



Clean Energy Technology Training, Accreditation, &
Certification
Program Opportunity Notice (PON) 1286

Proposals Due: April 15, 2009 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (NYSERDA) seeks proposals to meet a range of clean energy workforce training needs. Funding is available to facilitate workforce education in the area of emerging clean energy technologies, specifically large (wholesale) wind and anaerobic digester training throughout New York's System Benefits Charge utility territories. Funding is also available for clean energy training in New York City for photovoltaics, customer-sited wind, fuel cells, solar thermal and geothermal energy technologies. These technologies and geographical areas are being targeted to compliment other training initiatives being developed by NYSEDA through previous solicitations. Training initiatives can be developed and implemented as continuing education opportunities, college credit courses, certificate programs, two-year degree programs, etc. Activities that may be funded include, but are not limited to: national accreditation and certification programs, market assessments, curriculum development, training facilities and equipment, resource libraries, program marketing and outreach assistance for training institutions, scholarships, internships and/or apprenticeships, development of training and accreditation programs, distance learning, establishing manufacturer or dealer training sites at training institutions, and train-the-trainer programs.

It is anticipated that multiple awards will be made under this PON. The number of proposers selected for contracting will be determined by the funds available, the desire to have facilities and trainers in all areas eligible for certification and accreditation (trainers, instructors, training institutions, continuing education programs), covering all technology areas and the goal of having programs, institutions, and trainers who are qualified to teach throughout different regions of New York State. The proposal evaluation process will be structured to ensure that there is comprehensive coverage of all technology and geographic areas listed in the solicitation and that clean energy technology training is available throughout the System Benefits Charge (SBC) utility territories.

Co-funding by the proposer of at least 40% is required for each project. Total NYSEDA funding will be capped at \$500,000 per project selected. It is expected that priority will be given to those proposals that support technologies funded by the Renewable Portfolio Standard (RPS). Information about the RPS can be found at:

<http://www.powernaturally.org/rps.asp>

Proposal Submission: Proposers must submit fourteen (14) 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, PON 1286
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399**

If you have technical questions concerning this solicitation, contact Lee Butler at (716) 842-1522, ext. 3003 or lwb@nyserda.org. If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090, ext. 3507 or vwf@nyserda.org.

No communication intended to influence this procurement is permitted except by contacting Lee Butler at (716) 842-1522, ext. 3003 or lwb@nyserda.org. Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

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

I. INTRODUCTION

Goals and Objectives

The New York State Energy Research and Development Authority (NYSERDA) seeks proposals to meet a range of clean energy workforce training needs. Funding is available to facilitate workforce education in the area of emerging clean energy technologies, specifically, large wind and anaerobic digester training, and additional clean energy training in New York City for photovoltaics, customer-sited wind, fuel cells, solar thermal and geothermal energy technologies. These areas have been identified as gaps in existing training programs or programs that are being developed by NYSERDA and its training partners. Additionally, the PON seeks to develop and expand appropriate certification and accreditation programs for those clean energy technologies such as those currently offered by Institute for Sustainable Power (ISP) and The North American Board of Certified Energy Practitioners (NABCEP). The result is expected to be a network of accredited training institutions with certified instructional staff providing clean energy workforce training. This training is expected to prepare students to earn nationally-recognized certification. The final outcome is expected to be development of a well-trained, qualified, workforce serving the needs of the clean energy technology market.

Background

NYSERDA's Residential Efficiency & Affordability Program (REAP) has developed a variety of market transformation programs to achieve energy efficiency, improve energy systems reliability, and make use of alternative energy resources in residential buildings. The growing need for, and availability, of these kinds of services and systems is resulting in significant economic development opportunities within the state. As a result, NYSERDA strives to educate and increase the number of clean energy system installers, qualified building performance contractors, builders of energy efficient homes, Home Energy Rating System (HERS) raters, and other building science professionals who deliver clean energy and energy efficiency services to the residential marketplace. To provide the highest quality services to the residents of New York, NYSERDA supports the development of a qualified, professional workforce throughout the state.

The initiatives developed in REAP are closely coordinated with other NYSERDA training programs and initiatives developed for commercial and industrial systems/services and the manufacturing sector. Such activities include training on lighting products and systems, wastewater treatment operation, building operation, building systems, green and Leadership in Energy and Environmental Design (LEED) buildings, commercial heating and air conditioning systems, etc.

