

Common Protocols and Best Practices for Using Process Evaluations
Request for Proposal (RFP) 2128
Up to \$50,000 Available

Proposals Due: November 8, 2010 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (NYSEERDA) requests proposals from organizations or individuals interested in (1) developing common process evaluation planning, design, implementation, and reporting protocols, and (2) to establish and investigate best practices for conducting process evaluations of Energy Efficiency Portfolio Standard (EEPS) and System Benefits Charge (SBC) programs. These protocols and best practices will be used by evaluators hired by each program administrator to help identify ways that the programs can capture the greatest savings and perform as effectively as possible. Maximizing program performance by using targeted program evaluations should be a primary objective of any future process evaluation, guided by a flexible protocol that allows evaluation contactors to focus efforts on any aspect that can improve cost effective energy savings and enhance customer relationships.

The initial term of this contract will be for up to one year up to \$50,000. The contract budget may be increased, at NYSEERDA's discretion, pending the approval of proposed project enhancements.

Proposal Submission: Proposers must submit eight (8) copies of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposals must be clearly labeled and submitted to:

Roseanne Viscusi, RFP 2128
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Tricia Gonzales at (518) 862-1090, ext. 3338 or pmg@nyserda.org. If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090, ext. 3507 or vwf@nyserda.org.

No communication intended to influence this procurement is permitted except by contacting Tricia Gonzales (Designated Contact) at (518) 862-1090, ext. 3338 or pmg@nyserda.org. Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

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

I. Introduction

On June 23, 2008, the New York State Public Service Commission (the Commission) issued an order creating an Energy Efficiency Portfolio Standard (EEPS) program for New York State to develop and encourage cost-effective energy efficiency over the long term, and adopted a goal of reducing electricity usage (as forecast in 2007) by 15% statewide by 2015. The EEPS program ordered by the Commission also included terms to promote the efficient use of natural gas. Details about the EEPS program can be found on the Commission's website (<http://www.dps.state.ny.us/>).

In its June 23rd 2008 order, the Commission directed the six large investor-owned electric utilities and the New York State Energy Research and Development Authority (NYSERDA) to submit for approval proposals for electric energy efficiency programs. During 2009 the Commission approved certain utility and NYSEDA administered electric programs for implementation during 2009 - 2011. The Commission also ordered the gas utilities serving more than 14,000 customers and NYSEDA to submit for approval proposals for gas energy efficiency programs. During 2009 the Commission approved certain utility and NYSEDA administered gas programs for implementation during 2009 - 2011.

To date, the Commission has approved for implementation over 90 EEPS gas and electric programs from over 10 EEPS program administrators. As part of the original June 23rd 2008 order, the Commission required that all gas and electric energy efficiency programs established under the EEPS proceeding be evaluated, according to the same evaluation protocols:

“All programs, including utility programs, will be subject to the same evaluation protocols as provided in the selection factors discussed below. The Director of the Office of Energy Efficiency and Environment is directed to establish an Evaluation Advisory Group, which will advise Staff [of the Department of Public Service] in developing evaluation protocols and in other critical evaluation and reporting issues. The Evaluation Advisory Group should consist of program administrators, stakeholders, and other State entities.”

As directed by the Commission, the Evaluation Advisory Group (EAG) was formed in July of 2008 with representatives from all program administrators conducting EEPS programs in New York state.

In addition to its EEPS funds, NYSEDA has about 25 programs funded by the system benefits charge (SBC) that are required to comport with EEPS evaluation guidelines. This includes the EEPS mandate that 5% of the program budget be used for program evaluation. (SBC program evaluations were previously only required to spend 2% of their program budget on program evaluation.) Details about the NYSEDA SBC programs can be found on the NYSEDA web page (<http://www.nyserda.org/>).

NYSERDA, on behalf of Commission staff and the EAG is issuing this request for proposals (RFP) to conduct research and analysis in order to recommend common statewide process evaluation protocols that could be used by all program administrators implementing and evaluating EEPS and SBC programs in New York State.

II. Project Requirements

Objectives

The primary objective of this project will be to develop common process evaluation planning, design, implementation, and reporting protocols, and to establish and investigate best practices for conducting process evaluations of EEPS and SBC programs. The final product should not duplicate industry protocols such as those

promulgated by the Electric Power Research Institute and the State of California. Instead, it should recommend approaches to process evaluations that will help the New York program portfolio achieve the most cost effective energy savings possible.

