
**Energy Smart Focus Program
Request For Proposals (RFP) 1076**

Proposals Due: March 17, 2008 by 5:00 PM Eastern Time*

SUMMARY OF REVISIONS

The following changes have been made to RFP 1076, “Energy Smart Focus Program”:

- The proposal due date has been extended from February 7, 2008 to March 17, 2008.
- Informational sessions for potential proposers will be held in Syracuse, NY on February 26, 2008 and in New York City on February 27, 2008. A conference call dial-in number will be available. Additional information is available at www.nyserda.org.



Energy Smart Focus Program
Request for Proposal (RFP) 1076
\$3,100,000 Available

Proposals Due: March 17, 2008 by 5:00 PM Eastern Time*

PROGRAM SUMMARY:

The New York State Energy Research and Development Authority (NYSERDA) requests proposals from firms to assist NYSERDA in achieving greater energy efficiency awareness and energy efficiency penetration among its customers as it moves toward a sector-based approach to program delivery. Sector-based program delivery is expected to make it easy for customers to access specific programs, services, products and technologies, training and educational materials that are relevant to them; contractors and other allies to help them achieve their energy reduction goals, and trade organizations and other associations for further support. The firms selected will help NYSERDA develop programmatic strategies that are appropriate for each of the sectors, resulting in actions that make their new or existing facilities more energy efficient. Strategies to consider include, but are not limited to: benchmarking, targeted marketing materials and messages, one-on-one interaction, training, development of informational resources and tools, leveraging partnerships with trade associations, integration with regional and national efforts and recognition of sector leaders, as well as guidance for customers in using the existing Power-Saving Partners Program and the **New York Energy SmartSM** programs and services.

Proposers may submit proposals for one or more of the following three sectors: Healthcare Facilities, Colleges & Universities and Local Governments. NYSERDA anticipates that it will award one contract per sector, though proposers may submit proposals to more than one sector. Teaming is allowed. The initial contract will be for a one-year period with two, two-year optional contract extensions for a maximum contract duration of 5 years.

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

Roseanne Viscusi, RFP 1076
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

Informational sessions for potential proposers will be held in Syracuse, NY on February 26, 2008 and in New York City on February 27, 2008. A conference call dial-in number will be available. Additional information is available at www.nyserdera.org.

If you have technical questions concerning this solicitation, contact Gregory Lampman at (518) 862-1090, ext. 3372 or ggl@nyserdera.org. If you have contractual questions concerning this solicitation, contact: Doreen Darling at (518) 862-1090, ext. 3216 or djd@nyserdera.org.

No communication intended to influence this procurement is permitted except by contacting Gregory Lampman (Designated Contact) at (518) 862-1090, ext. 3372 or ggl@nyserdera.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.

Sector specific questions should be directed to:

- Colleges & Universities – **Jaime Ritchey, (518) 862-1090 Extension 3517 or jrr@nyserdera.org**
- Local Governments – **Charle-Pan Dawson, (518) 862-1090 Extension 3244 or cad@nyserdera.org**
- Healthcare Facilities – **Rachel Adams, (212) 971-5342 Extension 3016 or rra@nyserdera.org**

*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.nyserdera.org.

I. INTRODUCTION

NYSERDA has spent many years developing a host of very successful programs for its customers. As NYSERDA continues to expand program offerings and add new opportunities and incentives for customers, customers are often confused about how to access programs and services, or more importantly, do not fully understand the menu of opportunities available to them. Some of NYSERDA's programs have become more complex and often involve knowledge of processes outside of NYSERDA's purview, such as permitting of generation sources or access to the New York Independent System Operator (NYISO). Additionally, because of the increased need to reduce demand in the New York metropolitan area, incentive levels are different from the rest of the State, and certain technologies are specific or more appropriate to that locale. For these reasons, it is imperative that NYSERDA move toward an internal structure that supports customers who want assistance. Sectors have varying technological needs, value propositions, and future prospects. Energy efficiency technologies and programs that are keyed to those needs, value propositions, and prospects are likely to be more successful than broad scale efforts with no specific target in mind. By providing services specifically designed and packaged to complement a sector's core mission and unique operating characteristics, additional understanding and implementation of energy efficiency can be achieved.

