



**‘Impact Evaluation for the American Recovery and Reinvestment Act (ARRA) Program’  
Request for Proposals (RFP) 1656  
(Up to \$4 Million Available)**

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

Funding for this program is being provided under the American Recovery and Reinvestment Act (ARRA). If you receive funding under this solicitation you may be subject to special terms and conditions, including but not limited to: detailed reporting requirements; audit of your use of ARRA funds; Buy American and Davis-Bacon prevailing wage requirements for construction activities. You will be required to provide certain information in a timely manner to meet ARRA requirements. See attachments for a complete list of special terms and conditions. Failure to comply may result in the loss of Federal grant funding.

The New York State Energy Research and Development Authority (NYSERDA) requests proposals from organizations or individuals interested in conducting impact evaluation of several NYSERDA programs funded by American Recovery and Reinvestment Act (ARRA) economic stimulus funds. The impact assessment shall include the measurement and verification of energy and demand savings; calculating the total amount of renewable energy generation and installed capacity; estimating job creation (including number, type and duration) and resulting economic impacts; and carbon emissions reductions. Other possible metrics include, but are not limited to, any resulting economic impacts beyond job creation, and the adoption of new technologies (e.g., solar energy). Impact evaluation activities will include, but may not be limited to: metering and monitoring to assess achieved energy savings (including development of realization rates); using surveys or other methods to determine attribution of energy savings and other impacts to the program funding; quantifying cost-effectiveness of the programs; conducting a study to assess energy savings resulting from energy code compliance efforts; evaluation reporting; and other ad hoc tasks.

The ARRA Programs covered by this RFP are administered by NYSERDA with funds awarded by the federal Department of Energy (DOE) through two funding streams:

- **State Energy Program (SEP) Formula Grants:** With the total amount of \$123.1 million in SEP funds, NYSERDA will offer the Clean Fleet Program; Energy Efficiency for Municipalities, Schools, Hospitals, Public Colleges and Universities, and Not-for-Profits (MUSH) Program; the New York Energy Codes Program; and the Renewable Energy Program.
- **Energy Efficiency and Conservation Block Grant (EECBG) Program:** NYSERDA will utilize \$29.7 million in EECBG funds for competitive financial assistance to municipal projects for development of energy efficiency and conservation strategies; residential and commercial building energy audits; energy efficiency retrofits; and the development and implementation of transportation programs. Funding will also support energy code activities.

Up to \$3.6 million of the SEP funds and up to \$400,000 of the EECBG funds awarded by DOE will be used for impact evaluation for an initial two-year contract plus an optional one-year renewal. *However, proposals should include plans spanning the entire three years.*

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

**Roseanne Viscusi, RFP #1656  
NYS Energy Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399**

If you have technical questions concerning this solicitation, contact Michael Bello at (518) 862-1090 ext. 3495 or [mb6@nyserda.org](mailto:mb6@nyserda.org). If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090 ext. 3507 or [vwf@nyserda.org](mailto:vwf@nyserda.org).

No communication intended to influence this procurement is permitted except by contacting Michael Bello (Designated Contact) at (518) 862-1090, ext. 3495 or [mb6@nyserda.org](mailto:mb6@nyserda.org). Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

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

## I. INTRODUCTION

This RFP has been issued to procure the services of a contractor or contractor team to perform impact evaluation activities for NYSERDA's ARRA-funded SEP and EECBG Programs. The evaluation activities performed by the selected contractor will focus on the key metrics outlined by DOE including: measuring and verifying energy and demand savings; amount of renewable energy generation and installed capacity; carbon emission reductions; estimating job creation (including number, type and duration) and other economic impacts; and the adoption of new technologies. Impact evaluation activities include, but may not be limited to: using surveys or other methods to determine attribution of energy savings and other impacts to the program funding; quantifying cost-effectiveness of the programs; conducting a study to assess energy savings resulting from energy code compliance efforts; evaluation reporting; and other ad hoc tasks.

The selected contractor will be expected to provide credible and comprehensive evaluations of both the SEP and EECBG program portfolios and individual program achievements<sup>1</sup>, consistent with available resources, and to provide timely information to NYSERDA, DOE, and other key stakeholders about the impacts and cost-effectiveness of the programs offered by NYSERDA.

The selected contractor will be required to follow, to the maximum extent possible, any evaluation guidelines put forth by DOE for ARRA-funded programs. The selected contractor will also be expected to understand how ARRA-funded programs relate to and can help achieve New York's energy policy goals, including the goal to reduce electricity use 15% below forecast levels by the year 2015 (referred to as "15-by-15"). To the extent possible, the selected contractor will also be expected to evaluate ARRA-funded programs in a manner that comports with evaluation guidelines put forth for other energy efficiency programs designed to meet New York's 15-by-15 goal, *e.g.*, the Energy Efficiency Portfolio Standard (EEPS)<sup>2</sup>. The evaluation conducted as a result of this RFP should produce program impact results that are useful both in terms of meeting Federal and State requirements for data on program achievements.

### **NYSERDA State Energy Program (SEP) Background Information**

Approximately \$123.1 million is available for NYSERDA programs funded by SEP Formula Grants, including up to \$3.6 million made available in this RFP for impact evaluation activities. DOE requires that SEP funds be encumbered within 18 months of application approval. NYSERDA's SEP application was approved on July 2, 2009. SEP programs/technologies to be offered by NYSERDA and evaluated by the selected contractor are described below and in Table 1.

**Clean Fleets:** Designed to provide financial support to accelerate the introduction of light, medium, and heavy-duty alternative fuel vehicles and certain advanced vehicle technologies in communities across the State.

**Energy Efficiency for Municipalities, Schools, Hospitals, Public Colleges and Universities, and Non-Profits:** Designed to provide financial support for customers in the municipal, K – 12 public school, public university, hospital, and not-for-profit sectors for energy efficiency and retrofit projects. The main goals of the program are to create jobs and improve the energy efficiency of buildings and facilities throughout New York State.

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<sup>1</sup> For more information on individual SEP and EECBG Program achievements, please refer to the [New York State Comprehensive Application for the State Energy Program \(SEP\)](#) and the [New York State Plan for the Energy Efficiency and Conservation Block Grant \(EECBG\)](#).

<sup>2</sup> Evaluation Plan Guidance for EEPS Program Administrators; August 7, 2008, available at [www.dps.state.ny.us](http://www.dps.state.ny.us).

