Full-Service Marketing, Graphics, and Public Relations
Request for Qualifications/Proposal (RFQL)/(RFP) 1224

Revised December 7, 2009

# Summary of Revisions

- NYSERDA staff has added a "Frequently Asked Questions (FAQs) and Answers" page for solicitation, RFQL/RFP 1224: Full-Service Marketing, Graphics, and Public Relations. This document will be a useful resource to potential bidders. Please check back periodically, as the FAQ page may be updated. The FAQs document will be posted on the web and available upon request.
- The due date for proposals has been extended from December 1, 2009 to December 28, 2009 at 5:00 PM Eastern Time.

Proposals Due: December 28, 2009 by 5:00 PM Eastern Time

The New York State Energy Research and Development Authority (NYSERDA) is seeking proposals for full-service marketing, graphic services, and public relations to secure one or more agencies immediately for two projects and to determine qualified agencies for future projects to be provided on an as-needed basis to promote its broad range of programs to a variety of audiences. The work will consist of, but is not limited to:

1. Full-Service Marketing:
The successful proposer will develop and execute marketing strategies and tactics targeting a range of consumer and business-to-business audiences and market segments across New York State. The proposer should be familiar with behavioral marketing (i.e., using the outcome of psychological research to obtain a desired reaction from customers) and demonstrate the ability to conduct marketing campaigns that influence consumer as well as business-to-business behavior.

- Develop and execute an integrated marketing strategy for NYSERDA and communicate a consistent NYSERDA brand and message.
- Develop and execute an integrated marketing strategy for individual NYSERDA programs, including Clean Energy Research and Market Development, Energy Efficiency Research, Energy Efficiency Services, Saratoga Technology + Energy Park® (STEP®). Assignments for Residential Efficiency and Affordability Programs will not be included initially but may be made during the term of this contract.
- Services should include, but not be limited to: planning, messaging, creative strategy and development, research, branding, copywriting, internet marketing, social marketing, direct marketing and database management, media planning and placement, promotional support, public relations, account management, and audience recommendations.

2. Graphics Services
In accordance with NYSERDA brand guidelines:

- Design, layout, and produce print-ready material
- Provide high-quality graphics that are compatible with NYSERDA's electronic platform. Must be able to provide files AND FONTS in non-Mac PC formats of: Adobe Creative Suite 3 or 4, QuarkXPress 6.5 or 8, Adobe Professional, Live Cycle, and the Microsoft Office Suite – 2007.
- Provide fast turnaround on design and graphics projects
- Coordinate photographic shoots and provide stock photography
- Carry out special projects, as identified

3. Public Relations:

- Work with NYSERDA Communications staff to recommend and, as necessary, implement Publicity and Public Relations strategies and tactics to support marketing plans.

The proposer may submit qualifications for any or all parts of this RFQL/RFP. Multiple proposers may be awarded contracts for each of the three segments. One or more proposers may be awarded an assignment based on this RFQL/RFP. For future projects, qualified contractors will participate in mini-bids on individual projects as needed. A contractor will be selected from these mini-bids based on, but not limited to, the following criteria: capability, expertise, cost, and availability. The contract term will be three years, with the possibility of three one-year extensions.

**Proposal Submission:** Proposers must submit 10 copies of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposals must be clearly labeled and submitted to:

**Roseanne Viscusi, RFQL 1224**
**NYS Energy Research and Development Authority**
**17 Columbia Circle**
**Albany, NY 12203-6399**

Pursuant to §139-j(2)(a) of the State Finance Law, the individuals below have been designated as persons who may be contacted by Proposers concerning this procurement. The designated individuals may be reached by e-mail or by phoning (518) 862-1090 and selecting the appropriate extension: Technical or content questions should be directed to Paula Rosenberg at (518) 862-1090, ext. 3270, or pr1@nyserda.org. Contractual questions should be directed to Venice Forbes at (518) 862-1090, ext. 3507, or vwf@nyserda.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.nyserda.org.