Sectors such as Healthcare Facilities, Colleges & Universities, and Local Governments have substantial energy efficiency and energy cost savings potential, but each has unique barriers to acceptance of new technologies and concepts. For example, many hospitals are typically driven to make upgrades only when equipment failures occur or to remain in good standing when the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Many local governments face issues with how to begin, plan, execute, and finance sustainable projects that reduce both energy consumption and greenhouse gas emissions, even though these projects often have the ability to repay themselves in a relatively short period of time compared to other public investments.

This RFP is designed to select contractors to develop and implement sector specific approaches and services for the Healthcare Facilities, College & Universities, and Local Government sectors of New York State. Each sector approach will use the existing portfolio of NYSERDA programs in conjunction with other strategies and services appropriately customized. Strategies and services to be considered may include, but are not limited to: benchmarking, targeted marketing materials and messages, one-on-one interaction, training, development of informational resources and tools, leveraging partnerships with trade associations, sustainability initiatives, integration with regional and national efforts, recognition of sector leaders, and help with accessing NYSERDA incentives and other opportunities.

II. PROGRAM REQUIREMENTS

A. General Services Requested

The objective of the Energy Smart Focus Program (the Program) is to provide targeted sectors with customized services so that customers may better understand and implement: energy efficiency and peak-load reduction measures, sustainable design and operation, renewable energy, and alternate-fuel vehicle projects as appropriate to the sector. In addition to energy-related benefits, strategies will vary by sector and be developed to leverage non-energy benefits, such as: satisfying environmental regulations, improving

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productivity, promoting economic development, improving indoor environmental quality, and implementing maintenance savings, which often influence energy efficiency decisions.

Each sector will be assigned a NYSERDA project manager who will be responsible for overseeing the selected Proposers efforts and coordinating internally to ensure that there is consistency in the information provided to customers and that it reflects the goals and objectives of the **New York Energy SmartSM** Program. The selected Proposers will also be required to coordinate with other NYSERDA project managers and contractors. Through the Business Partners Program, NYSERDA has selected contractors to assist in developing strong working partnerships with our existing market supply channel participants (lighting vendors, product distributors, HVAC contractors, etc.) to further promote energy efficiency to commercial customers. Contractors selected as a result of this Program solicitation will need to work closely with the Business Partners Program Contractors to incorporate the partnership component into their sector-based plan of action.

The Program will be an information transfer and marketing effort that will use existing core **New York Energy SmartSM** and Power Savings Partners programs along with the services and strategies developed by the sector selected proposers. A list of generalized potential services is provided below. Services and strategies which are more specific to individual sectors are provided in the next section of this solicitation. While proposers should consider including the strategies and services below in their proposal, not all of them need to be included. It is expected that successful proposers will choose services and strategies appropriate for the sector, modify and prioritize them, and provide additional services and strategies not included, in an effort to better achieve the goals of this Program.

- Benchmarking - A rating methodology that scores and tracks a facility's energy usage and other factors over time to help establish relative efficiency and improvement goals. Benchmarking may also compare a facility's energy use to its peers, identifying facilities with higher potential for energy savings.
- Targeted marketing materials and messages - materials designed to motivate key market stakeholders to take action. These materials may offer technical or historical sector information and strategies. Examples include: sector case studies, white papers, technical information, customization and repackaging of program information, etc.
- One-on-one interactions and outreach - direct customer assistance will help facility managers and decision-makers develop action plans and take advantage of energy efficiency and demand management opportunities. The focus will be on recruitment of new participants to NYSERDA programs and developing and maintaining ongoing customer relationships.
- Training - may include educating customers on energy efficiency and demand reduction strategies, program opportunities, efficient operation of equipment and processes, procurement of energy-efficient products, etc. Training should encourage a long-term commitment to superior performance and be strategically tied to program resources and services.
- Partnerships with trade associations - establish partnerships with organizations and associations that result in ongoing education specific to the sector, reduce duplication of efforts, and facilitate the ability to reach the associations' constituents through established resources like newsletters, conferences, websites and training. These partnerships can increase the effectiveness of other strategies by leveraging additional resources.
- Materials and Tools - may include the development of guidelines, technical resources, simple estimator tools and other technical resources designed to assist customers achieve program goals.