**Energy Codes:** Designed to provide technical assistance and local compliance support to achieve the highest practical levels of compliance with the Energy Conservation Construction Code of New York (Energy Code).

**Renewable Energy:** Designed to expand the use of solar energy across New York through a partnership between NYSERDA and the Long Island Power Authority (LIPA).

**Table 1: NYSERDA ARRA-Funded State Energy Program (SEP) Summary Information**

SEP Programs/Technologies	Budget (\$Million) Including Program Administration, Marketing and Evaluation Costs	Expected Number of Projects	Expected Annual Energy Impact (MBtus = Million Btus)	Expected Job Creation (Total)
Clean Fleets	\$4.6	130 alternative fuel vehicles	42.0 MBtus	43
Energy Efficiency for Municipalities, Schools, Hospitals, Public Colleges and Universities, and Non-Profits	\$82.6	200 projects (various)	1,400,000 MBtus	867
Energy Codes	\$4.8	500 (200 training courses and 300 plan review services)	937,600 MBtus	72
Renewable Energy	\$31.0	100 PV Systems	116,000 MBtus	300

**NYSERDA Energy Efficiency Community Block Grant (EECBG) Program Background Information**

Approximately \$29.7 million is available for NYSERDA Programs funded by the EECBG, including up to \$400,000 made available in this RFP for impact evaluation activities. DOE requires that all EECBG funds must be encumbered within 180 days of application approval. NYSERDA’s EECBG application was approved on September 18, 2009. EECBG Programs to be offered by NYSERDA and evaluated by the selected contractor are described below and in Table 2.

**Sub-Grant Program for Small Municipalities:** Provide sub-grants to units of local government (municipalities) that are not eligible for direct formula grants for their energy reduction projects.

**Energy Conservation Codes Program:** Support the promulgation and adoption of more stringent energy codes for buildings throughout New York State and provide various implementation and support services to local communities responsible for assuring compliance with the advanced codes.

**Table 2: NYSERDA ARRA-Funded Energy Efficiency and Conservation Block Grant (EECBG) Program Summary Information**

EECBG Program	Budget (\$Million) Including Program Administration, Marketing and Evaluation Costs	Expected Number of Projects	Expected Annual Energy Impact (MBtus = Million Btus)	Expected Job Creation (Total)
Sub-Grant Program for Small Municipalities	\$27.1	125	1,696,143 MBtus	360
Energy Conservation Codes Program	\$2.6	350	3,606,539 MBtus	27

## II. PROJECT REQUIREMENTS

### A. Services Requested

The goal of this solicitation is to select a single contractor or a lead contractor with a team of subcontractors, to cost-effectively plan, design, and perform impact assessments of NYSERDA’s ARRA-funded SEP and EECBG Programs offered throughout the State. The tasks of the selected impact evaluation contractor are to: (1) develop an Action Plan outlining how you intend to implement the impact evaluation; (2) implement the Action Plan, including measurement and verification of the energy impacts, evaluation of non-energy impacts, an assessment of attribution of impacts to the programs, and evaluation reporting; (3) assist in calculating the cost effectiveness of the programs; (4) reporting; and (5) provide other assistance related to impact evaluation of the ARRA Programs on an ad hoc basis.

Implementation of the Action Plan is expected to be accomplished by conducting file reviews and site visits, metering and monitoring the various energy efficiency measures installed through the programs, fielding surveys (*e.g.*, in person, telephone, e-mail, etc.), analyzing secondary data, analyzing energy use and production (*i.e.*, from renewable energy systems) data, conducting engineering analysis and modeling, and assisting in gathering inputs for the benefit/cost analysis. The selected contractor must independently evaluate program impacts for a wide array of end-use energy customers (*e.g.* commercial, industrial, and municipal) in a manner consistent with accepted engineering standards and protocols (*i.e.*, the International Performance Measurement and Verification Protocol (IPMVP) guidelines as established by DOE) and any specific evaluation guidelines put forth by DOE for ARRA-funded programs.

General tasks and assistance that the selected contractor will be required to perform include, but are not limited to, the following:

**Task 1.** Develop an Action Plan detailing the process, methods, timeline and cost for undertaking tasks and activities related to ARRA-funded SEP and EECBG Program impact evaluation. Each sub-task listed under Task 2 below must be detailed in the Action Plan.

**Task 2.** Implement the impact evaluation Action Plan, and maintain regular communication with NYSERDA on progress. Sub-tasks for which the selected contractor must develop and maintain a separate schedule and budget are listed below.

***Task 2a. Measurement and verification of energy impacts attributable to the ARRA-funded programs.***

Activities shall include, but may not be limited to:

- Measuring and verifying energy efficiency measure installation and energy impacts;
- Collecting field data by metering and monitoring equipment installed through the programs;
- Conducting reviews to assess reasonableness of engineering calculations and protocols; and
- Conducting analysis of energy consumption and production data to ascertain savings/generation due to energy efficiency or renewable energy measure installation.

***Task 2b. Assessing attribution of impacts to NYSERDA's ARRA-funded programs.***

Activities shall include, but may not be limited to collecting data, through surveys or other means, to assess attribution of effects that are above and beyond what would have been achieved without the ARRA funds. Any attribution analysis should include both free-ridership and spillover effects.

***Task 2c. Assessing impacts of Energy Code Programs on compliance rates and ultimate energy savings.***

Activities shall include, but may not be limited to, providing input on a code compliance baseline study conducted by a separate NYSERDA contractor, and completing a follow-up study to assess compliance rates, changes in compliance due to ARRA Energy Code Program interventions, and associated energy savings.

***Task 2d. Assessing macroeconomic impacts of all NYSERDA ARRA-funded programs.***

Activities shall include, but may not be limited to conducting macroeconomic impact analysis to assess ARRA program impacts on job creation and other economic indicators.

***Task 2e. Providing report writing and presentation of results.***

Activities within this area shall include, but may not be limited to writing reports detailing evaluation findings, contributing to existing reports that NYSERDA must file to comply with DOE and other requirements, and presenting results to various audiences in various forums. Evaluation reports should include actionable recommendations for improving program implementation, and should contain specific details on the purpose, methods, approach, analysis and findings associated with each major study. Summary impact reports will generally be

completed on an annual basis and will cover all major evaluation activities highlighted in Tasks 2a through 2d across the ARRA-funded programs. Annual reporting will begin 12 months after approval of the Action Plan and continue every year thereafter for the remainder of the agreement. Other ad hoc or interim reports may also be requested by NYSERDA.