## I. Introduction

The New York State Energy Research and Development Authority (NYSERDA), a public benefit corporation, has been helping New York save energy since 1975. NYSERDA offers programs, technical support, and funding to help businesses, municipalities, research institutions, and consumers become more energy efficient, protect the environment, and save money. By supporting the development and commercialization of new technologies, NYSERDA programs move New York toward a clean-energy future, deliver economic benefits, and prepare New York workers for green-collar jobs. NYSERDA program staff has significant expertise that enables them to evaluate energy-related projects to ensure the best outcome. NYSERDA invests in programs that support New York State's energy goals – reducing energy consumption while promoting the use of renewable resources and protecting the environment.

NYSERDA is seeking proposals for full-service marketing, graphic services, and public relations to be provided on an as-needed basis to promote its broad range of programs to a variety of audiences. The contract term will be three years, with the possibility of three one-year extensions.

The proposer may submit qualifications for any or all parts of this RFQL/RFP. Multiple proposers may be awarded contracts for each of the three segments. One or more proposers may be awarded contracts for two immediate projects later outlined in this RFQL/RFP. Qualified contractors will participate in mini-bids for each individual future project, as needed. A contractor will be selected from these mini-bids based on, but not limited to, the following criteria: availability, location, cost, experience, staffing, and capability.

## II. Contract requirements

This RFQL/RFP is divided into three segments - full-service marketing, graphics services, and public relations. Each segment will be evaluated individually. Proposers may submit qualifications for one, two, or three segments. Multiple proposers may be selected as pre-qualified contractors for all or part of the services proposed. Task Work Orders for full-service marketing may be awarded immediately for Biofuels and STEP projects based on proposer responses to Full-Service Marketing segments of the RFQL/RFP. Master Contracts for pre-qualified contractors will have a term of three years, with the possibility of three one-year extensions.

For future projects, each project will be awarded based on a mini-bid process on an as needed basis solicited to prequalified contractors only and pre-authorized in writing by NYSERDA.

For every mini-bid task awarded, the successful mini-bid contractor will be required to provide task-order project plans and estimates that include:

- Task description, identification of target audience, marketing objective, proposed action plan, and evaluation plan.
- Schedule, including milestones such as first draft, revisions, anticipated completion, and delivery.
- Budget, including breakdown of proposer costs (personal services, creative and production services, estimated travel, and expenses).

Projects will be directed by and coordinated with NYSERDA's Marketing staff. Fast turnaround is frequently required.

1. <u>Full-Service Marketing</u> tasks include, but are not limited to, the following:

    - Becoming familiar with previous and ongoing marketing campaigns to fully understand the nature of the proposed work, particularly as it relates to energy efficiency issues and programs developed by NYSERDA, State utilities, Governor's "45 by 15" initiative, Energy Efficiency Portfolio Standard, System Benefits Charge, the U. S. Department of Energy, and other entities.

- Designing and implementing integrated marketing campaigns to meet organization and program objectives, including identifying campaign objectives and developing a messaging strategy (i.e., themes, slogans, logos, graphics, program materials, and communication tools and methods appropriate for specific New York State target audiences).
- Conveying the benefits of energy efficiency to all customers, enabling them to make informed choices with respect to their rights and protections and the services and programs provided by regulated utilities, other State agencies, and competitive suppliers.
- High-level branding and messaging.
- Creating broad awareness and understanding of NYSERDA programs.
- Motivating end-user actions to participate in NYSERDA programs or to use recommended do-it-yourself energy efficiency measures.
- Ensuring that consumers know how to access needed information on energy efficiency and NYSERDA programs and services.
- Developing an integrated media strategy, including targeted consumer and industry publications/media and consideration for new/social media.
- Conducting market research and/or providing other services to gather consumer and business-to-business input necessary to develop and evaluate NYSERDA programs and test strategies prior to implementation.
- Establishing benchmarks for key measures such as awareness, understanding, attitudes, and participation rates, and tracking progress toward such benchmarks.
- Developing exhibits, displays, and educational materials with campaign messages, Web addresses, and toll-free phone numbers.
- Providing copywriting services.
- Providing promotional and collateral support.
- Providing public relations.
- Augmenting audience definitions with available research and industry expertise.