These objectives comport with the Commission's June 23rd, 2008 order and can facilitate EAG and DPS staff's ability to monitor efficiency programs and provide program administrators with valuable information. A key objective of this project will be to facilitate joint evaluations among program administrators, thereby lowering costs to individual program administrators, minimizing the evaluation's impact on key trade allies and stakeholders while helping to meet project objectives.

Definition

For the purposes of this project, a process evaluation is a systematic assessment of an energy efficiency program in order to identify and recommend changes to the program's structure, management, administration, design, delivery, operations, and goals that can increase its efficiency or effectiveness. For energy efficiency programs, a process evaluation's primary objective is to help program administrators structure their programs to identify and achieve cost effective savings while maintaining high levels of participant satisfaction. It should also address the individual program's role within a portfolio of programs and how it is integrated into state energy policy so that both program and portfolio can secure cost effective energy efficiency resources.

Process evaluations of similar programs should yield comparable results and actionable recommendations so that the program can achieve maximum performance within a portfolio of services and support good customer relationships. It is also important that the evaluation include the evaluator's expert interpretation of the evaluation results, based on his or her experience with other programs and evaluations. The process evaluation should provide an evidence-driven analysis and actionable recommendations for program and portfolio changes.

The protocols for process evaluations should support comparisons between and among programs and the strategic planning of energy efficiency services so that these services can be developed, designed, improved, and deployed to achieve the best results across the portfolio. The protocols should be flexible so that program administrators can engage experts from a broad array of evaluation specialists. The protocols should not favor certain contractors.

Scope and Deliverables

The primary purpose of this project is to identify process evaluation best practices and define process evaluation protocols. Evaluators should be able to use these protocols and best practices to capture the greatest impact possible from a program operating within a portfolio of programs designed to make the most use of public funds. The final product should be a set of flexible protocols that will help evaluators use targeted program evaluations to focus their efforts on any elements that can improve cost effective energy savings and enhance customer relationships.

Scope

The contractor should recommend protocols for program administrators to use for process evaluations of energy efficiency programs. New York energy efficiency programs fall into the following categories: residential, multifamily, commercial, industrial, large industrial, institutional, and government. The NYSERDA SBC programs also address energy research and development issues. The contractor should identify which elements in process evaluations (formulation of questions, timing of surveys, etc.) are necessary for an insightful and thorough evaluation that will produce actionable recommendations and improve the outcome of the evaluated program.

Protocols should be developed for the most effective use of these critical elements.

The contractor should also identify the best practices for process evaluations from the above perspective and incorporate the findings into the protocol recommendations. The project should be structured to identify and encourage best practices within the individual research tasks of a process evaluation, so that the results are reliable and the analyses comprehensive enough to support a program design and re-design.

Deliverables

The primary deliverables are:

1. Protocols that identify program, sector, and portfolio integrated operation and market-based improvements that will improve the program and the program's performance within an integrated portfolio.
2. A common set of protocols and best practices that can be used for each sector: residential, multifamily, commercial, industrial, large industrial, institutional, and government.
3. Protocols and best practices that may be used to develop a detailed evaluation plan for each process evaluation.
4. Recommendations for the storage, maintenance and cataloging of process evaluation data, results, and findings.
5. Identification of factors that can change process evaluation results, findings, and recommendations and the conditions under which these factors can be expected to impact process evaluation efforts, approaches, and findings. Such factors might be changes to codes and standards, departure of key product distributors, and emerging technologies.
6. A presentation of the draft report to the EAG (web conference).
7. The final report (electronic).

Tasks

Task 1: Kick-Off Meeting with Project Manager and EAG Statewide Studies Subcommittee

The kickoff may be conducted via a conference call or web meeting. The main topics for the kickoff meeting are:

- Meet project manager/EAG subcommittee members,
- Review requirements,
- Discuss contractor's approach to work,
- Review time line, and
- Establish dates for progress meetings.

Task 2: Survey Practices and Protocols of New York State, Regional and /or National Process Evaluations

The goal of the project is to develop process evaluation protocols for use in New York State. Program evaluations that have been completed in the past could be a source to illustrate what has and has not worked. Additionally, efficiency and energy research and development program evaluations that have been conducted both regionally and nationally could inform this project. This task need not be an exhaustive review of the literature. Rather it will be a literature search that provides important highlights that have been documented in other programs and jurisdictions as best practices for energy efficiency program evaluations and details specific methods (e.g., specific questions and algorithms) that contribute to these best practices.