- Integration with regional and national efforts - collaboration with organizations such as: the U.S. Environmental Protection Agency (EPA), U.S. Department of Energy (DOE), Northeast Energy Efficiency Partnership (NEEP), the Consortium for Energy Efficiency (CEE), the American Council for an Energy Efficient Economy (ACEEE), Motor Decisions Matter, ENERGY STAR[®], Pump Systems Matter, and the Compressed Air Challenge.
- Assistance with Sustainability – construction and operation of facilities can have enormous direct and indirect impacts on the environment. By assisting interested “customers” in evaluating and implementing sustainable practices, energy efficiency is often enhanced.
- Recognition - may include awards, promotions and other forms of customer recognition demonstrating customer efforts to reduce consumption or improve their energy efficiency. Recognition efforts should be designed to lead to recruitment of other “customers” and create additional interest in maintaining efficiency in the target sector. Organizations and/or individuals may be recognized.

The sector-specific approach will be defined by the proposer and must include the services and strategies to provide the greatest impact on energy awareness and energy efficiency penetration into the sector. It is anticipated that each sector will require a unique portfolio of services and strategies. The proposal must explain how these services and strategies will integrate with existing NYSERDA programs. If the proposer's team is in a unique position to provide or leverage services, these additional benefits should be identified as part of the proposal.

Descriptions of sector strategies and services should be as detailed as is reasonable in the proposal. It is anticipated that a majority of the efforts will be funded on a time and materials basis. Where possible, the funds and hours allocated to a particular service or strategy should be estimated and included in the proposal. Similarly, if a lump sum task is included, the actual task costs and deliverables should be detailed.

Proposers are encouraged to propose and justify the best portfolio of services. This portfolio may or may not require use of all available funds, and the services provided may be modified at NYSERDA’s discretion during contract negotiations or over the course of the contract. NYSERDA encourages, but does not require, cost-sharing (e.g., in-kind contributions, funding from other organizations, etc.) for all projects.

B. Specific Services Requested

The following are brief descriptions of sector-specific information and services. Where a service is required, it must be included in the proposal. Where information or suggestions are provided, proposers should consider including them in their proposals, but may modify and add to them as they deem appropriate. It is important to remember the overall goal is to offer a portfolio of services and strategies which provide the greatest impact on energy awareness, and energy efficiency penetration into the sector in a cost-effective manner.

Colleges & Universities

This sector includes any and all higher education facilities and campuses in New York State including but not limited to: private colleges and universities, community colleges, and State universities. This sector includes all buildings, infrastructure, vehicles, and operations of campuses.

- The proposal should demonstrate the proposer’s proficiency with the following topics:

- Energy efficiency, renewable energy, and environmental improvement technologies applicable to Colleges and Universities.
- Processes and procurement methods which can vary substantially based on the type of college/university.
- Power purchasing (including green power purchasing options) rate analysis and aggregation opportunities.
- It is anticipated that proposers will be providing the following services for a limited number of campuses with the purpose of creating a roadmap or template for other similar campuses to follow.
 - Develop a baseline inventory of a campus (including dormitory, classroom, office, and other facilities) energy consumption (electric, gas, fuel oil, and other) and resulting waste streams, including quantifying greenhouse gas emissions.
 - Gathering all appropriate information from local utilities.
 - Assist in the planning, financing and implementation of strategies to reduce their environmental footprint and lower their energy costs. This should include, but not be limited to leveraging the use of existing NYSERDA programs.
 - Development of a long-term plan for energy efficiency and sustainability.
- The proposer must demonstrate the ability to perform outreach activities to assist in the delivery of NYSERDA programs and services. This includes, but is not limited to: arrange site visits and meetings with appropriate campus staff, create case studies and training materials, and explore the beneficial need of creating a conference or workshop such as the SUNY Sustainability Conference held in November, 2007.
- Proposers must reach out to state and national organizations such as Association of Physical Plant Administrators (APPA), Society for College and University Planning (SCUPA), and others to see how energy currently plays a role in the organization(s) and examine ways to further promote and integrate sustainability to their members. The proposal must demonstrate how these efforts will be cost effectively accomplished and what the deliverable will be.
- The proposal must demonstrate how the success of the Program will be tracked and monitored. Items may include benchmarking and monitoring of energy performance, report on metrics, maintaining a state-wide database of customer contacts and details of Program impacts, developing feedback tools to evaluate the service and recommend opportunities for continuous improvement.

Healthcare Facilities

For the purposes of this RFP, Healthcare refers to the following facility types: acute care, hospitals, behavioral health, outpatient or ambulatory clinics, and long-term (assisted) care. This sector includes all buildings, infrastructure, equipment and operations of the healthcare facilities.