NYSERDA has supported the development of standards and certifications that define quality installations of systems and processes. The training of contractors to deliver energy services to those standards is fundamental to the success of the NYSERDA programs and is critical to ensuring customer satisfaction and developing a sustainable market for clean energy technology and energy efficiency services. Over the years, NYSERDA has contracted with training, education and other professional organizations to create hands-on adult education-based curricula as well as credit-bearing courses and certification processes. In addition, NYSERDA currently provides certain training and certification incentives for students.

In particular, NYSERDA recently entered a contract (PON No. 1018) to form a network of learning institutions through which to deliver standardized building science training. NYSERDA also contracted with numerous colleges and universities (PON No. 885) to develop training courses for clean energy technologies. In addition, NYSERDA contracted with professional organizations to develop standards and certification. These courses of instruction for certification include a wide range of disciplines including installation of wind, PV, geothermal and solar thermal systems, training for building analyst, building science specialist (envelope, heating, cooling), HERS Rater, sales/marketing, and others. The efforts, as well as the organizations involved, are described in more detail below.

NYSERDA currently seeks to build on these successful training and certification efforts, and further develop a multi-disciplinary energy services infrastructure within the state to support the rapidly growing clean energy

resource and energy efficiency industry. Through this solicitation, NYSERDA seeks services for the development of technical training programs that have viable business models that are envisioned to become self-sustaining, supporting clean energy technologies, as defined in Section II below. It is also a goal to increase collaboration between, and integrate these various clean energy resource and energy efficiency training efforts, as well as the energy industry, to encourage the development of relevant continuing education certificates and degree programs in addition to energy careers for New York's emerging and transitioning workforce.

Most recently, six training teams were selected for contract awards under PON 1196. Five teams will provide training services throughout much of the Upstate and Hudson Valley regions of New York. Technologies covered include customer sited wind, photovoltaics, geothermal energy, and solar thermal. A sixth contractor will provide large wind system training in northeastern New York.

This PON (1286) is designed to fill any remaining training gaps, focusing on those technologies and regions of the state not sufficiently addressed by existing training programs or by the six teams recently selected under PON 1196. For example, additional large wind training is desirable outside of the regions covered by a wind training program being developed in northeastern New York. NYSERDA also seeks to develop a training program for the installation and operation of anaerobic digestion systems. Finally, additional training for photovoltaics, customer-sited wind, fuel cells, solar thermal, and geothermal energy is desired in New York City.

Related Organizations

NYSERDA has worked with several organizations that have developed and maintained nationally-recognized standards, certifications, and accreditations in support of its programs. Incorporating these national standards into programs helps ensure a higher level of quality performance, a more qualified pool of contractors, and provides homeowners better assurance of system installations.

Some sample organizations are listed below. These organizations are provided as an example of the level of standards and types of certifications and accreditations expected to result from this PON. Proposals in response to this solicitation are expected to incorporate processes that will meet or exceed the standards and certification/accreditation requirements illustrated by these or similar organizations, where applicable.

- **Institute for Sustainable Power (ISP)**

The ISP is a non-profit organization, incorporated in 1996, to coordinate, develop, and maintain international standards for the evaluation and qualification of renewable energy (RE), energy efficiency (EE), and distributed generation (DG) training providers.

ISP has established its own credentialing process called Institute for Sustainable Power Quality (ISPQ). The credentialing process is designed to improve and expand the renewable energy, energy efficiency, and distributed generation industries by:

- raising the level of training quality, competency, and availability;
- encouraging safety and the training of safe practices in the industry; and
- supporting training programs by providing guidance and consensus standards on the content and delivery of courses.

(See <http://www.ispq-central.com/> for more information)

- **The North American Board of Certified Energy Practitioners (NABCEP)**

NABCEP is a volunteer board of renewable energy stakeholders who created a certification program for renewable energy installers, designers, and inspectors. It is incorporated as a 501(c) (3) non-profit organization. Thirteen board members represent the renewable energy industry, independent installers, manufacturers, labor, contractors, training organizations, educators, national laboratories, policymakers,

state and local governments, and federal stakeholders. NABCEP is using a consensus-building process to develop national standards and certification requirements for renewable technology installers, and is also following the best practices established by the certification community, including the guidelines in ISO draft 17024. See www.nabcep.org for more information.

- **Building Performance Institute (BPI)**

BPI is the national resource for the development of standards and best practices, as well as certification and accreditation procedures for assessing and improving the energy performance of homes. A number of NYSERDA's Programs require participants to achieve BPI certifications and/or accreditation. (See www.bpi.org for more information.)