The literature review should include such sources as the proceedings of the International Energy Program Evaluation Conference (IEPEC), the proceedings of the Association of Energy Services Professionals (AESP) and the proceedings of the various conferences sponsored by the American Council for an Energy Efficient Economy

(ACEEE). The California Measurement Advisory Committee (CALMAC) database (www.calmac.org) also contains relevant reports and papers.

The contractor should supplement this task by identifying gaps in earlier process evaluations and current protocols and by using this review to identify ways to improve process evaluations. These insights could be gathered from process evaluation experts and those who make use of process evaluation studies.

Task 2A: Review of New York State Programs for Which These Protocols May Apply

1. Review the EEPS programs and NYSERDA's SBC programs and determine how common process evaluation protocols can be used for each portfolio of programs.
2. Review the EEPS and NYSERDA SBC evaluation activities that are planned, underway, or completed and determine how common process evaluation protocols can be used for each portfolio of programs. This task should take into account the evaluation funds that are encumbered.

Task 3: Develop a List of Best Practices for Obtaining Constructive, Targeted Information and Recommendations from Process Evaluations

Based on the research conducted in Task 2, develop an annotated list of the best practices for the individual research tasks within a process evaluation, so that the results are reliable and the analyses comprehensive enough to support a high-impact program design and re-design process as an integrated part of a portfolio of services.

Areas of inquiry for this work may include, but not be limited to answering the following questions. What are the best process evaluation practices for:

1. Planning evaluations (evaluation design, sampling, interviewing, data analyses, etc.)?
2. Reporting evaluation results?
3. Identifying changes needed to make the portfolio more effective and increase impacts?
4. Monitoring program and portfolio performance changes over time?
5. Measuring satisfaction and the key drivers of satisfaction, approaches for improving satisfaction, and understanding the potential net costs and benefits of these changes?
6. Evaluating and improving program administrator and customer relationships?
7. Streamlining program recommendations and suggestions?

Task 4: Formulate Protocols to Guide New York Program Administrators in Achieving Maximum Benefit from Process Evaluations

Based on the results of Tasks 2 and 3, formulate a list of common evaluation protocols that New York State program administrators may use to ensure reasonable comparability and maximum utility of the results of process evaluations conducted on EEPS and SBC programs. Determine which portions of program evaluations (sampling schemes, survey questions, answer scales, survey timing) could or should be the same for all program administrators to ensure reasonable comparability of process evaluation results. Individual program budgets should be taken into account when making protocol recommendations. For example: "For small programs with relatively constrained evaluation budgets we recommend the following protocols ..." or "For large programs where evaluation budget constraints are not as much of an issue we recommend the following additional protocols ..."

Common protocols and best practices recommended for New York State should be segmented by sector, as described in the deliverables section above.

The protocols, best practices, and recommendations should be presented in an action plan that will make

evaluations more useful and productive and that are tailored to the specific needs of New York's program portfolio. This project should not result in a general process evaluation handbook; the recommendations should be specific to helping New York achieve its energy program goals. The following areas should be addressed:

1. Process evaluation structure: How should evaluation efforts be structured (program level, service level, service group level, market sector level), and how should these efforts be coordinated so that the results can be compared across programs and providers?
2. Process evaluation planning: How should evaluations be planned - by program, by issue or by market? How frequently should process evaluations generally be conducted? How should researchable issues be established? How do we make sure that we are getting the most from the evaluations so that the key needs of the program managers and designers, the Department of Public Service, and the public are being met?
3. Coordination of evaluation tasks: With over 90 energy efficiency programs operating in NY, there will likely be overlapping evaluation activities. For example, multiple program evaluations may require asking the same trade allies similar questions. What are the best approaches to mitigate confusion and other difficulties such as survey fatigue?
4. Reporting: How could evaluation results be reported so that they are accessible to the many interests and stakeholders?
5. Actionable recommendations: How do we make sure that evaluations provide detailed, actionable recommendations for changes and a clear path to program improvements rather than general findings that provide limited opportunities for change? What changes should be made to the programs' design, approach, operations, marketing, and other processes that will likely increase savings, improve cost effectiveness, and increase customer satisfaction?
6. The program's place within the portfolio: Does the program fit within New York's energy efficiency program goals? Is the program structured to best contribute to the success of the portfolio within its market segment? Are there gaps in program services?
7. Participant satisfaction: How do we make sense of satisfaction scores? What is bad, good, better, best? What analysis is needed to determine where improvements in satisfaction will help the program capture more savings and impacts or be more cost effective?
8. Participant-Administrator Relationship: Beyond measures of satisfaction, how do we assess the program participant relationship with the program administrator? How can this relationship be improved so as to improve the overall program performance? How can changes in the relationship be measured?
9. Program Coordination: Is the program being coordinated with other programs (e.g., is there a strong referral function)? Are there improvements that could be made to the overall coordination?
10. Process evaluation plans: How do evaluators structure a process evaluation plan as part of the detailed evaluation plan required for all EEPS/SBC programs? How can consistent standards be maintained, while giving evaluators a reasonably degree of flexibility when applying the protocols to the evaluation of specific programs?
11. Follow-up: What should be the process for tracking and responding to the process evaluation's