- The proposal must detail how a strategic marketing plan which promotes energy efficiency within the healthcare sector will be developed.
- The proposal must present a strategy to motivate hospital participation in NYSERDA's programs by communicating energy and non-energy benefits that align with the objectives, goals, and metrics common to New York State healthcare institutions.
- The proposer must demonstrate how they will leverage the public sector (e.g. local, state, and federal government entities, including the New York State Department of Health and the Joint Commission) and appropriate legislation (e.g. fiscal, regulatory and health and safety requirements) to incorporate energy efficiency as a necessary part of Healthcare standards and requirements.

- The proposer must explain how they will identify and work with consulting and design firms to promote inclusion of energy efficiency measures in the design, construction and rehabilitation of Healthcare facilities.
- The proposal must include a plan to inform, educate, and promote Green Guide for Healthcare (GGHC) and Leadership in Energy and Environmental Design (LEED). Additionally, the proposal must include methods to provide cost-effective Professional Engineering certifications as required by ENERGY STAR®, LEED, and GGHC to apply for Leader Awards or Building Labels for healthcare facilities across New York State.
- The proposal must include the establishment of an advisory group to facilitate communication of energy efficiency options and programs to the sector as well as to provide feedback on the planning and execution of the Program.
- The proposal should demonstrate the proposer’s proficiency and/or familiarity with the following topics:
 - Experience with successful healthcare sector marketing.
 - Knowledge of energy benchmarking methodology for hospitals and healthcare facilities.
 - Awareness of near-term policy changes taking place for healthcare in New York State.
 - Understanding of GGHC and LEED for both new construction and existing buildings.
 - Familiarity with how to leverage Medicare/Medicaid along with other funding to support energy efficiency.
 - Skill in maintaining and establishing relationships with healthcare facilities and associated trade organizations across New York State.
 - Comprehension of hospital decision-making and purchasing methods.
- The proposal must demonstrate how the success of the Program will be tracked and monitored. Items may include, report on metrics, maintaining a state-wide database of customer contacts and details of Program impacts, developing feedback tools to evaluate the service and recommend opportunities for continuous improvement.

Local Governments

For the purposes of this RFP, a local government is defined as a general purpose government at the village, town, city, or county level. This sector includes all buildings, infrastructure, vehicles and operations under the purview of local government jurisdiction.

- The proposer must demonstrate the ability to assist local governments in the planning, financing and implementation of strategies to reduce their environmental footprint and lower their energy costs. In order to successfully conduct these efforts, the proposer must be able to demonstrate proficiency with:
 - Assisting a local government in the development of a baseline inventory of energy consumption and resulting waste streams, including greenhouse gas emissions, by municipal, industrial, residential, commercial, and transportation sectors
 - The variety of locale-specific initiatives that can be implemented by local governments to reduce energy and emissions, including at a minimum energy performance contracting, LEED certification, and implementation of renewable energy projects.
 - The various policy implications of implementation at the local government level, including its relationship to the localities’ planning methods, zoning ordinances and building codes. The proposer must demonstrate familiarity with drafting resolutions reflecting these policies.

- The local budgetary process and financing mechanisms, such as municipal leasing, and how these mechanisms aid implementation.
- Fostering partnerships between local advocates and/or administrative bodies leading the initiative, various municipal sectors, local stakeholders and the public. At a minimum, this will include convening stakeholder public meetings and charrettes, as well as small-group meetings with local government officials.
- Many state and national organizations target local governments to provide some type of service and information to the sector such as conferences, newsletters, training, site specific assistance, etc. The proposal must outline how these organizations will be identified, prioritized, and detail how they will be leveraged for the benefit of New York State local governments. Additionally, the proposer may be asked to develop unique training methods for local government officials related to the practice of sustainability.
- To assist in the delivery of NYSERDA programs and services, the proposer must be able to develop marketing, outreach, and training materials such as newsletters, case studies and toolkits. The proposal must also include strategies for sponsoring conferences and workshops that will promote the program. The proposer must be able to leverage existing resources and entities such as New York State Energy Smart Communities Coordinators.
- The proposer will be required to coordinate with NYSERDA’s Focus on Municipal Water and Wastewater contractor.
- To track and monitor the success of the Program, the proposer must provide benchmarking and monitoring of energy performance, report on metrics, and maintain a database of customer contacts and details of program impacts. The proposer may be asked to develop feedback tools for local government officials to evaluate the scope of services and provide opportunity for continuous improvement to the Program.
- The proposer may be asked to coordinate activities with NYSERDA’s representative on the New York Oceans and Great Lakes Ecosystem Conservation Council, in order to promote an “Ecosystem Based Management” approach to sustainable practices and initiatives.

