will be used to ensure that the best energy efficiency opportunities are identified and addressed. This approach will maximize system uptime and energy reliability, productivity and energy savings. Through this RFP, NYSERDA seeks to increase its engagement of service providers who are experts in data center operations. Credibility and quality of technical support are essential to program success as well as customer and stakeholder engagement.

NYSERDA will have an increased focus on data center projects that increase the efficiency of energy, while improving productivity or increasing capacity. Support System projects will include but are not limited to: cooling, air flow management, UPS efficiency, and power distribution. NYSERDA is looking for contractors with expertise and experience working to improve the efficiency of these support systems.

### **Data Center Information Technology Efficiency**

Data Center facilities require customized approaches to energy efficiency. These facilities typically support mission critical operations within the technology, communications, financial, government, medical, and university sectors, representing different computing work load types. Information Technology (IT) equipment have a direct impact and complex interactions with the associated facility support systems. Site and sector specific approaches will be used to ensure that the best energy efficiency opportunities are identified and addressed. This approach will maximize system uptime and energy reliability, productivity and energy savings. Through this RFP, NYSERDA seeks to increase its engagement of service providers who are experts in information technology systems. Credibility and quality of technical support are essential to program success as well as customer and stakeholder engagement.

NYSERDA will have an increased focus on data center projects that increase the efficiency of energy, while improving productivity or increasing capacity. IT projects will include but are not limited to: IT equipment replacement or upgrades, server virtualization, storage consolidation, thin clients, applications management, and server load prioritization and optimization. NYSERDA is looking for contractors with expertise and experience working to improve the efficiency of these IT systems. Engineering analysis, baseline definition, and M&V plans will predominantly focus on defining and reducing energy use per unit of productive computing.

### **III. CONTRACTOR RESPONSIBILITIES**

Contractors will be responsible for completing various tasks dependent on the level and type of services requested by NYSERDA and the program to which they are providing Technical Review Services. All tasks will be clearly defined in a Task Work Order (See Attachment F, Task Work Order Template).

For a Technical Review Service Task Work Order, the contractor shall be required to:

- Prepare a budget for review and approval by NYSERDA according to the task assigned.
- Negotiate the scope and cost of the technical review.
- Upon agreement by all parties to the budget, provide the required assistance within the agreed upon time frame.
- Submit the deliverable to NYSERDA for review and approval; NYSERDA's review will ensure that the deliverable conforms to the Task Work Order as approved.
- Provide required documentation of expenditures by task based on the approved Task Work Order when seeking reimbursement from NYSERDA.
- Submit invoices based on time and materials, not to exceed the approved budget.

The contract will not guarantee any specific amount of work, but will contain a maximum dollar amount. Work assigned to each contractor will depend on their technical expertise, location, current workload, and the ability to provide high quality, cost-effective, and timely services. NYSERDA reserves the right to reallocate funding among the contractors selected at the end of the first year and any subsequent contract year. NYSERDA also reserves the right to negotiate among finalists to ensure statewide services, and to assure access to specific technical expertise sought through this RFP. NYSERDA reserves the right to adjust funding based on program participation, additional funding approvals, and to incorporate programmatic changes as needed.

Confidential and proprietary customer information shared with contractors during technical review services is to be kept confidential by the contractor. Such information is not to be shared with other parties or used by the contractor for any purpose outside of the specific project.

### **IV. NYSERDA RESPONSIBILITIES**

NYSERDA will maintain overall management and control for all technical review services including the selection, supervision, and coordination of the contractors. The major responsibilities of NYSERDA are to:

- Market services to various customer groups and organizations.
- Assign projects to contractors based on expertise, location, and workload to best support the customer.
- Assist Contractors in developing Task Work Order Plans.
- Provide Contractors with administrative procedures.
- Monitor the progress of each Contractor through ongoing telephone contact, review of status reports and field monitoring activities, etc., for the purpose of meeting customer needs, identifying problems and initiating corrective action.
- Provide technical review of project reports and deliverables to ensure that the deliverables conform to the Task Work Order and program requirements.
- Ensure adherence to NYSERDA's established policies and procedures.
- Provide completed reports to the customer under NYSERDA cover and letterhead.
- Promote the availability of technical assistance and other services to customers.
- Maintain databases of customers, technologies, and energy and dollar savings resulting from the services, reports, case studies, fact sheets, and newsletter articles.
- Disseminate technical and financial-related energy-efficiency information to Contractors.
- Process properly documented payment reimbursement requests.