recommendations? Should program administrators prepare a formal response to each recommendation stating whether the recommendation was implemented, and if not, why? Should a database be developed to track and report the status of all process evaluation recommendations for EEPS and SBC programs?

12. Regulatory guidance: What kinds of policy, administrative, or regulatory structures are needed to maximize savings impacts from this program and from the portfolio as impacted by this program? How can these evaluations help us respond to the New York Public Service Commissioners' likely questions about how the program and the portfolio can be improved?

Task 5: Written Report Summarizing Survey Findings and Recommendations

The contractor must provide a written report (electronic) that details the findings and results of Tasks 2 through 4. The report should include an executive summary and sections that describe the literature search of best practices; the considerations to be made when developing common protocols; common survey questions and protocols recommended for New York State broken down by category; and the reasons for including each common protocol. The report should be written in plain language that follows generally accepted principles of good writing (see, for example, *The Chicago Manual of Style*, University Of Chicago Press). Detailed supporting information and references should be included as appendices.

Task 6: Brief Bi-weekly Conference Calls with Project Manager to Update Progress

Approximately 30 minutes to 1 hour to review progress to-date, schedule, and budget, answer questions or discuss any emerging issues. All draft results and decisions about the work will be reviewed by the project subcommittee. The project manager will be responsible for communicating subcommittee decisions to the consultant.

Task 7: Report Presentation to EAG

A two-hour meeting with the EAG and studies subcommittee (by conference call or web meeting) to review the results and answer questions about the draft final report. This meeting would likely occur approximately two weeks after the draft final report is distributed to EAG members. The final version of the report, including responses to EAG comments, will be due two weeks following the presentation.

The use of subcontractors and teaming arrangements as needed to fulfill all obligations associated with this RFP is appropriate. If a team is proposed, respondents to this RFP must be able to demonstrate that they have a teaming arrangement that is directly applicable to and consistent with the evaluation needs of the EAG and this RFP. The primary contractor of the team shall have full responsibility for maintaining continuous correspondence with the lead project manager, and ensuring all deliverables applicable to the contract are provided according to an approved time-line meeting quality standards.

III. Project Management

Contractor's Responsibility

The selected contractor shall be responsible for timely completion of the requirements described in the Scope and Deliverables section of this RFP.

The selected contractor must assume the overall responsibility for coordinating evaluation activities as described in this RFP (whether or not done by the contractor or one or more subcontractors) and have responsibility for completing the deliverables listed in this RFP.

The selected contractor shall keep the lead project manager informed biweekly by telephone, in-person meetings or

e-mail on the progress of the process evaluation protocols development. Meetings, as needed, with DPS staff and EAG members may be requested.

In any and all circumstances, the EAG process evaluation protocol development shall be based on sound methodology, credible data and analysis, and adhere to the highest professional standards.

The selected contractor's contribution will allow the EEPS and SBC program administrators to structure their programs in such a way as to identify and achieve cost-effective savings while maintaining high levels of participant satisfaction.

Bidder Qualifications and Relevant Experience

Since the results of this project will be used in EEPS and SBC process evaluations across New York State, the selected contractor should have extensive experience in evaluation of energy programs. Bidders may be from a single firm or be a team of qualified individuals representing several firms with, for example, team members having a range of organizational, operational, and process evaluation expertise. Bidders that propose a team must designate a single individual or firm as the lead contractor, responsible for the contract to complete the work, the schedule, delivery of the final report, and invoicing.