C. Geographic Coverage and Sector Funding

System Benefits Charge (SBC) funds will be used for this program. As such, program efforts are limited to the electric utility service areas of: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, National Grid, Orange and Rockland Utilities, Inc., and, Rochester Gas and Electric Corporation.

Table 1 lists the sectors and funding through this program. Services will be limited to facilities within SBC Territory, defined as all of New York State excluding Long Island in which the customers of the Long Island Power Authority are ineligible for SBC Programs. If site specific services are to be provided to individual customers, those customers must be electric distribution system customers of the aforementioned utilities and pay into the SBC.

TABLE 1.

SECTORS	MAXIMUM 5-YEAR FUNDING
Colleges & Universities	\$1,000,000
Healthcare Facilities	\$1,000,000
Local Governments	\$1,100,000

Proposers may propose to serve one or more sectors. Proposers opting to submit a proposal for more than one sector must indicate such on the Proposal Checklist. Separate proposals are required for each sector. Proposals to each sector will be evaluated, scored, ranked, and selected within each sector.

B. Contracting

This Program shall not serve as a marketing vehicle for any specific firm. Firms selected through this RFP will not be eligible to participate in other NYSERDA programs with customer leads that are developed while performing services under this contract.

The initial contract term for each sector will be for one-year with provisions for two, two-year renewals for a total of five years at NYSERDA’s discretion. Proposals should be written for the full five-year period. NYSERDA reserves the right to adjust funding based on program participation and incorporate programmatic changes as needed.

Due to the nature of the Focus Program, proposers are encouraged to consider teaming arrangement to better leverage the diverse range of expertise necessary. If the proposer's team is in a unique position to provide or leverage services from their own, or other organizations, this opportunity should be identified. A prime contractor and a single contact will be required for all proposals.

III. PROPOSAL REQUIREMENTS

A. Proposal Format

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

Proposals that include teaming arrangements must designate one party as the prime contractor. Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Text font size should be no smaller than 11 and care should be taken not to exceed pages limits provided. 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.

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

C. Executive Summary (one page limit)

Summarize the proposed effort.

D. Introduction/Background (two page limit)

- Discuss the rationale for the approach
- Identify the major goals and objectives of the proposed approach and strategy.
- Identify the market participants or other stakeholders targeted.
- Identify the market participants collaborating in the proposed project.
- Provide an overview of the Sector Approach Plan to be detailed further in the Statement of Work.

E. Statement of Work (seven page limit)

The Statement of Work should be a detailed plan of how the proposer will accomplish the project objectives. The Statement of Work should clearly articulate a set of tasks consistent with the program criteria established in this solicitation. The Statement of Work will also serve as the primary contractual document that identifies the deliverables for the project. It is an action document that specifically delineates each step or procedure required to accomplish the project objectives. Therefore, each action should be identified, indicating who will perform it, how it will be performed, timing, cost, deliverables, and its anticipated result(s). Proposals should be realistic, clear, and specific.

F. Project Outcome and Benefits (three page limit)

Describe the anticipated impacts of the proposed effort, both in terms of energy and non-energy impacts. Explain how the proposal's approach is comprehensive and why the firm/team is in the best position to undertake this effort. Explain how the approach is unique and why it will work compared to other approaches. Define the economic benefit to New York State, as well as the data collection and evaluation plans that will measure success. Explain what metric information (number of sites, square footage benchmarked, millions of gallons treated, individuals trained, etc.) will be collected and how success will be determined.

G. Proposer Qualifications (three page limit)

- Identify all project team members (name, business address, telephone number), including the party who will assume the ultimate responsibility for success of the project and their qualifications to undertake the proposed work. Attach resumes of key personnel in an appendix (will not count towards page limitations).
- Provide a list of relevant project staff and define their roles and responsibilities on the project.
- List and briefly describe two to three recent relevant or related projects that have been undertaken and successfully completed by the project team members. Describe the results of the projects.
- Discuss the project team's familiarity with and understanding of New York markets.