Training Institutions

Additional NYSERDA training partners can be found at www.GetEnergySmart.org and www.PowerNaturally.org. Proposers are encouraged to learn from existing training efforts and build on their success, as opposed to repeating or re-inventing what already exists. Partnering with organizations is highly encouraged to expand the impact and success of programs.

II. PROGRAM REQUIREMENTS

FUNDING AREAS

NYSERDA funds are intended to help support proposers in the process of developing or revising clean energy training classes, developing instructor training, and establishing training. The program will provide funding for:

- National accreditation and certification programs
- Market assessments
- Curriculum development
- Training facilities and equipment
- Resource libraries
- Program marketing and outreach assistance for training institutions
- Scholarships
- Internships and/or apprenticeships
- Task analyses necessary to develop training and accreditation programs
- Distance learning and integration of distance learning with hands-on training
- Establishing manufacturer or dealer training sites at training institutions
- Train-the-trainer programs

This PON is not intended to provide funding for direct labor, benefits, or labor-related overhead for delivering training, unless a respondent can justify that such expenses are unique and necessary and can be attributed directly to task requirements. It is intended that proposals for the development of training be self-sustaining, i.e. a business model that requires students to pay reasonable costs for training services.

Teaming among institutions, trainers, and instructors to address multiple areas targeted in this PON is encouraged. Preference will be given to proposals that will result in a program that develops certified instructors, certified master trainers, an accredited institution, and/or an accredited continuing education program. Preferred training sites are those in an existing educational setting with adequate space and technology to conduct both on-site and Web-based lectures and classroom activities for all training categories.

The number of proposers selected for contracting will be determined by the funds available, the desire to have facilities and trainers in all areas eligible for certification and accreditation (trainers, instructors, training institutions, continuing education programs), covering all technology areas and the goal of having programs, institutions, and

trainers who are qualified to teach throughout different regions of New York State. The proposal evaluation process will be structured to ensure that there is comprehensive coverage of all technology and geographic areas listed in the solicitation and that clean energy technology training is available throughout the System Benefits Charge (SBC) utility territories.

Another goal of this solicitation is to meet the educational and training needs of diverse constituencies. Proposals should include information on the student, or audience, and markets expected to be served. Student markets may include, but are not limited to minorities, women, veterans, etc.

Co-funding in the form of cash, instructor and staff time, equipment, etc., is required. A minimum of 40% co-funding as part of the total budget is required and co-funding levels will be considered in proposal evaluation.

Successful proposers to this PON will be required to work closely with NYSERDA and its energy efficiency and clean energy training partners on training-related activities and projects to coordinate all training activities. Successful proposers who create and develop clean energy training courses must develop curricula that meet the most current educational standards, technical standards, and best practices as illustrated by accredited educational institutions and certification/accreditation organizations. High quality training materials such as instructor manuals, student manuals, lesson plans, presentation materials, and classroom activities are required, and proposers are encouraged to provide samples, preferably in electronic format, of materials of similar quality to what is proposed.

All materials developed under contracts resulting from this solicitation shall be the property of NYSERDA (see sample contract attached to this solicitation for terms).

RANGE OF SERVICES

The technology areas eligible for funding by geographical area include:

Statewide/SBC Territory	New York City Region only
Commercial Wind (except northeastern New York)*	Photovoltaics
Anaerobic Digesters	Customer Sited Wind
	Fuel Cells
	Solar Thermal**
	Geothermal Energy

* A contract for commercial wind training in Clinton County, New York has been awarded through PON 1196. It is anticipated that no additional commercial wind training contracts will be awarded for that region.

** Development of solar thermal and initiatives will only be considered for funding if they address the replacement of electric heating systems with solar thermal systems.

A proposer may apply for funding in one or all areas. This PON (1286) is designed to fill any remaining training gaps, focusing on those technology areas and regions of the state not sufficiently addressed by existing training programs or by the six teams recently selected under PON 1196. Contract length may be up to 36 months.

To help proposers identify their best opportunity for proposals, a map is attached to the solicitation. The map illustrates the location of existing training locations, training locations currently in development, and the technology training available at each location.

A. CLEAN ENERGY TRAINING PROGRAM

A key element of this solicitation is development of clean energy training programs for the technologies listed above. Each technology area will require training manuals and related training materials, instructor development materials, and appropriately equipped training sites.

As a result of this solicitation, NYSERDA plans to facilitate development of several workforce development clean energy training courses and training sites. Training sites must be located in New York State and located in investor-owned utility service territories. Certified instructors and trainers **must** demonstrate that a significant number of their students will be New York State residents or practitioners that will install clean energy systems in and throughout New York State. This PON outlines additional evaluation criteria that must also be met.