Bidders should include resumes for staff assigned to this project, and it is expected that senior staff with extensive evaluation experience and credentials will make the final recommendations for the common protocols that are included in the project's final report.

EAG's Responsibility

This project is being undertaken by the New York State EEPS EAG. A project manager from NYSERDA has been assigned to oversee the RFP process, contractor selection, kick-off and bi-weekly progress meetings, and project schedule on behalf of the EAG. The NYSERDA project manager will be responsible for managing all aspects of the project - reviewing, commenting and approving tasks and subsequent deliverables - and resolving disputes. The NYSERDA project manager will be responsible for managing the final contract with the selected bidder and approving all work products prior to invoicing. The NYSERDA project manager will also be responsible for facilitating input from other EAG members who are participating in this study.

Budget and Pricing

The initial term of this contract will be for up to one year and up \$50,000. Price will be a factor in scoring the proposals. Bidders are encouraged to submit a cost-effective proposal for completing this work. Bidders should use their judgment in developing the required hours necessary to complete the work.

Bidders should provide a total price for the work that includes, but is not limited to, line items for meeting preparation, literature search, development of best practices and protocols, report preparation, report presentation, administration, and travel.

Bidders should indicate hours proposed for each individual for each task that they will be working on. Hourly rates should include all overhead and administration.

Bidders may wish to provide a separate quote for additional work that they think would significantly enhance or extend the results of this project.

Estimated Schedule

NYSERDA and the EAG would like to complete this work on an expedited schedule as outlined below in the table, however, if this initial schedule is not feasible for some reason, a modified schedule can be proposed as part of the Management Structure section (Section 3) described below under Proposal Requirements.

October 11, 2010	RFP 2128 Issued by NYSERDA
November 8, 2010	Proposals Due
December 23, 2010	Anticipated Contract Award
February 7, 2011	Signed Contract/Start of Project
April 18, 2011	Draft Final Report Due
May 2, 2011	EAG Presentation
May 16, 2011	Final Report Due

IV. Proposal Requirements

Proposers must submit eight (8) copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this Request for Proposal. A completed and signed Proposal Checklist must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist may be returned. Faxed or e-mailed copies will not be accepted.**

Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Unnecessary attachments beyond those sufficient to present a complete, comprehensive and effective response will not influence the evaluation of the proposal. Proposers will not be reimbursed by NYSERDA or the EAG for any costs associated with preparation of their proposals. The proposals should not exceed **10 pages**, excluding the conflict of interest, cost proposal, proposed project enhancements, and appendices. Each page of the proposal should state the name of the proposer, the RFP number and the page number. The proposal must be in the following format:

RFP 2128 Proposal Checklist (Attachment A)

- Section 1: Introduction
- Section 2: Statement of Work/Approach
- Section 3: Management Structure (and revised Schedule, if needed)
- Section 4: Qualifications, Experience and References to Similar Projects
- Section 5: Potential Conflict of Interest
- Section 6: Cost Proposal
- Section 7: Proposed Project Enhancements (Optional)
- Appendices: Resumes of Key Personnel
Summaries of Relevant Work Products
Letters of Commitment

Proposal Explanation

Section 1. Introduction (2 page limit)

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

Section 2: Statement of Work/Approach (4 page limit)

The Statement of Work must clearly describe the approach the proposer will take to achieve the activities outlined in the Scope and Deliverables section of this RFP. Proposers should detail the approach and methodology and define the rationale for both.

Section 3: Management Structure (2 page limit)

Proposers shall identify all team members, including the Principal or Lead contact, who will be responsible for ensuring that the project is timely and of good quality. Provide a clear description of the roles and responsibilities of each key person in completing the work plan and include an organization chart illustrating these roles and responsibilities. Designate one team member who will serve as the day-to-day contact with the NYSERDA Project Manager. Provide the names and addresses of any subcontractors. Discuss how you would manage and maintain flexibility to accommodate potentially short notification times and tight deadlines. Include a revised schedule table if the schedule noted above is not feasible.

Section 4. Qualifications/Experience/References to Similar Projects (2 page limit)

Describe specific experience related to the activities described in this RFP. Discuss proposed teaming arrangements if applicable. State the team's individual and combined expertise that would enable successful completion of the project. List and briefly describe relevant projects that have been completed by the proposer/proposing team. Indicate which team members were responsible for each project described. Resumes of all team members shall be provided in an appendix.