## V. COMPENSATION

Compensation for each service will be based upon the applicant's direct and indirect personnel services costs plus allowable expenses to an upset maximum dollar amount. Contract payments will be tied to satisfactory completion and acceptance of the specified deliverables from the Task Work Orders. Satisfactory completion means that the NYSERDA Project Manager approves the deliverables as complete and satisfactory.

The initial contract will be for a one-year period, with 2, two-year, optional contract extensions at NYSERDA's discretion for a maximum of 5 years. \$5 million has been allocated to support these contracts. NYSERDA reserves the right to adjust funding based on program participation and incorporate programmatic changes as needed. The applicant must be able to begin work within 10 days of execution of the contract.

## VI. PROPOSAL REQUIREMENTS

Proposers may respond to one or more of the Technical Categories. Indicate which categories are being applied to on Attachment C, Areas of Expertise Checklist. Proposers must submit a Statement of Qualifications and Experience and agree to the terms and requirements of this RFP. Proposals will be evaluated as described in Section VII.

The firm and principals of the proposing 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 Review Services provided to NYSERDA and its customers. Selected contractors will not be allowed to provide Technical Review Services on projects where they would be reviewing or validating their own engineering work.

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 also 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 at the address on the front of this Request for Proposal. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned.** Faxed or e-mailed copies will not be accepted.

### Procurement Lobbying Requirements

**Executive Order 127 and State Finance Law sections 139-j and 139-k** – In compliance with Executive Order 127 and §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 referenced in this solicitation (**mandatory**)
2. A completed Disclosure of Prior Findings of Non-Responsibility form (**mandatory**)

Failure to include signed copies of the Proposal Checklist referenced in this solicitation will disqualify your proposal.

Procurement lobbying requirements contained in State Finance Law sections 139-j and 139-k became effective on January 1, 2006. The text for these laws are available at:

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

NYSERDA has integrated the requirements of these laws into the Proposal Checklist and Disclosure of Prior Findings of Non-Responsibility forms furnished with this solicitation. Additional information is available under the General Conditions below and at the New York State Office of General Services web site at:

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal. Each page of the proposal should state the name of the proposer, the RFP 1909, and the page number.

**Total length of the proposal, excluding appendices and resumes, may not exceed 15 pages.** EACH section should begin on a separate page and each page should clearly state the name of the applicant. 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 11 point.

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

- **RFP 1909 Proposal Checklist (Attachment A)**
- **Disclosure of Prior Findings of Non-Responsibility Form (Attachment B)**
- **Areas of Expertise Checklist (Attachment C)**
- **Section 1: General Information**
- **Section 2: Statement of Qualifications and Experience**
- **Section 3: Rate Structure (Attachment D)**
- **Section 4: Liability and Insurance Bonding**

**Section 1: General Information**

Responding proposers must include the following information with their response. If subcontractors are intended to be included as part of the proposer's team, include the following information for the subcontractor as well.

1. Firm name, address, telephone and fax number, e-mail address and contact person
2. Federal Employer Identification Number
3. Year that firm was established
4. Name and address of parent company (if applicable)
5. Indicate type of firm:
  - Partnership
  - Corporation (also indicate State incorporated in)
  - Sole Proprietor
  - Branch Office of
  - Joint Venture (List venture partners)
  - Other (Explain)
6. This submittal applies to:
  - Parent Company
  - Subsidiary
  - Division
  - Branch Office
  - Other (Explain)

**Section 2: Statement of Qualifications and Experience**

In this section, proposers must summarize their understanding of the requirements of this RFP, the general approach to fulfilling them, and why NYSERDA should select the proposer's firm. The Statement of Qualifications and Experience must contain the following components.

1. General Description: Provide a general description of the proposer and the services that can be offered as a Technical Reviewer. If the proposing team is a partnership, clearly indicate lead contact, subcontractors, team member roles, and their areas of expertise.