2. Graphics Services tasks include, but are not limited to:

- Developing and distributing collateral and support materials, including creative concepts (e.g., design, layout, copywriting, graphics) for attractive technical publications and plain-language publications such as brochures, tip strips, posters, and other printed materials.
- Developing logos.
- Developing and producing marketing materials, advertising, signage, and display graphics and materials.
- Producing large-format output.
- Acquiring (including obtaining necessary approvals) and manipulating photos. Providing silk-screen services.
- Providing in-house pre-press and high-end color separation services.
- Providing other to-be-determined graphic material and production services.

High-quality graphics must be provided that are compatible with NYSERDA's electronic platform. Must be able to provide files AND FONTS in non-Mac PC formats of: Adobe Creative Suite 3 or 4, QuarkXPress 6.5 or 8, Adobe Professional, Live Cycle, and the Microsoft Office Suite – 2007.

3. Public Relations tasks include, but are not limited to:

- Developing and implementing public relations and publicity plans designed to extend the reach of NYSERDA's priority messages.
- Coordinating with NYSERDA's Communications and Marketing staff to implement recommendations that support business and marketing goals.

## III. Proposal Requirements

**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, additional forms must be completed and filed with proposals: (1) a signed copy of the Proposal Checklist including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form. Failure to include a signed copy of the Proposal Checklist referenced in this solicitation will disqualify your proposal.

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

**A. Proposal Checklist**
Proposers must submit 10 copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this RFQL/RFP. A completed and signed Proposal Checklist must be attached as the front cover of the proposals, one copy 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.

**B. Introduction, Cover Letter, and Abstract**
Proposers must submit a cover letter on company letterhead that references this RFQL/RFP and provide a brief summary of the proposal. Proposers should describe teaming and partnering arrangements and their ability to perform services that meet the overall goals and objectives of the project(s) they are proposing. The cover letter must also include firm name, address, phone and fax numbers, e-mail address, contact person, year the firm was established, and type of firm (partnership, corporation, sole proprietorship, etc.). The cover letter must be signed by a person with the authority to enter into a contract with NYSERDA. A sampling of prior/existing or proposed contracts or other forms of relationships with the State of New York, any of the State's other operating agencies, including public authorities, and any local government must also be provided.

**C. Proposal Format**
Proposers may choose to respond to all or any combination of the following three segments:

**1.** Full-Service Marketing
**2.** Graphic Services
**3.** Public Relations

### 1. Full-Service Marketing

In addition to the award of Master Contracts for pre-qualified contractors, Task Work Orders for full-service marketing may be awarded immediately for Biofuels and STEP projects based on proposer responses to Full-Service Marketing segments of the RFQL/RFP.

**a. Qualifications**
To meet the evaluation criteria for full-service marketing, proposers must address in

narrative form how they will satisfy the requirements discussed within the RFQL/RFP. The narrative must provide adequate information to effectively demonstrate the proposer's capability of performing all the work and services required.

**b. Marketing Approach Assignment – Biofuels**
Proposers must provide a detailed planning and creative approach to a high-level, integrated marketing campaign for a Biofuel Station Initiative based on the information provided, information available on the NYSERDA Web site, industry data, and other available sources. Media and public relations also should be considered. This is not a request for an actual campaign, just the proposer's approach to developing one.