Indicate the name and telephone number of at least three references for whom your organization has similar relevant completed projects. Summaries of related work products, tools and other supporting materials that demonstrate your ability to complete the work requested in this RFP may be submitted as attachments to your proposal.

Section 5. Potential Conflict of Interest

Identify the nature of any potential conflicts of interest among team members in providing services to NYSERDA under this RFP. Fully discuss possible conflicts of interest, actual and perceived, which could arise in connection with performance by team members of the proposed contract. Describe how your firm would resolve conflicts of interest.

In the event that NYSERDA determines that a team member may have a conflict of interest or the appearance of a conflict of interest, NYSERDA may: (1) take this into consideration in evaluating the proposal; (2) exclude the proposer from consideration for an award; (3) adjust the scope of work to avoid the conflict or appearance of conflict; or (4) negotiate other appropriate actions with the team member to avoid the conflict or appearance of conflict.

Section 6. Cost Proposal

Using the attached Project Personnel and Rates form as a template (Attachment D), submit the name, title, and hourly salary range for each individual in the proposal who will perform the work in the Scope and Deliverables section under an agreement with NYSERDA (including all subcontractor personnel) and provide overhead multipliers for the duration of the agreement.

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

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

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

Section 7. Proposed Project Enhancements (Optional)

Bidders may propose additional work that they think will enhance or extend the results of this project. Additional cost estimates for these enhancements should also be included. The contract budget may be increased, at NYSERDA's discretion, pending the approval of proposed project enhancements.

Appendices

Materials to be submitted include:

- Resumes of key personnel that will complete the tasks described in the Statement of Work
- Summaries of related work products that demonstrate your ability to assist NYSERDA in coordinating its evaluation activities, and that demonstrate your capability to perform the tasks that would be identified in such a strategy
- Letters of commitment

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

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

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

V. Proposal Evaluation

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

Responsiveness to the Work Scope of the RFP. Does the proposer present a sound approach for accomplishing the objectives of this proposal? Is there a sound rationale or justification for the proposed approach(es)? Has the proposer demonstrated a clear understanding of the project goals and objectives? Does the proposer appear to have the flexibility to accommodate potentially short notification times and tight deadlines? Has the proposer demonstrated a thorough understanding of New York's EEPS and SBC programs? Is there clear evidence that the proposer possesses the capability to assess New York's process evaluation activities and results across numerous organizations and resources and present this information accurately, clearly and concisely in reports? Is the Statement of Work thorough, specific, and consistent with the stated objectives?

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

Comprehensiveness of Approach and Management Plan. Does the proposer demonstrate the ability to complete all aspects of the project in a timely manner? Are appropriate management and coordination strategies articulated? Are sufficient resources being devoted to the project? Is the project organization, including the staffing plan, clear and well-defined? Is there one team member designated as the day-to-day NYSERDA contact?

Cost. How cost-effective is the proposal? Are hourly rates, overhead rates, indirect costs, other cost multipliers and total hours reasonable and appropriate for the proposer's and subcontractor's personnel completing the tasks? Are the proposer's and subcontractor's rates cost effective when compared to the cost allocation of comparable proposals?

Other. Is the proposal well-organized, well-written, and complete? Does the proposal offer economic benefits in New York State (a local office, while not required, would be considered favorably)? Do appendices include resumes and letters of commitment?

VI. General Conditions

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 www.nyserda.org/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

State Finance Law sections 139-j and 139-k - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>. The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

Tax Law Section 5-a - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. *See*, ST-220-TD (available at http://www.tax.state.ny.us/pdf/2007/fillin/st/st220td_507_fill_in.pdf). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSERDA. *See*, ST-220-CA (available at http://www.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.pdf>.

Contract Award - NYSERDA anticipates making one award under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. 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 reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement to those specifically identified in the submitted proposal. NYSERDA expects to notify proposers in approximately eight 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 NYSEERDA's best interest. NYSEERDA reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Agreement.