Training Manuals and Materials

Each course must have an instructor's manual and a student text or manual. Additionally, it is expected that each class will have lesson plans. Hands-on classroom activities are encouraged. Lab or field work is also encouraged. If included, lab and field activities must include a list of necessary equipment to conduct those activities. Where beneficial, course material should reflect information provided by original equipment manufacturers, particularly for fuel cell and digester technologies. The quality standard for training materials developed is described in Section II: Funding and Schedule.

Where possible, course materials developed by successful proposers shall be certified or recognized by an appropriate certification organization such as, but not limited to, BPI, ISP, or NABCEP. For example, current building science classes taught by Hudson Valley Community College and its network of learning centers are recognized by BPI. Course material is aligned with BPI standards and classes prepare students to take the BPI written and field examinations.

Instructors and Instructor Development

The clean energy technology instructor or certified instructor (CI) is the link between the students, the training material, and practitioner certification. The CI is responsible for training students to the relevant, nationally approved task analysis standards developed by national certification organizations if available. Instructors that are contractors of institutions that propose are expected to fully meet applicable certification requirements as a result of NYSERDA's assistance under this program. An example of certification requirements can be found at the ISP Website: <http://www.ispq-central.com/>

Master Trainer

A master trainer (MT) can train instructors or students. The MT serves a critical role in the development of new clean energy technology instructors. A MT must have a quality program, policies and procedures, appropriate record keeping, and a documentation system. An approved curriculum and delivery method for training instructors is required for a MT.

B. ACCREDITED TRAINING INSTITUTION

Accredited training institutions are the organizations that provide the umbrella under which the training takes place. Training institutions that partially meet some base-level requirements towards accreditation will be eligible for funding under this PON. It is expected that funded institutions will be able to reach full accreditation 12-24 months after a contract with NYSERDA is executed. Sample institution accreditation requirements, as used by ISP can be found at their Website: <http://www.ispq-central.com/>.

Institutions and organizations requesting funding **must demonstrate** that the above areas are being met at some level at the time a proposal is submitted and are expected to fully meet appropriate accreditation and certification requirements (as available) as a result of NYSERDA's assistance under this program.

C. ACCREDITED CONTINUING EDUCATION

Accreditation of continuing education programs is similar to accreditation of training institutions. In the case of a continuing education program, the emphasis is on providing training to practicing professionals with experience in various trades. Institutions providing continuing education programs and their trainers must have a mechanism in place to remain current on clean energy technology and applications and the clean energy installer industry, and must incorporate technological developments into their curricula. For example, this can be done by providing a library of installation materials and having good relationships with manufacturers. Successful candidates should also have adequate facilities and equipment for course offerings, appropriate course materials against stated outcomes and objectives, and evaluation techniques that examine the knowledge or skills gained by participants.

D. TRAINING FACILITIES AND EQUIPMENT

Funding is available under this PON for developing training facilities and purchasing training equipment and resources required for institution accreditation. Only equipment that can be justified as directly necessary for clean energy training will be approved.

E. RESOURCE LIBRARY

A resource library is recommended for each accredited institution. This library should include relevant reports, articles, video, multimedia, up-to-date periodicals, up-to-date manuals from equipment manufacturers, and CD ROM materials, in addition to Internet access. A successful proposer will demonstrate how the addition or augmentation of a library will help it meet accreditation standards.

F. PROGRAM MARKETING AND OUTREACH

Existing clean energy installers and practitioners that have electrical or building experience and vocational students are just a few examples of prospective students for accredited programs. For example, potential students may be recruited from regional trade schools, local chapters of a trade union, and electrical, heating, and air conditioning contractors that are interested in diversifying their services. This program will provide funding for, but is not limited to, program advertising, creative marketing, and outreach activities aimed at prospective students. In particular, outreach to underutilized economically disadvantaged or work re-entry populations is desired.

G. MARKET ASSESSMENT

Each institution should evaluate its enrollment goals and objectives for a clean energy technology program. The ISP notes that the accreditation process will often take longer to develop and implement than hoped or planned. This PON will provide funding for educational organizations to conduct a market assessment for an accredited clean energy training or continuing education program. Funds are available for market assessments to better determine if a program is cost-effective and meets an organization's goals and objectives. Entities may request funds for a market assessment only, with the possibility to pursue accreditation in the future, or as part of a multistage proposal that begins with a market assessment and ends with accreditation (meeting the necessary milestones along the way).