- Background: NYSERDA recently implemented the Biofuel Station Initiative offering incentives to New York State gas station owners who agree to sell biofuels such as biodiesel and E85 as a means to reducing the State's dependence on foreign petroleum. To date, 110 gas stations are participating in the program; the goal is to increase that number to 300 station participants by 2011. NYSERDA plans to implement a marketing/communications program to provide biofuel stations in New York State with marketing support to inform the public about the benefits of biofuels in general, as well as educate owners of flex-fuel vehicles about E85.
- Goals:
    - Generate awareness among the general public of biofuels as alternatives to traditional fuels.
    - Generate Biofuel Station program awareness and interest among flex-fuel car owners in order to increase business at participating gas stations.
    - Through general awareness efforts, increase retail gas station participation in the NYSERDA incentive program.
- Priority Audiences:
    - New Yorkers, especially those using flex-fuel vehicles, who are within a practical driving distance of participating stations.
    - Retail gas station owners that are not currently participating in the program.
- Primary Messages:
    - Do your part to reduce the nation's dependency on foreign petroleum by using E85 instead of traditional fuels.
    - Since E85 costs less, you can save money on fuel when you use E85 instead of traditional fuels.
    - You may already have a vehicle that can run on E85 or biodiesel instead of traditional fuels.
    - Visit www.nyserda.org [with the appropriate link to a new Web page devoted to biofuels] for more information about E85 and gas stations in your area that provide biofuels.
- Hypothetical Budget: $500,000

**c. Marketing Approach Assignment – Saratoga Technology + Energy Park®** (STEP)®
Proposers must provide a detailed planning and creative approach to a high-level, integrated marketing campaign for STEP. Media and public relations also should be considered. NYSERDA is planning a marketing effort based on the information provided, information available on the NYSERDA Web site, industry data, and other available sources to attract STEP tenants. This is not a request for an actual campaign, just an approach to developing one.

- Background –

STEP is a knowledge community in the heart of New York's Tech Valley with significant resources for clean-energy and environmental technology companies that are looking for a strategic location at which to build and grow. More than a physical site, it is a fully integrated knowledge community that includes programs, services, partnerships, and amenities to support the success of companies and their employees. NYSERDA owns and sponsors STEP and is committed to STEP's goal of nurturing the technologies that will address energy needs and environmental conservation for the long-range future.

- Goal – Tenant/Developer Attraction
    - Short term -- Generate leases to fill current available space (~60,000 sq. ft. for four to six tenants.
    - Longer term – Secure one new ground lease and supporting tenants totaling 300,000 sq. ft.
- Priority Audiences – U.S. and International
    - Light manufacturing, assembly, and services companies directly related to clean energy or with operations tied to energy efficiency.
    - Economic development organizations with access to and influence over appropriate tenants/developers.
- Primary Messages:
    - STEP's location makes it possible for companies to tap into a highly skilled workforce and access key research and development facilities.
    - Locating at STEP enables companies to tap into valuable New York State financial incentives.
    - STEP's strategic location in New York State offers a marketplace committed to green/clean industry and a robust supplier base.
    - STEP's campus-like setting and proximity to the Luther Forest Technology Campus and clean-energy manufacturing and research companies create opportunities for synergy and collaboration.
    - Quality of life to be enjoyed in New York's Capital Region makes residing in the area an attractive option for current and potential employees.
- Hypothetical Budget: $150,000
- Visit step.nyserda.org for additional information.

**d. Evaluation Plan**

Proposers must provide examples of how they track, monitor, and report program results. Successful proposers will be required to provide metrics that include, but are not limited to:

- Measuring and quantifying results against stated objectives for each task.
- Media reach and frequency based on audience segments, including total number of customer impressions from all media and marketing campaigns, dollars invested by media type for ads, number of ads placed by type, etc.
- Results of all marketing and outreach methods/activities, including, but not limited to, promotional and educational events and media, print advertising, television and radio advertising, Internet-based applications, etc.
- Events and attendance.

**e. References, Samples, Case Studies**

Proposers must list their most recent relevant projects, including high-level goals undertaken and results successfully achieved by the project team members. Identify any specific areas of corporate expertise the company has, especially as it relates to NYSERDA's mission and program areas. Provide references with contact information for each project. Proposers may provide samples of marketing plans and materials used for those projects as attachments (please limit the material to a reasonable quantity for review purposes). If audio or video material is submitted, it must be restricted to samples of relevant work, and must not exceed four minutes in length. Excessive quantities of material may not be reviewed. When submitting samples or case studies, please include a hard copy of each sample and a DVD containing each sample or case study as PDFs. Letters of reference may be provided in an appendix.