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 NYSEERDA after the award of a contract, NYSEERDA may exercise its stop-work right pending further investigation, or terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the particular circumstances. Proposers must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

VII. Attachments

- Attachment A – Proposal Checklist
- Attachment B – Disclosure of Prior Findings of Non- Responsibility
- Attachment C – Intent to Propose
- Attachment D – Contract Pricing Proposal and Rates Form
- Attachment E – Sample Agreement



ATTACHMENT A - RFP No. 2128 PROPOSAL CHECKLIST (MANDATORY)

Proposal Title		Due Date	
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
Federal Tax Identification #/Social Security			
Address	City	State or Province	Zip
Secondary Contact		Title	
Company		Phone	Fax
		e-mail	
Address	City	State or Province	Zip
<p>THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:</p> <p>Do you accept all Terms & Conditions in the Sample Agreement? (if no, explain on separate pg) __ Yes __ No (NYSERDA anticipates considering only specifically listed exceptions in negotiations.)</p> <p>Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) __ Yes __ No</p> <p>Are you a Minority or Women-Owned Business Enterprise? __ Yes __ No</p> <p>Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? __ Yes __ No</p> <p>Are you submitting the required number of copies? (See proposal instructions.) __ Yes __ No</p> <p>Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? __ Yes __ No (if yes, explain on separate page)</p>			
ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?			
Introduction Statement of Work/Approach Management Structure Qualifications, Experience and References to Similar Projects Potential Conflict of Interest Cost Proposal Appendices: Resumes of Key Personnel Summaries of Relevant Work Products Letters of Commitment		Indictment/Conviction of Felony (if applicable) NYSERDA Contracts Awarded (if applicable) Prior and/or Competing Proposals (if applicable) Exceptions to Terms & Conditions (if applicable) Completed and Signed Contract Pricing Proposal Form(s) Disclosure of Prior Findings of Non-responsibility Form	
AUTHORIZED SIGNATURE & CERTIFICATION			
I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA's procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I the undersigned am authorized to commit my organization to this proposal.			
Signature		Name	
Title		Organization	
Phone			

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

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

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

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

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

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

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

By: _____ Date: _____
Signature

Name: _____ Title: _____

Attachment C

INTENT TO PROPOSE

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

Roseanne Viscusi - RFP No.2128
New York State Energy Research and Development Authority
17 Columbia Circle, Albany, NY 12203-6399
fax (518) 862-1091 e-mail rdv@nyserda.org

Name:		Title:	
Organization:			
Address:			
Address:			
City:	County:	State:	Zip +4:
E-mail Address:		Phone No.: ()	
Web Site:		Fax No.: ()	
Authorized signature:			Date:

Please check all that apply:

We **do** intend to submit a proposal.

We **do not** intend to submit a proposal because: _____

I did not receive a notice in the mail. Please **add** me to NYSERDA's database.

Please **delete** me from NYSERDA's database.

How did you receive information about this solicitation? (Please check all that apply.)

<input type="checkbox"/> announcement notice in mail	<input type="checkbox"/> NYSERDA's website
<input type="checkbox"/> notice in NYS Contract Reporter	<input type="checkbox"/> word-of-mouth
<input type="checkbox"/> notice in other media (please list):	<input type="checkbox"/> NYSERDA staff/booth at meeting (please specify):

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

Attachment - D

New York State Energy Research and Development Authority Contract Pricing Proposal Form			Solicitation/Contract No.	Page	
Contractor:			Name of Proposed Project:		
Address:					
Location (where work is to be performed):			NYSERDA funding:		
			Total Project Cost:		
Cost Element			Total Project Cost	Funding & Co-funding via NYSERDA	Cost-sharing & Other Co-funding
1. Direct Materials					
a. Purchased Parts					
b. Other					
Total Direct Materials					
2. Materials Overhead	Rate:				
3. Direct Labor (specify names/titles)	Hours	Rate/hr			
Total Direct Labor					
4. Labor Overhead	Rate %	\$ Base			
Total Labor Overhead					
5. Outside Special Testing					
6. Equipment					
7. Travel					
8. Other Direct Costs					
9. Subcontractors/Consultants					
Total Subcontractors/Consultants					
10. General & Administrative Expense	Rate %	Element(s)			
11. Fee or Profit (If allowable) Rate:					
12. Total Estimated Project Cost					

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

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

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

INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE

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

A. GENERAL

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

B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL

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

1a. DIRECT MATERIALS - PURCHASED PARTS

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

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

1b. OTHER DIRECT MATERIALS

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

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

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

3. DIRECT LABOR

a. Commercial Enterprises

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

b. Educational Institutions

Provide the following for each calendar year of the contract:

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

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

5. OUTSIDE SPECIAL TESTING

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

6. EQUIPMENT

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

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

7. TRAVEL

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

8. OTHER DIRECT COSTS

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

9. SUBCONTRACTORS/CONSULTANTS

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

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

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

11. FEE OR PROFIT

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

Attachment E
**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
PERSONAL SERVICES AGREEMENT**

1. Agreement Number:

5. Project Period:

2. Contractor:

6. Federal ID:

3. Contact:

7. Total Amount of Award: \$

4. Award Date:

8. Commitment Terms and Conditions:

The 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; and
- ! Exhibit D, Prompt Payment Policy Statement.