The goal of the market assessment is to determine the needs for an entity to obtain accreditation, the market for prospective students, marketing needs to attract new students, and the potential for co-funding or endowments to help achieve accreditation. Funding for market assessments is only available for organizations trying to achieve accreditation as a training institution or continuing education entity.

H. SCHOLARSHIP PROGRAMS

Funding for scholarship programs is also available under this program. Scholarship programs should be designed to create opportunities and encourage interest and participation in accredited training programs. Creative incentives should be designed to attract students with diverse backgrounds, and criteria for awarding scholarships must be defined in the proposal. Funding for scholarship programs is only available for organizations trying to achieve accreditation as a training institution or continuing education entity.

I. APPRENTICESHIP PROGRAM

Funding is available for developing an accredited apprenticeship program through established procedures for accrediting training institutions. Innovative apprenticeship programs that will provide potential students with opportunities to work with experienced clean energy installers are encouraged. Letters of commitment from installers are required. Funding for apprenticeship programs is only available for organizations trying to achieve accreditation as a training institution or continuing education entity.

J. OTHER

Additional funding may be made available for other innovative initiatives directly related to accreditation or certification efforts. Proposers will be required to identify and describe such initiatives and provide justification for funding as part of their proposals.

III. PROPOSAL REQUIREMENTS

Proposal Qualifications and Requirements

Proposers to the solicitation must have the following qualifications:

- Staff with documented experience in curriculum development and maintenance
- Credentialed and experienced instructional staff, or a plan and schedule for instructional staff to obtain necessary credential requirements
- Experience in developing, implementing and maintaining certified training programs
- Experience in developing certifications and accreditation standards and tasks
- Experience with integrating new material into existing curricula and/or developing new stand-alone curricula approved by the New York State Department of Education for use at either the secondary or post-secondary education levels
- Continuing education institutions and organizations and institutions seeking accreditation **must demonstrate** that the following five areas are being met at some level at the time a proposal is submitted:
 - The organization must be a legal entity, such as an educational institution or corporation.
 - A quality record-keeping program and documentation system must be in place.
 - Current course offerings must be related to energy efficiency, renewable and clean energy technologies.
 - Credentials and experience of instructors must be presented.
 - References from previous program participants must be provided.

All training activities and materials developed are subject to NYSERDA review and approval. All training curricula and materials developed will be the property of NYSERDA. Tuition revenues are not included in the PON.

All proposals submitted as part of PON No. 1286 become the property of NYSERDA. Proposers will not be reimbursed by NYSERDA for any costs associated with preparation of their proposals.

Proposers must submit 11 (eleven) copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this Program Opportunity Notice/Request for Proposal. A completed and signed Proposal Checklist must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned.** Faxed or e-mailed copies will be not be accepted.

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 PON/RFP number, and the page number. The proposal must be in the following format:

Proposal Checklist - The checklist to be completed is attached to this PON. The checklist must be attached to all fourteen (14) proposals. At least one copy must contain an original signature.

Section 1: Introduction and General Information - The proposers should briefly identify key information about their organizations. Responding proposers or proposing teams must include the following information for each team member with his or her response:

- Firm name, address, telephone number and fax number, an e-mail address and contact person;
- Year firm was established;
- Name and address of parent company (if applicable);
- If your firm is not New York-based, a discussion of the mechanism that will guarantee the provision of prompt and efficient services in New York State.

Proposers should describe why they are qualified to perform and complete the services requested under this PON. This section should be limited to no more than 1-2 pages and provide a brief introduction of the proposer and the team members, if applicable.

Proposers should describe any current activities that this proposal may build upon.

Section 2: Executive Summary - Summary of the proposed program. (not to exceed one (1) page)

The summary should state the goals of the proposal clearly and concisely. The summary should also state the proposer's plans beyond this PON: Is the end of the project supported by this PON the project endpoint or is it part of a longer ongoing training plan?

Section 3: Narrative Description of Proposed Technologies, Funding Areas, and Range of Services

Proposers should describe, in detail, the activities proposed by technology area and the range of services that will be provided by the proposer or the proposing team for each area. Proposers should also provide details on any current activities that this proposal may build upon. The Proposer should address the areas below, where applicable, and provide more specific information about how these areas will be addressed in Section 4 (Statement of Work). Section 3 should address the "what" and "why" related to the proposed training, accreditation, and certification initiatives and activities. Section 4 should describe "how" those activities will be developed and implemented as further described below.

INSTRUCTORS: How will the pool of instructors be created? How will an instructor, or instructors, be placed at each training site? How will quality of instruction and curriculum standards be maintained?