## 2. Graphics Services

**a. Qualifications**

To meet the evaluation criteria, each proposer must address in narrative form how it will satisfy the requirements discussed within the RFQL/RFP. The narrative must provide adequate information to effectively demonstrate the proposer's capability of performing all the work and services required.

Proposers should provide details about their firm's resources and procedures for providing graphics services in a timely manner.

**b. References, Samples, Case Studies**

Proposers must list their most recent relevant projects, including high-level goals undertaken and results achieved by the project team members. Provide names of references with contact information for each relevant project. Proposers may provide samples of design campaigns and materials produced as attachments. However, the material should be limited to a reasonable quantity for review purposes. When submitting samples or case studies, proposers should submit one hard copy of each sample and a DVD containing each sample or case study as a PDF. If web design material is submitted, proposers should include PDF versions of Web pages or Web links on a DVD. Excessive quantities of material may not be reviewed. Letters of reference may be provided in an appendix.

Proposers must include samples of their graphics work, such as:

- Annual reports
- Brochures
- Logos
- Photographic samples of display units
- Sample pocket folder
- Sample corporate identity package
- Sample high-level branding and messaging campaign

The proposer must note the extent of its contribution to the final product, along with a name, title, company name, address, and phone and fax numbers for contacts at the organizations for which these services were performed. NYSERDA reserves the right to request information from any source so named.

## 3. Public Relations

**a. Qualifications**
To meet the evaluation criteria, proposers must address in narrative form how they will satisfy the requirements discussed within the RFQL/RFP. The narrative must provide adequate information to effectively demonstrate the proposer's capability of performing all work and services required. Proposers must describe their ability to provide both statewide and regional/local coverage.

**b. Evaluation Plan**
Proposers should provide examples of how they track, monitor, and report program results. Successful proposers will provide metrics that include, but are not limited to:

- Measuring and quantifying results against stated objectives for each task.
- Media coverage.
- Events and attendance.

**c. References, Samples, Case Studies**
Proposers should list their most recent relevant projects, including high-level goals undertaken and results that have been successfully achieved by the project team members, especially as they relate to NYSERDA's mission and program areas. Contact information for references should be provided for each project. Proposers may provide samples of materials produced as attachments; however, material should be limited to a reasonable quantity for review purposes. If audio or video material is submitted, it must be restricted to samples of relevant work and must not exceed four minutes in length. Excessive quantities of material may not be reviewed. When submitting samples or case studies, please include a hard copy of each sample and a DVD containing each sample or case study as PDFs. Letters of reference may be provided in an appendix.

Examples may include, but are not limited to:

- Public relations campaigns and plans.
- News releases and press kits.
- Coverage received following event.

**D. Personnel and Capabilities**

Proposers should indicate how long their firm has been in continuous operation and its lines of business and growth within the past five years. Prior to the proposal due date for the RFQL/RFP, the company must have a minimum of three years experience providing the types of full-service marketing, graphics services, or public relations described in the "Contract Requirements" section above.

Proposers should indicate whether their firm will provide services directly or subcontract with another firm. Résumés of all key project personnel, including those of proposed subcontractors, must be submitted; such résumés should include education and experience relevant to the proposed work.

Identify all project team member organizations (name, address, phone number); their qualifications to undertake the proposed work should be identified. Include the percentage of employees' time that is to be dedicated to NYSERDA's projects. If applicable, proposers should provide a letter of

commitment to participate from each subcontractor in an appendix. Key personnel to be assigned to the project and their roles should be identified, with an appendix including a résumé for each of the key personnel. Proposers should address their overall staffing situation and their ability to assign staff or acquire subcontractors as needed to support specific task orders.

Proposers should provide any other significant information that they deem relevant to demonstrating their experience and why they are qualified to meet NYSERDA's needs.