2. **Experience and Qualifications:** In this section, applicants must provide documented ability to perform the range of services as described in this RFP. Each proposer should include a description of up to 5 projects completed by the proposing firm within the specified service area. The sample projects should have been completed within the past three years and should demonstrate the firm's experience in servicing the targeted customer base. 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 and their respective involvement on the project.
3. **Staffing Plan:** In this section, proposers must provide a staffing plan outlining the personnel and their abilities to support the proposed services. This section must include:
  - A **chart or matrix** depicting the offices from which services will be provided, the geographic region the office will serve, which areas of expertise will be covered by each office, and the personnel located in each office that will be supporting NYSERDA projects. New York based firms are encouraged. If the proposer 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 individual who will be the **main contact** for Technical Review Services. This individual should be experienced in client relations and project development. The description of the main contact's expertise should highlight these abilities. Include the Contractor's Designated Contacts form (Attachment E).
  - **One-page resumes** that highlight recent experience of the personnel who will be **directly involved** in providing the technical review services.
  - A **one (1) page** description of any product, manufacturer, service **or other NYSERDA related affiliations**, including existing contracts. NYSERDA shall consider the proposers' performance in other NYSERDA contracts to help determine the proposer's ability to fulfill a potential Technical Review contract and any perceived conflicts of interest.
4. **Objectivity:** Proposers to this RFP must demonstrate their ability to provide objective, third-party assistance to NYSERDA and its customers. The proposer shall:
  - List any current or past (within the last three (3) years) subcontractors, affiliations, partnerships or company divisions, including NYSERDA contracts which could affect objectivity.
  - 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. Please describe all of your product, manufacturer or service-related affiliations. If any affiliations exist, you must provide a statement verifying these affiliations do not conflict with or appear to conflict with the objectivity of providing services to NYSERDA and its customers. Non-disclosure of any affiliation can result in the termination of a contract, if awarded. These affiliations may assist customers in the implementation of recommended projects, however, it is also important to NYSERDA and its customers to be aware of the Contractor's affiliations before a project is initiated.
  - Examples of such affiliations shall include, but not be limited to: a manufacturer's representative of energy-consuming or energy-efficiency equipment, financial interest in equipment that potentially may be specified or recommended in a report, ability to provide construction services, or affiliation with a service provider to an energy service company.

### **Section 3: Rate Structure**

The proposer shall use the Project Personnel and Billing Rates form, Attachment D, to clearly indicate hourly salary rate range for each title classification proposed under the agreement with NYSERDA and other overhead multipliers you propose to use for the duration of the agreement with NYSERDA.

Please provide rates and multiplier for services to be provided. These rates shall be independent annual rates. The multiplier stated shall include all overhead, profit, and other costs. **Please do not provide fully burdened rates in the chart.**

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

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

#### **Section 4: Liability Insurance/Bonding**

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

## **VII. PROPOSAL EVALUATION AND CONTRACTOR SELECTION**

Eligible proposals, meeting the requirements of this solicitation, will be reviewed by a Technical Evaluation Panel (TEP) consisting of NYSERDA staff, a Department of Public Service staff member, and selected outside reviewers. The TEP will review the written proposals, score and rank the proposals. The highest ranked proposer will be recommended for contract negotiations. Proposals will be evaluated, scored, and ranked, separately for each Technical Category. The TEP will review the written proposals using the evaluation criteria below in order of importance.

1. **Relevant Experience, Qualifications, and Technical Expertise.** Does the proposer demonstrate an understanding of the range of services requested by this RFP? Has the proposer provided examples, which demonstrate their ability to deliver high quality, objective, energy related technical services? Which Technical Category has the proposer identified? Does the proposer demonstrate relevant experience and technical expertise in that Technical Category?
2. **Staffing Plan.** Are key personnel's education, experience, and capability relevant to the sought Technical Review Services? Are resumes of key personnel provided? Do they have the ability to commit junior and senior staff as required? Does the proposer have the ability to support projects from multiple office locations? Can the proposer provide responsive, flexible, and thorough customer service?
3. **Cost.** Are the Proposer's billing rates appropriate and reasonable?, Does the proposal team describe the ability to use junior and senior staff as appropriate to be cost effective while achieving Program success? How well does the proposer demonstrate the capacity to deliver services throughout New York State while minimizing travel/lodging costs?
4. **Other.** Is the proposal well written, clear, concise, and well organized? Does the proposer have past experience or familiarity with NYSERDA and its programs?

The TEP will review each proposal and may contact selected references to determine whether the applicant has the necessary technical experience, qualifications, resources, and competitive contract costs to successfully provide the requested services for NYSERDA. The TEP reserves the right to make decisions based on information obtained from the references.

Further, as part of the evaluation process, proposers may be required to have appropriate representatives attend an interview prior to final selection.

NYSERDA will negotiate contracts for services in fulfillment of the needs of this RFP on the basis of demonstrated competence and qualifications, at fair and reasonable fees. Contract negotiations may include the proposed Contractor's fee schedules to ensure work is accomplished at fair and reasonable rates. These contracts will not guarantee any specific amount of work, but may contain a maximum dollar amount. The amount of work assigned to each Contractor will depend on their particular expertise, geographic area in which they agree to conduct services, the amount of work requested in the Contractor's technical and geographic area and the ability of the Contractor to provide high quality, cost-effective, and timely services.