**Task 3.** Provide assistance to NYSERDA in conducting cost-effectiveness analysis of the NYSERDA ARRA-funded SEP and EECBG Programs. DOE encourages states, in calculating cost-effectiveness, to go beyond traditional utility metrics and cost tests, and has suggested that each state's portfolio of projects funded by SEP ARRA grants should seek to achieve annual energy savings of at least 10 million source BTUs for each \$1,000 of total investment.<sup>3</sup>

Cost-effectiveness tasks conducted by the selected contractor shall include, but may not be limited to:

- Reviewing and identifying appropriate cost-effectiveness tests for NYSERDA's various ARRA-funded programs.
- Assisting in developing inputs and assumptions for calculating program, sector, and portfolio level cost-effectiveness. These inputs will include but will not be limited to: energy savings, incremental and total measure costs, leveraged funds, program costs and measure life.
- Calculating and reviewing cost-effectiveness and interim results.

**Task 4.** Provide other assistance related to impact evaluation of the NYSERDA ARRA-funded SEP and EECBG Programs on an ad hoc basis, such as the calculation of emissions reductions from installed efficiency measures.

The selected contractor will be expected to evaluate each of the individual programs/technology areas offered with SEP and EECBG funds (*i.e.*, Clean Fleets; Energy Efficiency for Municipalities, Schools, Hospitals, Public Colleges and Universities, and Non-Profits; Energy Codes; Renewable Energy; and the Sub-Grant Program for Small Municipalities). However, programs/technologies are not necessarily expected to receive an amount of evaluation attention and resources that are directly proportional to their respective budgets. NYSERDA will work with the selected contractor, during development of the Action Plan, to finalize the allocation of evaluation resources to each program/technology.

NYSERDA may, at its discretion, expand the selected contractor's agreement beyond the scope and funding of this RFP to address impact evaluation needs of other ARRA-funded programs or projects administered by it or other New York funding recipients.

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

The selected contractor will be responsible for timely completion of the requirements described in Section A, Services Requested. The selected contractor must assume overall responsibility for coordinating and conducting field work and surveys (whether done by the contractor or one or more subcontractors), and have responsibility for completing all deliverables contained in the resultant contract. The contractor must complete annual impact evaluation reports, with the first one due 12 months after approval of the Action Plan, and a final impact evaluation report by a date yet to be determined.

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

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<sup>3</sup> U.S. DOE, Financial Assistance Funding Opportunity Announcement, State Energy Program Formula Grants, Issue Date 3/12/09, pages 27 and 28.

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

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

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

### **Geographic Coverage**

- Must have and must be able to demonstrate in the proposal the capability to provide qualified, efficient and cost-effective field services across all of New York State.

### **Customer Coverage**

- Must have the experience and ability to work with, and conduct analysis for a wide variety of energy users including, but not limited to: municipal, local or county governments; public (State and City) university or community colleges; public K-12 schools; and public or private non-profit hospitals in communities throughout New York. A background and prior experience in the evaluation of renewable energy sources, low emission vehicles and vehicle fleets, and state energy codes is preferred.

**Technical Support Requirements:** The selected contractor must have proficiency in MS Excel, MS Access, MS PowerPoint, MS Word, and SPSS or SAS.

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

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

### **C. NYSERDA's Responsibility**

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

## D. Available Funds

The term of this contract will be for two years (plus a potential one-year extension) with a maximum funding amount of \$4 million. Of this total, \$3.6 million is available for the evaluation of the SEP Programs and \$400,000 is available for the evaluation of the EECBG Programs. NYSERDA will work with the selected contractor, during development of the Action Plan, to finalize the allocation of evaluation resources to each program/technology.

## E. Additional Sources of Information

Additional information regarding the American Recovery and Reinvestment Act of 2009 (ARRA) and New York State policy which may assist bidders in preparing a response to this RFP can be located at the Internet links listed in Table 3.

**Table 3. Sources of Additional Information on ARRA and New York State Policy**

<b>Information</b>	<b>Internet Link</b>
NYSERDA's Economic Recovery Main Menu Page	<a href="http://www.nyserda.org/economicrecovery/default.asp">http://www.nyserda.org/economicrecovery/default.asp</a>
Funding chart for ARRA Programs being offered by DOE and New York State	<a href="http://www.nyserda.org/pdfs/EconomicStimulusFunding.pdf">http://www.nyserda.org/pdfs/EconomicStimulusFunding.pdf</a>
Federal ARRA Program General Information	<a href="http://www.recovery.gov">http://www.recovery.gov</a>
State ARRA Program General Information	<a href="http://www.recovery.ny.gov">http://www.recovery.ny.gov</a>
State Energy Program (SEP) General Information	<a href="http://www.nyserda.org/Economicrecovery/sep.asp">http://www.nyserda.org/Economicrecovery/sep.asp</a>
New York's SEP Application	<a href="http://www.nyserda.org/Economicrecovery/documents/NYS%20SEP%20ARRA%20Grant%20Application.pdf">http://www.nyserda.org/Economicrecovery/documents/NYS%20SEP%20ARRA%20Grant%20Application.pdf</a>
Energy Efficiency and Conservation Block Grant (EECBG) General Information	<a href="http://www.nyserda.org/economicrecovery/blockgrants.asp">http://www.nyserda.org/economicrecovery/blockgrants.asp</a>
New York's EECBG Application	<a href="http://www.nyserda.org/pdfs/NYS%20EECBG%20Plan-%206-09-rev2.pdf">http://www.nyserda.org/pdfs/NYS%20EECBG%20Plan-%206-09-rev2.pdf</a>
New York Evaluation Guidelines for "15-by-15" Programs	<a href="http://www3.dps.state.ny.us/PSCWeb/PIOWeb.nsf/20b9016ae2129d5c852573db00779ee1/a4756ca0f43b7628852574b9006ffe45?OpenDocument">http://www3.dps.state.ny.us/PSCWeb/PIOWeb.nsf/20b9016ae2129d5c852573db00779ee1/a4756ca0f43b7628852574b9006ffe45?OpenDocument</a>

## III. PROPOSAL REQUIREMENTS

Proposals shall be prepared for a three-year effort, providing the details of the work and the associated budget as outlined below. We want to see the full three year scope and budget – we will contract for two years at the end of year two we can decide to exercise the option to renew.