CURRICULA: How will curricula be developed? How and who will develop new curricula? How will curricula be integrated into existing workforce training programs?

TRAINING DELIVERY: How will training be delivered? How will students register for classes? How will classes be scheduled? How will consistency of training at various SBC training sites be achieved?

FACILITIES AND EQUIPMENT: How will the list of necessary equipment be developed? Will training to use the equipment be necessary? How will this training be accomplished? How long should the equipment last? Where will training classes be conducted?

MARKETING AND OUTREACH: What methods will be used? Who will be responsible for these efforts? How will these efforts be coordinated with other related program marketing and outreach efforts?

SCHOLARSHIP AND APPRENTICESHIP: Who will be eligible? What are the selection criteria? What portion of training costs will be covered?

ACCREDITATION AND CERTIFICATION PROGRAMS: What will the development process be? Who will be included in the development process? How will the resulting accreditations and/or certifications be validated?

OTHER SOURCES OF FUNDING: What are the proposers other sources of funding? Is there a complete description of each funding source?

EVALUATION: How will students' performance be evaluated? How will the effectiveness of a course/class be assessed?

Section 4: Statement of Work - The Statement of Work details how the proposer will fulfill the tasks outlined in "**RANGE OF SERVICES**". The Statement of Work is the primary contractual document that identifies the deliverables and provides a basis for payment. It is an action document that specifically delineates each step or procedure required to accomplish the applicable tasks outlined in "**RANGE OF SERVICES**." The Statement of Work must be prepared as an ordered set of tasks, including subtasks as necessary. The proposers should describe their approach/methodology and define their rationale for the proposed approach. They should describe the actions they will take to complete each task and what the anticipated outcome of each task is. Each action should, therefore, be identified, indicating who will perform it, how it will be performed, when it will be performed, and its anticipated deliverables. In addition to responding to the defined tasks, the proposer is invited to present additional tasks as long as they promote, and are consistent with, the goals and objectives of this initiative.

In order to effectively evaluate a proposer's Statement of Work, there must be concrete and specific ideas presented in the proposal for each element of all tasks. Proposers are expected to demonstrate their understanding of each task and what it entails by elaborating on how they would carry it out. No proposer is expected to provide a fully detailed and comprehensive implementation plan at this point, but each proposer will be evaluated on how much forethought and consideration they have given to every aspect of the proposed training program. Use the following format to describe each task or subtask:

Task 1: Task Title
The Contractor shall....
The Task 1 deliverable is....

The SOW must incorporate all of the areas identified and described by the proposer from Section III.3 of the Proposal Requirements.

Section 5: Management Structure - The proposal shall identify all project participants, including the program director, who will be responsible for ensuring that the tasks within the statement of work are carried out properly and in a timely manner. The proposer should provide a clear description of the roles and responsibilities of each

key person in completing the work plan. An organization chart should be included in the proposal. Proposals that include teaming arrangements must specify one party as the Prime Contractor. The Prime Contractor will have overall responsibility for the administration of the Agreement and completion of the Statement of Work. The proposer should also describe how coordination with NYSERDA and its clean energy partners will be accomplished.

Section 6: Qualifications - The proposers shall demonstrate how they are qualified to carry out the tasks in the Statement of Work. The proposal should clearly demonstrate how the proposer meets the experience, skills, and abilities necessary to effectively develop and implement this Program, as described above. Given the wide variety of skills and expertise needed to complete some elements of these tasks, the proposers should describe ideas or strategies to augment their capabilities with external resources, if needed. Proposals should include examples of relevant training, accreditation, and certification projects and programs that have been completed by the proposers that would demonstrate their qualifications to develop and implement this Program. Each proposer should include the name and telephone number of at least three references for whom its organization has completed projects. Resumes of all key team members should be provided in an appendix.

Section 7: Schedule and Staff Plan - The proposers shall include a time line for completing each task and major subtask identified in their Statement of Work. This time line should be in bar chart form showing anticipated starting and completion times for each task, in terms of weeks or months after execution of the Agreement.

The proposal should also include a staffing plan that identifies the key personnel, including any subcontractors or other resources, responsible for completing each task and major subtask. Provide a table showing the number of hours each key person or subcontractor will spend on each task and the total hours per task.

Section 8: Cost Proposal and Budget - The Contract Pricing Proposal Form (CPPF) is included as an attachment to this PON. The proposal must include a completed CPPF for each of the following:

- The total proposal
- Each of the applicable tasks in the Range of Services.

Attach detailed budget breakdowns (using the CPPF Supporting Schedule) for subcontractors, equipment, material, and travel. A cost-plus-fixed-fee type of contract is contemplated to be used.