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.

Exhibit B
General Contract Provisions, Terms and Conditions

The New York State Energy Research and Development Authority ("NYSERDA") hereby offers to retain the Contractor on the terms and conditions set forth in this Agreement, to perform the services set forth in the Statement of Work attached hereto as Exhibit A and made a part hereof (the "Work").

1. Term. This Agreement will be deemed to be effective as of the date shown in Item 4 of page one of the Agreement, and the Work will be provided by the Contractor for the period shown in Item 5 of page one of the Agreement.
2. Compensation. NYSERDA will compensate the Contractor at the rate(s) indicated in the Budget included in Exhibit A for services rendered in performance of the Work hereunder. The rate(s) include overhead, general and administrative expense, and profit. In no event shall the total cost to NYSERDA for the performance of Work under this Agreement exceed the amount shown in Item 7 of page one of the Agreement. The Contractor may submit monthly invoices for Work performed during the previous monthly period, and NYSERDA will pay the amount of such invoices in accordance with and subject to its Prompt Payment Policy Statement, a copy of which is attached hereto as Exhibit D. The Contractor shall be notified by NYSERDA in accordance with Section 504.4 (b)(2) of such Exhibit D, of any information or documentation not included with such invoice.
3. Release by the Contractor. The acceptance by the Contractor of final payment with respect to Work hereunder shall constitute and operate as a release by the Contractor in favor of NYSERDA for any and all claims against NYSERDA that the Contractor might otherwise have or assert for Work, materials or equipment furnished by the Contractor and for services rendered by the Contractor pursuant to or in connection with the Work for which such final payment is made.
4. Representations. The Contractor represents and warrants to NYSERDA that:
 - (a) it shall perform the Work in an efficient and expeditious manner with high diligence and skill in accordance with the best professional standards;
 - (b) it has no, and shall not obtain during the course of this Agreement any, interest, financial or otherwise, direct or indirect, nor is the Contractor engaged in any business or transaction or professional activity, nor has the Contractor incurred any obligation of any nature, which is in substantial conflict with the rendering of services under this Agreement; and
 - (c) 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.

5. Rights to Data. All reports, records, documents, and other papers and materials prepared in connection with this Agreement, and all Work, and the product of all Work performed hereunder, shall be the property of NYSERDA, and the Contractor shall not use or disclose same except upon the prior written approval of NYSERDA. The Contractor may not take any action, including signing any agreement, that has the effect of restricting or limiting in any way NYSERDA=s rights unless it receives written approval from NYSERDA.
6. Publicity. Under no circumstances shall the Contractor issue, or permit to be issued, any press release, advertisement or literature of any kind, or conduct or permit to be conducted any interview or news conference referring to the Work, except upon prior written approval of NYSERDA.
7. 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 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.
8. Assignment. 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.
9. Maintenance of Records. The Contractor shall keep, maintain and preserve throughout the term of this 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 this Agreement. NYSERDA will have the right from time to time and at all reasonable times during the term of this Agreement and such period thereafter to inspect and audit any and all such books, accounts and records.
10. Audit Adjustment. Any payment made hereunder shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.
11. Compliance with Applicable Laws. In the performance of the Work hereunder, the Contractor shall comply with all applicable Federal, State and local laws and regulations, including, without limitation, the provisions set forth in Exhibit C attached hereto and made a part hereof. Further, it is the intent and understanding of the parties hereto 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. Accordingly, every such provision is deemed to 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. The references to particular laws of the State of New York in this paragraph, in Exhibit C and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such paragraph, Exhibit and Agreement shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

12. Termination. The Agreement may be terminated by either NYSERDA or by the Contractor upon fifteen (15) days prior written notice to the other party. In the event of such termination, compensation shall be paid to the Contractor in accordance herewith for Work performed to the date of termination. In addition, 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. Further, 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 in either event, NYSERDA may exercise its termination right by providing written notification 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 Paragraph hereof entitled Term and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor).
13. 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.
14. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor, and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

EXHIBIT C

REVISED 9/06

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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