H. Work Schedule and Staffing Plan (three page limit)

Prepare a work schedule highlighting tasks and major milestones in terms of weeks or months after execution of the Agreement. Define an appropriate and realistic schedule consistent with the Statement of Work for task deliverables, including progress reports (*e.g.*, monthly quarterly, etc) and a final report, and incorporate them into the work schedule. The schedule should allow time for approval of tasks by NYSERDA. The work schedule should also include a project staffing plan which indicates the roles, responsibilities, and anticipated hours allocated to all key personnel. Note that hours allocated in the work schedule must be consistent with those in the budget.

I. Budget

A total project budget, including all cost elements, must be provided. This must be a task-based budget that shows cost details including direct and indirect costs, production, overhead, labor, and subcontractors, if applicable, related to each task. The intent must be to define the cost and emphasis of individual tasks in relation to others. The Proposal must also provide budget estimates for materials, equipment, and travel. A single Contract Pricing Proposal Form should be submitted with each proposal with a separate Reporting Schedule for each Task (see Attachment C). The Reporting Schedules can be customized to most clearly demonstrate costs.

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

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

NYSERDA reserves the right to audit any indirect rate presented in the proposal and to make adjustment for such difference. Requests for financial statements or other needed financial information may be made if deemed necessary. At NYSERDA's discretion, funds may be reallocated between tasks.

J. Letters of Commitment

Include letters of commitment from any subcontractors, co-funders, or other organization directly involved in the project.

K. Other Attachments

Include as appropriate to support the proposal.

IV. PROPOSAL EVALUATION

Eligible proposals, meeting solicitation requirements, will be reviewed by a Technical Evaluation Panel (TEP) consisting of NYSERDA, a Department of Public Service staff member, and selected

outside reviewers. Final rankings will be made by the TEP based on the written proposals. The highest ranked proposer will be recommended for contract negotiations. The TEP will review using the Evaluation Criteria below in order of importance.

A. Strategy and Overview (35 points)

Are the goals, objectives, and proposed strategy feasible? Are they likely to obtain the desired results? Does the proposed strategy address the unique characteristics of the sector? Does the proposed strategy reflect an understanding of the sector in New York? Does the proposed strategy address mid-stream partners and end-users? Is the Statement of Work for the sector comprehensive, realistic, and consistent with the proposal requirements?

B. Cost (20 points)

Is the overall cost reasonable? How cost-effective is the proposal based on the strategy and overview included? Are allocations of task hours justifiable? Are the billing rates reasonable and appropriate? Is there documentation in support of the indirect cost rates? Does the proposal team describe the ability to use junior and senior staff as appropriate to be cost effective while achieving program success?

C. Qualifications of Proposer(s) and Experience (20 points)

Does the Project Team have the necessary background and experience? Does the proposal team demonstrate recent experience in similar type projects and will there be a main contact who will handle the project? Does the proposal team show a balance of technical, operations, marketing, administrative or other expertise necessary to accomplish the project? Does the proposal team demonstrate a familiarity with the Sector that they propose to provide services to? If submitting and selected for more than one proposal, does the proposal team have the ability to effectively manage multiple efforts?

D. Reporting Market Effectiveness (15 points)

How does the evaluation plan effectively track the success of the proposal? Is the reporting plan reasonable and appropriate for the tasks? Is the metrics tracking plan sufficient to demonstrate program success? Does the proposal include a plan to measure success?

E. Other (10 points)

Does the proposal leverage added value opportunities? Does the proposal team have past experience or familiarity with NYSERDA and its programs? Does the proposal clearly define the economic benefit to New York State? The proposal team who possess, or can obtain through cooperative or joint ventures, the following capabilities will be favored under this RFP:

- The ability to dedicate staff as appropriate.
- Previous experience in the conduct and delivery of sector services.
- The ability to deliver service effectively and economically.
- Demonstration of past energy-related work.
- Other factors deemed appropriate by NYSERDA.

V. GENERAL CONDITIONS

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

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

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

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

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

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

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

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

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

event of two findings within a 4 year period, the Proposer/Offerer is debarred from obtaining governmental Procurement Contracts.

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

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

Contract Award - NYSERDA anticipates making one award per sector through 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 approximately eight (8) 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.