NYSERDA reserves the right to negotiate among finalists to assure services, and to assure access to specific expertise.

## VIII. 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 <http://www.nyserda.org/About/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

**Executive Order 127** - NYSERDA is required to comply with the provisions of Executive Order 127. The Executive Order is available at

[http://www.ogs.state.ny.us/procurecounc/pdfdoc/11-2004Attachment\\_12.pdf](http://www.ogs.state.ny.us/procurecounc/pdfdoc/11-2004Attachment_12.pdf)

Pursuant to the Executive Order, proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of \$15,000, must include:

(1) the name, address, telephone number, place of principal employment and occupation of every person or organization retained, employed or designated by or on behalf of the proposer to attempt to influence the procurement process and whether such person or organization has a financial interest in the procurement. If a proposer has identified one or more such persons or organizations, a *Contractor's Designated Contact(s)* form (which is available upon request or at <http://www.nyserda.org/Funding/stdforms.asp>) must be completed and filed with the proposal for each person or organization identified.

(2) a disclosure statement regarding proposer's history of findings of non-responsibility made by any agency or authority within the previous five years where such prior finding of non-responsibility was due to intentional provision of false or incomplete information to a covered agency or authority with respect to Executive Order 127. All proposals submitted in response to this solicitation should include a completed *Disclosure of Prior Findings of Non-responsibility* form (which is also available upon request or at <http://www.nyserda.org/Funding/stdforms.asp>).

**State Finance Law sections 139-j and 139-k** - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain new procurement lobbying requirements which can be found at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>

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

**Tax Law Section 5-a** - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at [http://www.tax.state.ny.us/pdf/2006/fillin/st/st220td\\_606\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2006/fillin/st/st220td_606_fill_in.pdf)). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a perspective contractor prior to contacting and filed with NYSERDA. See, ST-220-CA (available at [http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca\\_606\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf)). The Department has developed guidance for contractors which is available at [http://www.tax.state.ny.us/pdf/publications/sales/pub223\\_606.pdf](http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf).

**Contract Award** - NYSERDA anticipates making multiple awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA expects to notify proposers in approximately 8-10 weeks from the proposal due date whether your proposal has been selected to receive an award.

**Limitation** - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all

proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest.

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

## **X. ATTACHMENTS**

- Attachment A: Proposal Checklist
- Attachment B: Disclosure of Prior Findings of Non-responsibility
- Attachment C: Areas of Expertise Checklist
- Attachment D: Project Personnel and Billing Rates Form
- Attachment E: Contractor's Designated Contact(s)
- Attachment F: Task Work Order Template
- Attachment G: Sample Agreement





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 – RFP 1909**  
**Area of Expertise Checklist**

<b>Technical Category</b>	<i>(Check all that apply)</i>
Industrial / Manufacturing Process Efficiency	
Data Center Support Systems Efficiency	
Data Center Information Technology Efficiency	

**Attachment D – RFP 1909**

**PROJECT PERSONNEL & RATES**

DIRECT PERSONNEL COSTS:

Title Classification	Not to Exceed Hourly Rate Range	
	Minimum	Maximum
Principal Investigator		
Technical Specialist		
Senior Project Manager		
Project Manager		
Senior Engineer/Architect		
Engineer		
Analyst		
Administrative Support		

MULTIPLIER:

Profit / Fixed Fee:

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                         |

**Attachment E – RFP 1909**

**Contractor’s Designated Contact(s)  
Executive Order 127**

This form is provided to allow Proposer/Contractor to identify any person or persons that it has retained, employed or designated to attempt to influence the procurement process.

Solicitation or Contract Number:		
Name of Proposer or Contractor:		
Address:		
Name and Title of Person Submitting this Form:		
Is this an initial filing in accordance with Section II, paragraph 1 of EO 127 or an updated filing in accordance with Section II, paragraph 2 of EO 127? (Please indicate with an “X”)	<input type="checkbox"/>	Initial Filing
	<input type="checkbox"/>	Updated Filing
Date submitting this form:		
The following person or organization was retained, employed or designated by or on behalf of the Proposer or Contractor to attempt to influence the procurement process:		
Name:		
Address:		
Telephone Number:		
Place of Principal Employment:		
Occupation:		
Does the above named person or organization have a financial interest in the procurement? (Please indicate with an “X”)	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No

-Attach additional forms as necessary-

**Attachment F – RFP 1909**

**Task Work Order  
Existing Facilities Program  
Performance Based Incentives**

Pursuant to Agreement No. 98xx, the Contractor shall provide the following services under this Task Work Order.