Each proposal MUST contain two (2) signed and notarized Agreements (Attachment D, including Exhibits B, C & D). If your proposal is selected for funding, NYSERDA will work with the proposer to develop a Statement of Work which will be appended to Attachment D as Exhibit A and constitute the final Agreement. Once agreement on the Statement of Work has been reached, NYSERDA will append it to Attachment D, countersign the Agreement, and return one fully-executed copy of the Agreement. This process is intended to facilitate the approval of projects and the expenditure of ARRA funds as quickly as possible.

Proposers must submit ten (10) copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this RFP. A completed and signed Proposal Checklist (attached to this RFP)

must be attached as the front cover of your proposal, one of which must contain an original signature. Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned. Be sure that the individual signing the checklist is authorized to commit the proposer's organization to the proposal as submitted. Proposals that include teaming arrangements must designate one party as the lead contractor. Faxed or e-mailed copies will not be accepted.

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

**Section 1. Introduction. (2 pages maximum)**

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

**Section 2. Statement of Work. (20 pages maximum)**

Provide a general description of how the proposer will assess the impact of the described NYSERDA ARRA-funded SEP and EECBG Programs consistent with the requirements of DOE. Specifically, the proposer should describe their approach and methodology, and define their rationale for conducting the following tasks listed in Section II A: (1) develop an Action Plan outlining how you intend to implement the impact evaluation; (2) implement the Action Plan, including measurement and verification of the energy impacts, evaluation of macro-economic impacts, an assessment of attribution of impacts to the programs, and evaluation reporting; (3) assist in calculating the cost effectiveness of the programs; (4) provide other assistance related to impact evaluation of the ARRA Programs on an ad hoc basis.

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

Proposers shall identify all team members, including the Principal or Lead contact, who will be responsible for ensuring that the activities, analyses, and work products are timely and of good quality. Provide a clear description of the roles and responsibilities, and anticipated hours per month allocated to all key personnel. Note that hours allocated in the work schedule must be consistent with those in the budget. Provide the names and addresses of subcontractors. Provide an organization chart. Describe how you plan to coordinate the design of the impact evaluation plan and implementation services among all subcontractors and with NYSERDA. Discuss how you would manage and maintain flexibility to accommodate potentially short notification times and tight deadlines.

**Section 4. Qualifications. (10 pages maximum)**

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

**Section 5. Potential Conflict of Interest. (2 pages maximum)**

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

## **Section 6. Cost for the total project and proposal (20 pages maximum)**

Provide Contract Proposal Pricing Forms (Attachment E) for all three years of your proposal. A CPPF for each of the tasks requested under the Statement of Work in Section 2 above, including sub-tasks under Task 2a through 2e should also be provided. If site visits or surveys are proposed for Tasks 2a, b, or c, proposers should indicate their cost per site/survey and describe the data collection in the narrative so that reviewers may assess overall cost effectiveness (*e.g.*, discuss level(s) of measurement and verification data to be collected on site, audience(s) and survey length, etc.).

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

1. Describe the basis for the rates proposed (*i.e.*, based on prior period actual results; based on projections; based on federal government or other independently approved rates).
2. If rate(s) is approved by an independent organization, such as the federal government, provide a copy of such approval.
3. If rate(s) is based on estimated costs or prior period actual results, include calculations to support proposed rate(s). Calculations 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 adjustments for such differences. Requests for financial statements or other needed financial information may be made if deemed necessary.

*Appendices:* Materials to be submitted include:

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

## **IV. PROPOSAL EVALUATION**

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

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

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

***Comprehensiveness of Approach and Management Plan.*** Does the proposer demonstrate the ability to complete all aspects of the project? Has the proposer demonstrated the ability to institute appropriate data collection and field monitoring procedures? Are appropriate

management and coordination strategies articulated? Are sufficient resources being devoted to the project and each individual task? Is the project organization, including the staffing plan and schedule, clear and well defined? Is the staffing plan sufficient to provide timely deliverables?

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

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

## V. PROCUREMENT LOBBYING REQUIREMENTS

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

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

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

## VI. GENERAL CONDITIONS

**Proprietary Information** - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2) (d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be accepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 ([www.nyserda.org/nyserda.regulations.pdf](http://www.nyserda.org/nyserda.regulations.pdf)). However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

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

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

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

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

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

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

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

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

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

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

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

contract successful proposals. NYSERDA expects to notify proposers in approximately 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 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.

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## **VII. ATTACHMENTS**

**Attachment A – Proposal Checklist**

**Attachment B – Disclosure of Prior Findings of Non-Responsibility**

**Attachment C – Intent to Propose**

**Attachment D – Sample Agreement**

**Attachment E – Contract Proposal Pricing Form and Instructions**

**Attachment F – Preliminary Evaluation Guidelines from DOE (for SEP Programs)**



## Attachment A

### RFP 1656 -PROPOSAL CHECKLIST (MANDATORY)

#### American Recovery and Reinvestment Act (ARRA)

This completed form **MUST** be signed and attached to the front of your Proposal

Proposal Title		Due Date 11/5/09	
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><b>THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:</b></p> <p>Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) <span style="float: right;">__ Yes __ No</span></p> <p>Are you a Minority or Women-Owned Business Enterprise? <span style="float: right;">__ Yes __ No</span></p> <p>Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? <span style="float: right;">__ Yes __ No</span></p> <p>Are you submitting the required number of copies? (See proposal instructions.) <span style="float: right;">__ Yes __ No</span></p> <p>Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? <span style="float: right;">__ Yes __ No</span> (if yes, explain on separate page)</p>			
ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?			
<p>[Please attach a list of items consistent with the PON Requirements section of the solicitation and list the page on your Proposal that each item can be found.]</p>		<p>Indictment/Conviction of Felony (if applicable)</p> <p>NYSERDA Contracts Awarded (if applicable)</p> <p>Prior and/or Competing Proposals (if applicable)</p> <p>Signed and notarized agreement, including attachments</p> <p>Disclosure of Prior Findings of Non-responsibility Form</p>	
<p>For any member of the Proposing team, have you received, or do you expect to receive, over \$500,000 of Federal awards for any of the fiscal years during the term of our agreement? <span style="float: right;">Yes <input type="checkbox"/> No <input type="checkbox"/></span></p> <p>If yes, you are required to obtain an independent audit pursuant to the Federal Office of Management and Budget, OMB circular A-133, and provide a copy to NYSERDA throughout the term of this Agreement.</p>			

Did your organization receive: (1) more than 80% of its annual gross revenues in Federal awards, (2) \$25 million or more in annual gross revenues from Federal awards, and (3) the public does not have access to information about the compensation of the senior executives under filing requirements of the Security Exchange Act of 1934 or 780(d) or section 6104 of the Internal Revenue Code? Yes No  
 If no, provide the names and compensation of the five most highly compensated officers.