Cost Sharing - The proposal should show non-NYSERDA funding of at least 40% of the total cost of the project. Cost sharing can be from the proposer, other team members, and other government or private sources. Contributions of direct labor (for which the laborer is paid as an employee) and purchased materials may be considered "cash" contributions. Unpaid labor, indirect labor, or other general overhead may be considered "in-kind" contributions. NYSERDA will not pay for efforts that have already been undertaken. The proposer or proposing team cannot claim as cost-share any expenses that have already been incurred. Show the cost-sharing plan in the following format (expand table as needed):

	Cash	In-Kind Contribution	Total
NYSERDA	\$	\$	\$
Proposer	\$	\$	\$
Others (list individually)	\$	\$	\$
Total	\$	\$	\$

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

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

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

Anticipated Delivery Costs. The costs associated with the delivery of the classes that result from this PON will be funded through the registration fees paid by the attendees. It is NYSERDA's intention that these classes are delivered as cost-effectively as possible to the attendees. Proposers shall include, as part of their proposal, the anticipated cost to attendees for each of the training categories being proposed.

Section 8: Reporting - Include Monthly Progress Reports and a Final Report.

Metric Reporting Requirements:

For all Training Categories, the following metrics for monthly and quarterly reports shall include, but not be limited to:

- o Complete list of classes held during the previous reporting period, listed by category. The location(s) where the training sessions were held
- o The number of attendees for each training session
- o Names and contact information of students taking training shall be available to NYSERDA upon request
- o A summary of marketing, scholarship and internship activities
- o Registration fees paid by participants
- o Program dollars spent on training sessions
- o Training evaluation: Evaluations for each training session from both the attendees and the trainer are to be submitted. Evaluations shall be designed to get feedback on the effectiveness of the training and to provide information on how the training can be improved. The final evaluations will be reviewed and approved NYSERDA.

The Reports for classes where certification is available in addition to the metrics listed above, shall include, but not be limited to:

- Success rate of the training: How many of the contractors or installers who attended the classes took the applicable certification exam, if available, and what was the pass rate.

Appendices

Materials to be submitted in appendices include:

- o Resumes of key personnel who will complete tasks described in the Statement of Work.
- o If applicable, include letters of commitment, signed by a person authorized to bind the organization, for all participating organizations.
- o Letters of support from other Workforce Development entities, such as the Department of Labor/Community College "One Stop" system, are encouraged.

- o If applicable, a list of the NYSERDA contracts your organization and/or team members have received.
- o Other material deemed necessary by the proposer.

IV. RECOUPMENT

Recoupment is not anticipated under this solicitation.

V. PROPOSAL EVALUATION

Proposals will be scored and ranked within the areas targeted by this PON. For example, it is anticipated that large wind proposals will be ranked separate from anaerobic digester proposals. Proposals which include multiple technology areas will receive scores for each technology covered. New York City has been identified as an area for additional training in all technology areas. Proposals that meet Proposal requirements will be reviewed by a Technical Evaluation Panel (TEP) using the Evaluation Criteria below:

Relevant Experience and Qualifications

How well does the proposer demonstrate an understanding of the concepts and motivators underlying this program?

Does the proposer have documented experience in developing and implementing technical training?

Does the proposer have documented experience in developing accreditation and certification programs? Task analysis?

Does the proposal utilize various means of technology and resources for the delivery of training?

Are key personnel's education and experience relevant to the training needs? Is the overall capability of the training staff adequate and appropriate?

Has the training team demonstrated recent experience in developing, marketing, and delivering training to post-secondary education students and contractors?

Has the training team demonstrated recent experience designing and developing relevant training curricula for post-secondary, and workforce instruction programs?

Does the proposing institution have renewable technology accreditation? Are the instructors certified for renewable energy training? Have the instructors met some certification requirements?

What is the quality of the program staff's performance on past programs or their achievements related to proposed work?

Does the proposer have a record of developing training curricula that have been approved as a course, or approved for integration into existing curricula by the New York State Department of Education?

Does the proposer have an existing network of sites where training will be conducted? If so, are the training facilities self-sustaining?

Do the personnel dedicated to this program possess strong clean energy technology, residential construction, energy efficiency, and building performance knowledge and working history?

What is the proposer's previous experience with NYSERDA, if any?

Cost

Is the Contract Pricing Proposal Form (CPPF) responsive to the PON?

Is the CPPF clear?

Are billing rates current, reasonable, appropriate, and clearly identified or itemized?