VI. ATTACHMENTS

Attachment A - Proposal Checklist
Attachment B - Disclosure of Prior Findings of Non-Responsibility Form
Attachment C - Contract Pricing Proposal Form and Reporting Schedule
Attachment D - Project Personal and Rates
Attachment E - Sample Agreement

Attachment A - RFP1076 PROPOSAL CHECKLIST (MANDATORY)

Proposal Title		Due Date	
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
Address	City	State or Province	Zip
Secondary Contact		Title	
Company		Phone	Fax
Address	City	State or Province	Zip
The prime contractor must sign this form below.			
THE PRIME CONTRACTOR MUST ANSWER THE FOLLOWING QUESTIONS:			
Do you accept all Terms & Conditions in the Sample Agreement? (if no, explain on separate pg)		__ Yes __ No	
Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg)		__ Yes __ No	
Are you a Minority or Women-Owned Business Enterprise?		__ Yes __ No	
Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors?		__ Yes __ No	
Are you submitting the required number of copies of Part I and Part II? (See proposal instructions.)		__ Yes __ No	
Is other public funding pending/awarded on this and/or very-similar topic (prior and/or competing proposals)? (if yes, explain on separate page)		__ Yes __ No	
Are you submitting more than one proposal to this solicitation?		__ Yes __ No	
Sector Being Proposed: (select only one) _____ Colleges and Universities _____ Healthcare _____ Local Government			
ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?			
PART I Executive Summary____ Introduction/Background____ Statement of Work (with Schedule)____ Project Outcome and Benefits____ Proposer Qualifications____ Work Schedule and Staffing Plan____ Budget (Completed Contract Pricing Proposal Form(s) and Project Personnel Rates____ Letters of commitment from all participating organizations____ Indictment/Conviction of Felony (if applicable)____	NYSERDA Contracts Awarded (if applicable)____ Prior and/or Competing Proposals (if applicable) ____ Exceptions to Terms & Conditions (if applicable) ____ Disclosure of Prior Findings (mandatory) ____		
AUTHORIZED SIGNATURE			
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 Part I and Part II of this proposal.			
Signature		Name	
Title		Organization	
Phone		Date	

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

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

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

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

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

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

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

By: _____ Date: _____
Signature

Name: _____ Title: _____

ATTACHMENT D

PROJECT PERSONNEL & RATES

1. DIRECT PERSONNEL COSTS:

Title Classification	Not to Exceed Hourly Rate Range		Not to Exceed Hourly		Not to Exceed Hourly	
	YEAR 1		YEAR 2 & 3		YEAR 4 & 5	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum

2. MULTIPLIER (Including Profit/Fixed Fee):

a. Profit / Fixed Fee: _____ %

b. Multiplier _____

3. DIRECT NON-PERSONAL SERVICE COSTS:

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

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

ATTACHMENT E

**New York State Energy Research and Development Authority
SAMPLE AGREEMENT**

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

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions;
- Exhibit D, Prompt Payment Policy Statement;
- Exhibit E, Guidelines for NYSERDA Print Deliverables; and
- Exhibit F, Project Personnel Costs

9. ACCEPTANCE

[CONTRACTOR]

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

By _____

By _____

Name _____

Jeffrey J. Pitkin
Treasurer

Title _____

STATE OF)
) SS.:
COUNTY OF)

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

Notary Public

EXHIBIT A
STATEMENT OF WORK

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

Agreement: The Agreement and Exhibits A, B, C, D, E and F 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 2 of page one of the Agreement.

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

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

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

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

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

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

Article II

Performance of Work

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

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

Article III

Deliverables

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

Article IV

Payment

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

(a) 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 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 1 of page one of the Agreement. Invoices shall set forth total project costs incurred. They shall be in a format consistent with the cost categories set forth in the Budget. Invoices shall provide reasonable documentation for the above to provide evidence of costs incurred, including:

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

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

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

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

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

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

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Item 7 of page one of the Agreement.

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

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

Section 4.07. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor hereunder is the amount shown in Item 7 of page one 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 shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.06 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and Purchase Orders

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

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

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

Article VI

Schedule

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

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

Section 6.03 Option to Renew. NYSERDA shall have an option to renew this Agreement, at NYSERDA's discretion, for two, two year periods, upon the same terms and conditions as this Agreement. NYSERDA may exercise its option by providing written notice to Contractor not less than 30 days prior to the expiration of the initial term or any subsequent renewal term.

Article VII

Force Majeure

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

Article VIII

Technical Data

Section 8.01. Rights in Technical Data.