**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	



## 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: RFP 1656		
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)		





## Attachment C

### NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

#### INTENT TO PROPOSE

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

Roseanne Viscusi – RFP 1656  
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 – RFP 1656

### New York State Energy Research and Development Authority

#### STATE ENERGY PROGRAM AGREEMENT (“Sample Agreement”)

**Funding is provided from the American Recovery and Reinvestment Act of 2009 (Recovery Act), through the State Energy Program. Special terms and conditions apply to the use of these funds and a general description of the special terms and conditions are described below.**

**Contractors are required to comply with the National Environmental Policy Act in addition to the State Environmental Quality Review Act.**

**On all construction, alteration and repair projects, Contractors must comply with the Davis-Bacon Act concerning the paying of prevailing wages to mechanics and laborers employed directly upon the site, and for all projects by or for governmental agencies. Such Contractors must also comply with the New York State Department of Labor’s prevailing wage requirements.**

**All Work on public buildings or that constitutes a public work are subject to “Buy American Requirements.”**

**Funds must be obligated by NYSERDA within eighteen (18) months of October 17, 2010. Projects must be complete and all funds expended by NYSERDA by April 30, 2012. To ensure compliance, Contractors shall be required to complete Projects prior to such date, as specified in the solicitation.**

**Additional guidance from the Federal and State governments on the use of funds is expected and Contractors are required to meet any new Federal or State requirements.**

#### **To Be Completed by Contractor:**

1. Contractor:
2. Contact:
3. Project Period:
4. Federal ID:
5. DUNS Number:
9. Commitment Terms and Conditions

#### **To Be Completed by NYSERDA:**

6. Agreement Number:
7. Award Date:
8. Total Amount of Award: \$

This Agreement consists of this page through the signature page, plus the following attachments:

- Exhibit A Statement of Work, including Budget, Schedule
- Exhibit B General Contract Provisions, Terms, and Conditions
- Exhibit C Standard Terms and Conditions
- Exhibit D Prompt Payment Policy Statement

Addenda to include additional Federal or State requirements.

## SPECIAL TERMS AND PROVISIONS APPLICABLE TO RECEIPT OF RECOVERY ACT FUNDS

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (Recovery Act), was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, and stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Contractors shall use funds in a manner that maximizes job creation and economic benefit.

The Contractor shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in the Act itself and as discussed below, and shall require its contractors and subcontractors to comply, as appropriate.

The Contractor and the Authority understand that the following provisions may be changed and additional requirements may be added and that each agrees to be bound by such changes, additions, and guidance as may be issued with respect to, and as required under, the Recovery Act or by the State.

### I. Reporting Requirements

The Contractor agrees to obtain, retain, prepare, and provide to the Authority or the Federal Office of Management and Budget, as requested by the Authority, without limitation, the information required by the Recovery Act including but not limited to:

1. Monthly reports setting forth the percentage of the Project having been completed.
2. Monthly reports providing a description of the employment impact of Recovery Act funded work. The report should include:
  - (i) a brief description of the types of jobs created and jobs retained;
  - (ii) an estimate of the number of jobs created and jobs retained; and
  - (iii) an estimate of the number of hours worked in the jobs created and retained.
3. Contractor's nine digit Data Universal Numbering System (DUNS) number and Central Contractor Registration plus four extended DUNS number.
4. Amount awarded to Contractor.
5. Amount received by Contractor.
6. Contractor type.
7. Date of award.

8. Projected period of performance.
9. Place of performance and area of benefit.

10. The names and compensation of the five most highly compensated officers of the Contractor if the Contractor in the preceding fiscal year received:

- (i) 80 percent or more of its annual gross revenues in Federal awards; and
- (ii) \$25,000,000 or more in annual gross revenues from Federal awards; and
- (iii) the public does not have access to information about the compensation of the senior executives of the Contractor through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), or 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 USCS 6104].

11. List of Vendors awarded contracts and their DUNS number or name and zip code of headquarters.

Contractor shall provide the foregoing reporting information on forms prescribed by the Authority within five (5) business days of the end of the month unless otherwise required by the Authority. Contractor further agrees to provide any additional information deemed necessary in the sole discretion of the Authority, to enable the Authority to comply with its reporting requirements under the Recovery Act and to respond to any Federal or State inquiry regarding the Work (as defined in Exhibit B).

## II. Buy American

With respect to Work performed on public buildings or that constitutes a public work, the Contractor acknowledges to and for the benefit of the Authority that it understands the Work being financed herein is being funded with monies made available by the Recovery Act and that such law contains provisions commonly referred to as “Buy American” requiring all iron, steel and manufactured goods used in the Work to be produced in the United States (“Buy American Requirements”) and used by the Contractor or its contractors and subcontractors. The Contractor hereby represents and warrants to and for the benefit of the Authority that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the Work will be or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the Requirements is approved by an appropriate Federal agency, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the Authority, including from each contractor and subcontractor which has a contract financed with Recovery Act funds. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Authority to recover any Recovery Act funds paid and any damages against the Contractor including any loss, expense or cost (including without limitation attorney’s fees) incurred by the Authority resulting from any such failure (including without limitations any impairment or loss of funding, whether in whole or in part, from the U.S. Department of Energy (“DOE”) or the State or any damages owed to DOE or the State by the Authority). The Authority and the Contractor agree that DOE and the State are third party beneficiaries and may enforce the requirements of this Agreement.