**E. Fee Schedule**

Proposers should submit their cost proposal for performing work under an agreement resulting from this solicitation using the attached "Project Personnel and Rates" form (Attachment D) as a template. The cost proposal should clearly indicate the hourly rate range for each title or individual that will be involved in the contract work, including subcontractors. All overhead rates and multipliers must also be included. For each overhead rate or multiplier, the base on which the rate(s) would be applied (e.g., direct labor, materials, etc.) must be provided. Supporting documentation that explains indirect cost (overhead) rate(s) should be included in the proposal, as follows:

1. Describe the basis for the rates proposed (i.e., based on prior period actual results, federal government rates, or other independently approved rates).

2. If rate(s) is (are) approved by an independent organization, such as the federal government, provide a copy of such approval.

3. If rate(s) is (are) based on estimated costs or prior period actual results, include calculations to support proposed rate(s). Calculations should provide adequate information for NYSERDA to evaluate and confirm that the rate(s) is (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 required financial information may be made if deemed necessary.

For media placement services, cost proposals **must include** proposed across-theboard mark-ups. Also include a detailed explanation of how service and agency fees are generated. Indicate whether you also would propose alternate billing arrangements such as a percentage, flat rate, hourly rate, etc., for developing media plans, evaluating ad-hoc media offers, placing buys, and tracking and measuring results/reach and reporting successes. Since a contract with NYSERDA may provide benefits to the contractor, proposers should discuss their approach to sharing with or passing through to NYSERDA volume discounts associated with media purchases. The overall approach to media placement services should clearly indicate that NYSERDA will receive the best cost available for these services. NYSERDA may choose not to use the media-buying option under this contract.

## IV. Proposal Evaluation

Proposals that meet the submission requirements will be reviewed by a Technical Evaluation Panel consisting of NYSERDA staff and selected outside reviewers. A two-phase evaluation format may be used for one or more proposers whose written proposals are favorably reviewed. Those proposers may be invited to present their proposals at NYSERDA's facility in Albany, New York. Proposers may submit qualifications for one, two, or all three of the RFQL segments. Each of the three segments will be scored individually. Contracts may be awarded for all or part of the required services. Contracts may be awarded

for the programs described in this RFQL/RFP – Biofuels and STEP. The successful proposers for these two projects also will be eligible to bid on future projects. Selection of the successful proposal(s) will be made based on the following criteria, which are not listed in terms of importance:

A. Criteria for All Proposers

- The extent to which the proposer demonstrates an understanding of, and develops a proposal to address, project requirements.
- The quality of the proposer's approach as reflected by the responsiveness, thoroughness, and creativity of the strategy.
- The potential of the approach to achieve program goals.
- Cost effectiveness and competitive rates.
- Satisfactory record of performance.

B. Full-Service Marketing

- Proven experience in developing and implementing a comprehensive marketing plan, particularly one that resulted in changes to audience behavior.
- Demonstration of strategic thinking and creativity in approach and execution while maintaining brand consistency and messaging.
- Ability to team effectively with client staff.
- Proven ability to strategically target best-fit audience.
- A clear, comprehensive, creative approach to addressing the needs of the STEP facility.
- Samples that are relevant and thorough and provide measurable results.
- Demonstration of previous relevant experience in developing similar types of projects.
- An evaluation plan that provides mechanisms for comprehensive objectives and measurable results.
- Qualifications, knowledge, skills, and expertise in the subject area; experience with behavioral marketing strategies; and ability to provide public education, administrative, technical, and other expertise necessary to fulfill the requirements of the RFQL/RFP.
- Familiarity with New York State markets.
- Appropriate financial and staff resources, or the ability to obtain such resources, to meet the requirements of the RFQL/RFP.
- Presentation, if applicable.

C. Graphics Services

- Appropriate financial and staff resources, or the ability to obtain these resources, to meet the requirements of the RFQL/RFP.
- Demonstration of the proposer's ability to provide a timely, often rush, turnaround throughout the contract period.
- Previous relevant experience in developing similar types of projects, including coordination with government agencies, community-based and service organizations, and not-for-profits.
- Innovative strategic thinking and creativity.
- Ability to align design concepts with marketing strategies, branding, and messaging to meet the stated goals and objectives.
- Relevant samples that represent the quality of the proposer's work.