**NYSERDA Project #:**                      **Applicant:**

**Estimated Incentive:**                      **Project:**

<b>Description</b>	<b>Project Cost</b>	<b>Annual Cost Savings</b>	<b>Demand Saved</b>	<b>Summer On-Peak Demand Saved</b>	<b>Annual kWh Saved</b>	<b>Estimated Incentive</b>
Lighting Technologies						
Motors/Other Pre-Approved						
Cooling Technologies						
Custom and Renewable Technologies						
<b>CHP</b>						
<b>Industrial Processes</b>						
<b>Total</b>						

**Task 1 - Applicant Contact:** Contact the Applicant via telephone, followed by email, within five business days of receiving a Notice-to-Proceed to briefly describe the process and requirements of the Existing Facilities Program, and provide Consultant contact information. This telephone call should be followed up with an email summarizing the process and requirements of the Existing Facilities Program sent to the Applicant with a copy sent electronically to [efpmanager@nyscrda.org](mailto:efpmanager@nyscrda.org).

**Task 2 - Engineering Analysis Review:** Review the Engineering Analysis, focusing on project and measure compliance with the rules and procedures of the Existing Facilities Program. This will include review of eligibility, the reasonableness of savings estimates, and the appropriateness of the proposed Measurement and Verification (M&V) plan, if applicable. Complete a pre-installation inspection, coordinating with the Applicant. The deliverable associated with this task is a technical assessment review report and funding recommendation sent electronically to [efpmanager@nyscrda.org](mailto:efpmanager@nyscrda.org).

**Task 3 - Project Installation Report Review:** Conduct a site inspection to verify post-installation conditions. The deliverable associated with this task includes; a site inspection report, documentation of project costs, and incentive payment recommendation, if applicable sent electronically to [efpmanager@nyscrda.org](mailto:efpmanager@nyscrda.org).

**Attachment F – RFP 1909**

**Task 4 - Project Monitoring Phase:** Review the annual savings reports provided by the Applicant at the end of the measured performance period. Consultant shall complete site visits to monitor compliance with the approved M&V plan. The deliverables associated with this task includes; a savings reconciliation report and incentive payment recommendation sent electronically to efpmanager@nyscrda.org.

Upon approval of this Task Work Order, the total amount for technical review services will be encumbered under Agreement number 98xx. All work shall be performed in accordance with the requirements of the Existing Facilities Program.

Site:	Applicant:	NYSERDA Project No.:
-------	------------	----------------------

Name	Title	Hourly Rate	Hours Per Task				Total Hours	Total Cost
			1	2	2	4		
							-	\$0
							-	\$0
							-	\$0
							-	\$0
							-	\$0
							-	\$0
		<b>Labor Total</b>	-	-	-	-	-	<b>\$0</b>
							<b>Direct Non Personnel Services Costs:</b>	<b>\$0</b>
							<b>Total Project Cost (Not-to-Exceed):</b>	<b>\$0</b>

**Attachment G – RFP 1909  
Sample Agreement**

**New York State Energy Research and Development Authority  
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

**CONTRACTOR**

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

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Jeffrey J. Pitkin  
Treasurer

Title \_\_\_\_\_

STATE OF            )  
                          ) SS.:  
COUNTY OF        )

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

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

Exhibit A

Statement of work

To be determined

## EXHIBIT B

### GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

#### Article I

##### Definitions

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

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

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

## Article V

### Assignments, Subcontracts and Purchase Orders

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

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

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action which would impair its rights 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 therefore).

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

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

### Article XIII

#### Independent Contractor

Section 13.01. Independent Contractor. The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, the

Subcontractors, and their respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

## Article XIV

### Compliance with Certain Laws

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

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

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

## Article XV

### Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Publicity.

(a) The Contractor shall collaborate with NYSERDA's Director of 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<sup>SM</sup>**, 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 C, the terms of this Exhibit C 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

1. DIRECT PERSONNEL COSTS:

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

2. MULTIPLIER (Including Profit/Fixed Fee):

a. Profit / Fixed Fee: \_\_\_\_\_%

b. Multiplier \_\_\_\_\_

3. 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                         |