A waiver may be provided, if an appropriate Federal agency determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel and manufactured goods produced in the United States will increase the cost of the overall Work by more than 25 percent. The Contractor must obtain any waiver(s) directly. All requests for waivers shall be provided to the Authority for review prior to submission. Copies of any waivers granted to the Contractor must be provided to the Authority. Additional guidance on the Buy American Requirements and waiver process can be found on [www.recovery.gov](http://www.recovery.gov).

### III. Wage Rate Requirements

In accordance with the Recovery Act and other Federal requirements and the New York State Labor Law, all laborers and mechanics employed by contractors and subcontractors providing construction related services on the Work shall be paid wages at rates not less than those prevailing on Works of a character similar in the locality as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code, and as required by the New York State Department of Labor.

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the Work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the Work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. An additional classification and wage rate and fringe benefits therefore will be approved only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contractor agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contractor to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, is required to approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contractor or will notify the Contractor within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contractor do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contractor shall refer the questions, including the views of all interested parties and the recommendation of the Contractor, to the Administrator for determination. The Administrator, or an authorized representative, is required to issue a determination within 30 days of receipt and so advise the Contractor or will notify the Contractor within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or

working on the site of the Work, all or part of the wages required by the contract, the Authority may, after written notice to the Contractor, sponsor, applicant, and owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Authority or the Wage and Hour Division of the Federal or State Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Contractor to require a subcontractor to provide addresses and social security numbers to the Contractor for its own records, without weekly submission to the Authority.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information described under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; and

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code and other New York State statutes, rules and regulations.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Authority or the State or Federal Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, after written notice to the Contractor, sponsor, applicant, or owner, the Authority and other Federal and State agencies may take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.

(4) *Apprentices and trainees* -- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate

specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, 29 CFR part 30, and the New York State Human Rights Law.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Agreement.

(6) Subcontracts. The Contractor or subcontractor shall insert this section in any subcontracts and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these requirements.

(7) Contract termination: debarment. A breach of this section may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12 and in this Agreement.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this Agreement shall not be subject to the general disputes clause of this Agreement. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR parts 5, 6, and 7 or the New York State Department of Labor. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Authority, the U.S. Department of Labor, the New York State Department of Labor or the employees or their representatives.

(10) *Certification of eligibility.* (i) By entering into this Agreement, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Contractor shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any contract in excess of \$2,000 for construction, alteration or repair (including painting and decorating) being paid with Recovery Act funds.

#### IV. New York State Requirements

Contractor, if it is a vendor, shall comply with the following New York State requirements:

##### 1. Posting Job Listings on the New York State Job Exchange

###### **Option 1:**

The **preferred** approach is for the company to initially register through the New York State Department of Labor's Job Exchange <http://www.labor.state.ny.us> website for an employer account. This service allows the employer to directly manage its job orders status throughout the recruitment process. Approval for access is received within 3 business days which allows the employer to then list its job orders. The job orders are open to the public on this website and the job orders also roll over into the Department of Labor's One Stop Operating System (OSOS) for local One-Stop service.

###### **Option 2:**

The employer can complete a job order form and fax it to either of the following as appropriate. For jobs that are located in New York City, the employer can use the NYC Fast Fax form [http://www.labor.state.ny.us/formsdocs/does/ES515\\_584.pdf](http://www.labor.state.ny.us/formsdocs/does/ES515_584.pdf) and fax it to (718) 780-9458. Regarding jobs that are located outside of New York City, the employer can use the NYS Fast Fax Form <http://www.labor.state.ny.us/formsdocs/does/es515.pdf> and fax it to (518) 485-1333.

**Option 3:**

The employer can e-mail specifics of its job orders by using a fillable NYS Job Order Form <http://www.labor.state.ny.us/businessservices/PDFs/FastFax%20Electronic.rtf>. If the jobs are located in New York City, the employer would send the completed form to the [DoES\\_LO584@labor.state.ny.us](mailto:DoES_LO584@labor.state.ny.us) address. If the jobs are located outside of New York City, the employer would send the completed form to the [nysjobbank.does@labor.state.ny.us](mailto:nysjobbank.does@labor.state.ny.us) address.

**Option 4:**

The employer can speak with a representative concerning the placement of a job order. If the jobs are located in New York City, the employer should call (718) 780-9499. If the jobs are located outside of New York City, the employer should call 1-888-4-NYSDOL.

2. Since this Agreement contains ARRA stimulus funds, the vendor will post any jobs that it creates or seeks to fill as a result of the stimulus funding. Vendors will post through the New York State Department of Labor (<http://www.labor.state.ny.us>), notwithstanding any other posting they might make. Any advertisements posted by the vendor for positions pursuant to this contract must indicate that the position is funded with stimulus funds. The Department of Labor may waive the requirements of this section at its discretion.

3. The vendor will maintain detailed records of its expenditure of 2009 stimulus funds in connection with this Agreement and submit reports as requested by the State of New York. The State of New York, as the recipient of funds under the ARRA, is subject to quarterly reporting requirements and oversight by Federal agency inspectors. Additional reports may be required under this Agreement.

4. The vendor is also responsible for holding all sub grantees to the above reporting requirements.

5. Agreement Funding

- a. State General Fund Dollars \_\_\_\_\_
- b. Federal Fund Dollars \_\_\_\_\_
- c. ARRA Stimulus Dollars \_\_\_\_\_
- d. Other Fund Dollars \_\_\_\_\_

Agreement Total \_\_\_\_\_

V. Additional Covenants

1. The Contractor agrees to promptly refer to DOE’s Inspector General any credible evidence that a principal, employee, agent, contractor, subcontractor, loan contractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Agreement.

2. The Contractor acknowledges, and agrees to comply with the “whistleblower” protections set forth in Section 1553 of the Recovery Act related to disclosure of mismanagement of contracts, waste of funds, health and safety dangers, abuse of authority, or any violation of laws, rules or regulations related to the use of funds provided under this Agreement. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course

of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of: gross mismanagement of an agency contract or grant relating to covered funds; a gross waste of covered funds; a substantial and specific danger to public health or safety related to the implementation or use of covered funds; an abuse of authority related to the implementation or use of covered funds; or as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds. Contractor shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the Recovery Act, see [www.Recovery.gov](http://www.Recovery.gov), for specific requirements of this section and prescribed language for the notices.)

3. Contractor shall include Recovery Act special terms and conditions in any subcontract.

4. Contractor shall segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. Contractor shall maintain backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Contractor shall provide copies of backup documentation at the request of the Authority.