D. Public Relations

- Proven experience in developing and implementing a comprehensive public relations plan, particularly one that resulted in changes in awareness and/or behavior.
- Demonstration of strategic thinking and creativity in approach and execution while maintaining brand consistency and messaging.
- A clear, comprehensive public relations approach to addressing the needs of STEP.
- Samples that are relevant and thorough and provide measurable results.
- Previous relevant experience in developing similar projects.
- An evaluation plan that provides a mechanism for comprehensive objectives and measurable results.
- Qualifications, knowledge, skills, and expertise in the subject area; experience with target audience; and ability to provide public education, administrative, technical, and other expertise necessary to fulfill the requirements of the RFQL/RFP.
- Familiarity with New York State markets.
- The ability to align public relations strategy with business marketing strategies, branding, and messaging to meet the stated goals and objectives.
- Appropriate financial and staff resources, or the ability to obtain such resources, to meet the requirements of the RFQL/RFP.
- Presentation, if applicable.

## 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 State subcontractors and suppliers is available from:

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

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

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

**Executive Order 127 -** NYSERDA is required to comply with the provisions of Executive Order 127 (www.gorr.state.ny.us/EO127_fulltext.htm). Pursuant to this Executive Order, proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of $15,000 must include:

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

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

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

**Tax Law Section 5-a -** NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of $100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. *See,* ST-220-TD (available at http://www.nystax.gov/pdf/2007/fillin/st/st220td_507_fill_in.pdf). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSERDA. *See,* ST-220-CA (available at http://www.nystax.gov/pdf/2007/fillin/st/st220ca_507_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 or more awards under this solicitation. It may award a contract based on initial proposals without discussion, or following limited discussion or negotiations. Each proposal should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support proposals. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA expects to notify proposers in approximately 10-12 weeks from the proposal due date whether their proposals have been selected to receive awards.

**Limitation** - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, negotiate with all qualified sources, or cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest.

**Disclosure Requirement** - Proposers must 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 must describe the 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 that 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 (mandatory)
Attachment C - Cost Proposal Forms
Attachment D - Sample Agreement

## ATTACHMENT A - RFQL/RFP 1224 PROPOSAL CHECKLIST (MANDATORY)

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

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

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

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

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

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

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

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

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

Indictment/Conviction of Felony (if applicable) ____
NYSERDA Contracts Awarded (if applicable) ___
Prior and/or Competing Proposals (if applicable) ___
Exceptions to Terms & Conditions (if applicable) ___
Completed and Signed Contract Pricing
Proposal Form(s) ___

Disclosure of Prior Findings of Non-responsibility Form _

AUTHORIZED SIGNATURE & CERTIFICATION

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

| | |
|---|---|
| Signature | Name |
| Title | Organization |
| Phone | |

**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:<br><br>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?<br>(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?<br>(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”)<br>(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)<br><br>Offerer certifies that all information provided to NYSERDA with respect to State Finance Law §139-k is complete, true, and accurate.<br><br>By:_____ Date:_____<br>Signature<br><br>Name:_____ Title:_____ |

ATTACHMENT C

**Graphics Cost Proposal Form**

Proposer:_____ Date:_____

| Function | Hourly Rate |
|---|---|
| Design | |
| Computer make up | |
| Project supervision | |
| Client consultation | |
| Production -layout | |
| Production -art | |
| Other | |
| Other | |
| Other | |
| Other | |
| Other | |
| Other | |

| | |
|---|---|
| Total Overhead Costs (% of hourly rate) | |
| Profit (% of hourly rate) | |

**Please provide prices for other services as available or appropriate.**
**Attach a price list of available pre-press services.**

[**NOTE**: The prices provided in this Cost Proposal shall be fixed for the three-year term of the contract.]