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

(1) NYSERDA shall have:

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

(2) The Contractor shall have:

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

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

Article IX

Warranties and Guarantees

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

- (a) it is financially and technically qualified to perform the Work;
- (b) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any that may in any way affect the performance of this Agreement;
- (c) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted construction and design standards and best engineering practices;
- (d) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted construction and design standards and best engineering practices;
- (e) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;
- (f) there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or the NYSERDA's rights hereunder;

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

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

Article X

Indemnification

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

Article XI

Insurance

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

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

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

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

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

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

in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and

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

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

Article XII

Stop Work Order; Termination

Section 12.01. Stop Work Order.

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

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

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

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

- (i) the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Agreement, and
- (ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

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

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

Section 12.02. Termination.

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

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

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

Article XIII

Independent Contractor

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

Article XIV

Compliance with Certain Laws

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

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

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

Article XV

Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Publicity.

(a) The Contractor shall collaborate with NYSERDA's Director of 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 SmartSM**, and any related logo, without NYSERDA's prior written consent.

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

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

EXHIBIT C

REVISED 1/05

STANDARD TERMS AND CONDITIONS
FOR ALL NYSERDA AGREEMENTS

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

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

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

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

3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting

competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.

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

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

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

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

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

9. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

EXHIBIT D

PART 504

PROMPT PAYMENT POLICY STATEMENT

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

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

(1) under the Eminent Domain Procedure Law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

-2- (ii) if a contract provides that a payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

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

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

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

Section 504.4 Payment procedures.

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

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

- (1) any defects in the delivered goods, property or services;
- (2) any defects in the invoice; and
- (3) suspected improprieties of any kind.

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

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

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

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

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

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

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

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

Section 504.6 Interest eligibility and computation. If the Authority fails to make prompt payment, the Authority shall pay interest to a contractor on the payment when such interest computed as provided herein is equal to or more than ten dollars. Interest shall be computed and accrue at the daily rate in effect on the date of payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a payment shall be computed for the period beginning on the day after the payment due date and ending on the date of payment.

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

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

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

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

Section 504.11 Court action or other legal processes.

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

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

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

EXHIBIT E

GUIDELINES FOR NYSERDA PRINT DELIVERABLES

PURPOSE

This document briefly describes editorial and production procedures and gives electronic data-transfer information. NYSERDA's contractors prepare the reports describing NYSERDA research and development projects that NYSERDA publishes. Please direct questions about format and style to Diane Welch of NYSERDA's Technical Communications unit: (518) 862-1090, ext. 3276; fax (518) 862-1091; e-mail dlw@nyserda.org

COPYRIGHTS

All material borrowed or adapted from other sources should be properly identified (i.e., document, source, date, and page). The contractor must obtain and submit to NYSERDA the copyright owner's written permission to use copyrighted illustrations, tables, or substantial amounts of text from another publication.

GENERAL INFORMATION

The first reference to NYSERDA should read "the New York State Energy Research and Development Authority (NYSERDA)." Subsequent references should read simply "NYSERDA." When it is clear that you are referring to New York State, use State; otherwise, use New York State or the State of New York.

- Material borrowed or adapted from external sources must be identified (i.e., document, source, date, and page). Written permission to use copyrighted illustrations, tables, or text taken from another publication must be submitted with the report.
- Avoid half-page and one-sentence paragraphs.
- Do not use contractions.
- Acronyms must be spelled out the first time used, followed by the acronym in parentheses.

ELECTRONIC REQUIREMENTS

- Material must be submitted in any of the following formats:
 - Compact disc
 - Iomega 100 PC-Zip disk
 - IBM personal computer-compatible 3.5-inch, double-sided (DS), high-density (HD) diskette
- Textual material should be created in a format compatible with WordPerfect 9. While other word-processing programs may be able to be converted, results may vary. Characteristics such as underlining, bold, italics, and special characters that often appear in equations may be lost if WordPerfect 9 is not used.

If you are unable to meet these electronic transfer requirements, before submitting material, please contact Diane Welch of NYSERDA's Technical Communications unit at (518) 862-1090, ext. 33276; fax (518) 862-1091; e-mail dlw@nyserda.org

New York State Energy Research and
Development Authority
Technical Communications
17 Columbia Circle
Albany, New York 12203-6399

February 2000

EXHIBIT F

PROJECT PERSONNEL & RATES