5. SEP funding may not be used to supplant or replace existing state, ratepayer or other funding.

6. No part of the funds from the Recovery Act shall be commingled with any other funds or used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

7. Contractor shall cooperate with and agrees to allow, with respect to each financial assistance agreement awarded using at least some of the funds appropriated or otherwise made available by the Recovery Act, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General:

(i) to examine any records of the Contractor, any of its subcontractors, or any State or local agency administering such contract that pertain to, and involve transactions related to, the contract or subcontract; and

(ii) to interview any officer or employee of the Contractor, grantee, or agency regarding such transactions.

8. The Contractor acknowledges and agrees that the Work is subject to the Federal audit requirements of the Single Audit Act of 1984, and that it will comply with the requirements of the Single Audit Act of 1984 (31 USC 7501 *et seq.*) and all laws and regulations implementing same including without limitation 40 CFR Part 31, all as amended from time to time (collectively, the "Single Audit Act"). This shall include, without limitation, having either a single audit or a program-specific audit for any of the Contractor's fiscal years in which it expends a total amount of Federal financial assistance equal to or in excess of \$500,000.

9. Contractor shall also comply with the applicable requirements of:

- (i) Anti-Discrimination and Equal Opportunity requirements
- (ii) Title VI of the Civil Rights Act of 1964
- (iii) Title IX of the Education Amendments of 1972
- (iv) Section 504 of the Rehabilitation Act of 1973
- (v) Age Discrimination Act of 1975
- (vi) Anti-discrimination requirements of program-specific statutes
- (vii) Fair Housing Act
- (viii) Fair Credit Reporting Act
- (ix) Americans With Disabilities Act
- (x) Title VII of the Civil Rights Act of 1964
- (xi) Equal Educational Opportunities Act
- (xii) Age Discrimination in Employment Act
- (xiii) Uniform Relocation Act
- (xiv) Intellectual Property Provisions
- (xv) National Environmental Policy Act
- (xvi) National Historic Preservation Act, and related statutes (including processes for project review and documentation)
- (xvii) DOE contract requirements (10 CFR Part 600 et. seq.).

Contractor shall comply with all additional Federal and State requirements that are or may be attached hereto in the form of Addenda.

**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 provided in final form Agreement]

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

Budget: The Budget set forth in Exhibit A hereto.

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

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

Contractor: The Contractor identified in Item 1 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 their confidentiality; and

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

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

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

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

Technical Data: Recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental or developmental, or demonstration, or engineering work, or

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

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

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

## Article II

### Performance of Work

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

Section 2.02. Project Personnel. It is understood and agreed that the "Contact Person" identified in Item 2 of page one of the Agreement shall serve as Project Director and as such shall have the responsibility of the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA.

## Article III

### Deliverables

Section 3.01. Deliverables. All deliverables shall be provided in accordance with the Exhibit A Statement of Work and the other provisions of this Agreement.

## Article IV

### Payment

Section 4.01. Compensation. In consideration for this Agreement and as full compensation for the costs for the performance of all Work and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor the actual cost incurred as set forth in the Budget up to a maximum amount set forth in Item 8 of page one of the Agreement, subject to the provisions and restrictions contained herein. Such amount shall be paid only to the extent that costs are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement, the Budget and the following:

(a) Staff Charges: The Contractor shall be compensated for the services performed by its employees under the terms of this Agreement at the employee's actual wage rate.

(b) Direct Charges: The Contractor shall be reimbursed for reasonable and necessary actual direct costs incurred (e.g., equipment, supplies, travel and other costs directly associated with the performance of the

Agreement) to the extent required in the performance of the Work in accordance with the provisions of the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs should generally not exceed the daily per diem rates published in the Federal Travel Regulations. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate.

(c) Indirect Costs: The Contractor shall be reimbursed for fringe benefits, overhead, general and administrative (G&A), and other indirect costs included in the Budget at such rates as the Contractor may periodically calculate, consistent with appropriate Federal guidelines or generally accepted accounting principles.

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

Section 4.02. Progress Payments. The Contractor may submit invoices for progress payment no more than once each month or no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable." Such invoices shall make reference to the Agreement number shown in Item 6 of page one of the Agreement. Invoices shall set forth total project costs incurred. They shall be in a format consistent with the cost categories set forth in the Budget and any prevailing wage requirements. Invoices shall provide reasonable documentation for the above to provide evidence of costs incurred, including:

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

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

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

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

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

Section 4.03. Title to Equipment. Except as specifically set forth in the Statement of Work, title shall vest in NYSERDA to all equipment purchased hereunder, until such time as the equipment is permanently attached and becomes a fixture.

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, and any required measurement and verification, 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 8 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 8 of page one of the Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.08. Audit Adjustment. NYSERDA, the State and involved Federal agencies 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, the State or a Federal agency 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 and this Agreement.

Article VII

Force Majeure

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

Article VIII

Technical Data

Section 8.01. Rights in Technical Data.

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

(1) NYSERDA shall have:

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

(2) The Contractor shall have:

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

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

## Article IX

### Warranties and Guarantees

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

- (a) it is financially and technically qualified to perform the Work;
- (b) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;
- (c) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted construction and design standards and best engineering practices;
- (d) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted construction and design standards and best engineering practices;
- (e) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;
- (f) there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or NYSERDA's rights hereunder;
- (g) it has no actual knowledge that any information or document or statement furnished by the Contractor in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading, and that all facts have been disclosed that would materially adversely affect the Work; and
- (h) Contractor certifies that all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate.

## Article X

### Indemnification

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

## Article XI

### Insurance

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

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

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

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

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

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

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

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

## Article XII

### Stop Work Order; Termination

Section 12.01. Stop Work Order.

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

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

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

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

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

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

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

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

#### Section 12.02. Termination.

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

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

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

### Article XIII

#### Independent Contractor

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

Article XIV

Compliance with Certain Laws

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

Section 14.02. All Legal Provisions Deemed Included. It is the intent and understanding of the Contractor and NYSERDA that each and every provision of law required by the laws of the State of New York or the Recovery Act or a Federal rule or regulation or directive, interpretation or guidance 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 through Addenda or other written communication from the Authority so as to comply strictly with the laws of the State of New York or the United States and to comply with such directive, interpretation or guidance with respect to the inclusion in this Agreement of all such provisions.