ATTACHMENT C

**Full-Service Marketing Cost Proposal Form**

Proposer:_____ Date:_____

| Function | Hourly Rate |
|---|---|
| **Account Management** | |
| Position | |
| | |
| | |
| | |
| | |
| | |
| | |
| **Creative Services** | |
| Position | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| **Public Relations** | |
| Position | |
| | |
| | |
| | |
| | |
| **Other Positions** | |
| | |
| | |

| | |
|---|---|
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| | |
|---|---|
| Digital | |
| Media Mark-up (%) | |
| Total Overhead Costs (% of hourly rate) | |
| Profit (% of hourly rate) | |

**Please provide prices for other services as available or appropriate.**

ATTACHMENT C

**Biofuels and STEP Projects Cost Proposal Form**

Proposer:_____ Date:_____

| Function | Hourly Rate |
|---|---|
| **Account Management** | |
| Position | |
| | |
| | |
| | |
| | |
| | |
| | |
| **Services** | **Cost** |
| Materials | |
| Labor | |
| Research | |
| Media | |
| Digital | |
| Travel | |
| | |
| | |
| | |
| **Subcontractors** | **Rate** |
| Position | |
| | |
| | |
| | |
| | |
| **Other** | |

| | |
|---|---|
| | |
| | |
| | |
| | |
| | |

| | |
|---|---|
| Total Overhead Costs (% of hourly rate) | |
| Profit (% of hourly rate) | |

**Please provide prices for other services as available or appropriate.**

ATTACHMENT C

**Public Relations Cost Proposal Form**

Proposer:_____ Date:_____

| Function | Hourly Rate |
|---|---|
| **Account Management** | |
| Position | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| **Other Positions** | |
| | |
| | |
| | |
| | |
| | |

| | |
|---|---|
| Total Overhead Costs (% of hourly rate) | |
| Profit (% of hourly rate) | |

**Please provide prices for other services as available or appropriate.**

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

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

This Agreement consists of this form plus the following documents:

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

1. Exhibit E, Rate Schedule.

9. ACCEPTANCE

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

By _____

Name _____

Title _____

By _____
Jeffrey J. Pitkin
Treasurer

STATE OF )
) SS.:
COUNTY OF )

On the ____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ _____, personally known to me or proved to me on the basis of satisfactory

evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the document.

_____

Notary Public

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Article II

## Performance of Work

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

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

## Article III

## Deliverables

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

## Article IV

## Payment

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

(a) Compensation. Compensation will be based on the Contractor's Rate Schedule for NYSERDA set forth in Exhibit E. Contractor fees for a Task Order assignment must be fully set forth in each Task Order budget and must be approved by NYSERDA. The Task Order budget must state a not-to-exceed cost cap or ceiling

amount for each Task Order assignment. The Contractor shall not accrue billable costs beyond the not-to-exceed cost cap in the Task Order without approval in writing by NYSERDA.

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

The Contractor shall be notified by NYSERDA in accordance with Section 5.04.4 (b)(2) of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, of any such information or documentation which the Contractor did not include with such invoice.

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

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

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

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

Section 4.06. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of

three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to the performance of the Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance.

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

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

## Article V

## Assignments, Subcontracts and Purchase Orders

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

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling under $25,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the

work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit B to the extent required by law, and all other provisions now or hereafter required by law to be contained therein.

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

## Article VI

## Schedule

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

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

## Article VII

## Force Majeure

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

## Article VIII

## Technical Data

Section 8.01. Rights in Technical Data

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

(1) NYSERDA shall have:

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

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

(2) The Contractor shall have:

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

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

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

## Article IX

## Warranties and Guarantees

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

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

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

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

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

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

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

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

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

## Article X

## Indemnification

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

## Article XI

## Insurance

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

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

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

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

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

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

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

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by this Article and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof

entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

## Article XII

## Stop Work Order; Termination

Section 12.01. Stop Work Order.

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

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

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

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

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

(ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if

NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

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

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

Section 12.02. Termination.

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

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

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

## Article XIII

## Independent Contractor

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

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

## Article XIV

## Compliance with Certain Laws

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

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

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

## Article XV

## Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Publicity.

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

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

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

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