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

Article XV

Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Publicity.

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

(b) The Contractor shall not use NYSERDA's corporate name, logo, identity, any affiliation, or the service mark **New York Energy \$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 to comply with future Federal or State requirements relating to the Recovery Act, which shall be effective in accordance with its terms or as directly by the Authority, this Agreement may not be further changed, waived, discharged or terminated except 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 Special Terms and Provision Applicable to Receipt of Recovery Act Funds, any Addenda, and the terms of any Exhibits and attachments thereto, the terms of the Special Terms and Provision Applicable to Receipt of Recovery Act Funds, the Addenda and 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.



## Attachment E

### Contract Pricing Proposal Form

New York State Energy Research and Development Authority Contract Pricing Proposal Form			Solicitation/Contract No. 1656	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 F

### State Energy Program Evaluation Guidelines

It is important that the results achieved with funds provided by the American Recovery and Reinvestment (Recovery Act) be documented and assessed. These guidelines are provided to assist States in planning and conducting and evaluations of their State Energy Program (SEP) Recovery Act programs. This evaluation guidance is divided into two parts. The first part is intended to guide the states' administrative and management efforts while the second part presents technical standards pertaining to the methods used to conduct program evaluations.

#### ADMINISTRATIVE AND MANAGEMENT STANDARDS

The following administrative and management standards apply to the SEP national evaluation, and are recommended to the States as well. These standards allow evaluation efforts to be implemented using a number of approaches, provide flexibility in determining how SEP/ARRA reporting objectives are met, and avoid the necessity to acquire significant new staff resources or evaluation management capabilities.

1. **Evaluation Metrics:** All projects supported by SEP/ARRA funds should be evaluated via an evaluation process that focuses on reporting metrics which reflect the principal objectives of the State Energy Program. The national evaluation will focus on the following list of metrics, and the States may wish to focus on them as well, adding others if desired to reflect individual priorities:
  - a. Energy and demand savings
  - b. Renewable energy capacity and generation
  - c. Carbon emissions reductions
  - d. Job creation (including number, type, and duration)

Other possible metrics include, but are not limited to, economic impacts (in addition to job creation) and the adoption of new technologies.

2. **Independent Evaluations:** programs must be evaluated independently in order to obtain reliable results. SEP Recovery Act evaluations should be conducted by independent evaluators who have no financial or management interests in the projects being evaluated. The evaluators should be independent professionals who do not benefit, or appear to benefit, from the study's findings, and the state program managers and administrators should have no influence on the findings of the study that is conducted.
3. **Attribution of Effects:** Evaluations of SEP Recovery Act-funded efforts should document the resulting effects (energy savings, renewable generation, carbon reductions and job creation) that are above and beyond the effects that would have been achieved without those funds. That is, studies should focus on net effects of the SEP Recovery Act initiatives. The effects of jointly funded initiatives will be allocated to the Recovery Act in proportion to the percentage of those funds in relation to total program or project funding.
4. **Evaluation Budgeting:** Evaluation budgets should be established so that reliable results are generated and reported. Typically, outcome evaluations require the allocation of between 2% and 8% of the program/project budget depending on the size and type of program/projects being evaluated. However, evaluation budgets also depend on the level of research rigor applied to those studies. For the purpose of planning SEP evaluation efforts, we recommend that states allocate 5% or less of their SEP Recovery Act funds for that purpose
5. **Timing of the Evaluation:** Planning for an evaluation (identification of key metrics, research questions, date requirements, etc.) should begin at the same time that project activities are initiated. For many states, the services of an independent evaluator may not be immediately available upon project start-up, meaning that there may be a lag in the collection of baseline data regarding some important metrics. However, such data collection should begin as soon as possible and record-keeping on project expenditures and activities should start immediately. Evaluations should be structured to provide information to program managers as early as possible while still providing necessary rigor and reliability. It would be extremely helpful to the

national SEP evaluation if State evaluations are structured so that initial study results are available within 12 months.

## TECHNICAL EVALUATION STANDARDS

The following technical standards are recommended for evaluations to be performed on SEP Recovery Act-funded programs:

1. **Study Design:** The development of the evaluation approach should be independent of project administrators and implementers and should be capable of being implemented within the evaluation budget available for the study. The independent evaluator should work with project administrators to understand the project and its operational processes and establish an evaluation approach that is reliable and cost conscious.
2. **Study Rigor Level:** The study results should be reliable. This means that the study approach must be rigorous and capable of accurately assessing impacts using the relevant SEP metrics. The studies should be designed to fit within the evaluation budget without budget overruns, and should be conducted at the highest possible level of research rigor within that budget.
3. **Reliability of Findings:** The evaluation approach should be designed in a way that provides findings with the highest level of reliability achievable with the available research budget.
4. **Threats to Validity:** The independent evaluator should assess the various threats to validity for the study design and analytical approach and develop a study plan that minimizes those threats and reduces the associated level of uncertainty.
5. **Alternative Hypotheses:** To the extent possible, the study design should be developed in a way that addresses alternative hypotheses regarding how observed effects may have occurred.
6. **Ability to Replicate:** The methodological description of the study should be sufficiently detailed to allow the research design to be assessed for appropriateness by outside reviewers. The description should also be sufficiently detailed to allow the study to be replicated by other evaluation professionals.
7. **State-of-the Art Analysis:** The study approach should, to the extent possible, use current state-of-the-art evaluation approaches that maximize the use of technical advancements and the most current analytical approaches.
8. **Unbiased Assessment:** The evaluation design, data collection efforts, analytical approach, and reporting of results should be objective and unbiased. Unsubstantiated claims or unsupported conclusions or personal points of view should be excluded and the study results should be based on objective data/information analysis.
9. **Attribution of Effects:** The study should focus on identifying the outcomes of the project in question and identify the net effects that can be attributed to the State Energy Program's implementation and support efforts.
10. **Use of Skilled Professionals:** The evaluation should employ and be led by evaluation professionals who are trained, skilled, and practiced within the area of research associated with the study being conducted.
11. **Conflict of Interest:** Evaluators must disclose any real or perceived conflicts of interest that they might have.

Comments and questions relating to the above standards (both administrative and technical) should be addressed to Faith Lambert at 202-586-2319 or [faith.lambert@ee.doe.gov](mailto:faith.lambert@ee.doe.gov).