Is the proposer's total cost appropriate when compared to the cost of other comparable proposals and their projected results?

Are the costs to deliver the training developed and marketed as a result of this PON affordable and cost-effective for contractors and practitioners to attend?

Are trainer billing rates reasonable and appropriate?

Are the proposer's total delivery costs appropriate when compared to the costs of other comparable proposals and the projected results?

Is the delivery phase of the training plan complete?

Does the proposal meet cost sharing requirements?

What are the proposer's other sources of funding?

Is there a complete description of each funding source?
Does the proposal meet PON budget limits?

Comprehensiveness of Approach and Management Plan

Are training sites located in New York State and located in investor-owned utility service territories?
Does the proposal meet the targeted areas of this PON (large wind training outside of northeastern New York, anaerobic digester training, and clean energy technology training in the New York City Region)?
Has the proposer demonstrated that a significant number of their students will be New York State residents or practitioners that will install clean energy systems in and throughout New York State?
Does the proposer plan to provide a range of services commensurate with the services requested by NYSERDA?
Does the proposer have the expertise and experience to complete all aspects of the program successfully?
Does the proposer have a letter(s) of commitment or support from all team members and other Workforce Development organizations?
Are sufficient resources (staff, facilities, and equipment) being devoted to the SOW and each individual task?
Is the proposal organization, including the staffing plan and schedule, of high quality?
Is the program's staff overall capability appropriate?
Has the proposer demonstrated the capacity to develop and oversee a network of sites to deliver training statewide?
Is management oversight and control adequate?
Does it include coordination and interaction with all of the relevant parties?
Is the coordination of other participants (proposing team subcontractors, local resources, and other programs) well developed?
How comprehensive is the proposal in addressing:

- The number of funding areas included
- The technologies included
- The range of services included
- The geographic range of delivery of training

Does the proposal describe the student markets to be served?

Responsiveness to the Scope of Work of the PON

Is the proposal responsive to the PON?
Is the SOW thorough, specific, logical, and consistent with the PON's objectives?
Does the SOW reflect an understanding of all the issues involved and their interrelationships?
Has the proposal demonstrated an understanding of the importance of training accreditation and certification to the success of NYSERDA's program goals and objectives?
Has the proposer demonstrated an understanding of current training, certification, and accreditation activities supported by NYSERDA and does the proposal address the relationship, if any, between proposed and current training initiatives?
Does the SOW address one, or more, clean energy technologies?
Is the SOW appropriate in its approach to develop, market, and deliver quality training? How well does the proposer demonstrate an understanding of NYSERDA's current residential and renewable energy programs?
How well does the proposer's budget accurately reflect potential implementation costs associated with completing the tasks in the SOW?
How much additional elaboration was provided for each task in the SOW?
Does the proposer include creative suggestions to achieve the goals of this PON?
Are there any suggestions that broaden or deepen the scope of this PON that might not have been requested?
How well does the evaluation plan and strategy accommodate and address Program current and future needs?
How well does the proposal incorporate input from original equipment manufacturers and industry experts who can bring useful information to the workforce development program?

VI. GENERAL CONDITIONS

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers Law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2) (d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to accept it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 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 and 139-k. These provisions contain procurement lobbying requirements that can be found at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>. The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

Tax Law Section 5-a - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at http://www.tax.state.ny.us/pdf/2006/killin/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/killin/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 multiple awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA expects to notify proposers in approximately 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 (mandatory)

Attachment B – Disclosure of Prior Findings of Non-responsibility (mandatory)

Attachment C – Intent to Propose (optional, but encouraged)

Attachment D – Contract Pricing Proposal Form (CPPF - mandatory) & Instructions

Attachment E – Sample Agreement



ATTACHMENT A - PON No. 1286 PROPOSAL CHECKLIST (MANDATORY)

Proposal Title Clean Energy Technology Training, Accreditation, and Certification		Due Date June 24, 2008	
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
<p>THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:</p> <p>Do you accept all Terms & Conditions in the Sample Agreement? (if no, explain on separate pg) __ Yes __ No</p> <p>Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) __ Yes __ No</p> <p>Are you a Minority or Women-Owned Business Enterprise? __ Yes __ No</p> <p>Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? __ Yes __ No</p> <p>Are you submitting the required number of copies? (See proposal instructions.) __ Yes __ No</p> <p>Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? __ Yes __ No (if yes, explain on separate page)</p>			
ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?			
<ol style="list-style-type: none"> 1. Introduction and General Information 2. Executive Summary 3. Narrative Description of Proposed Technologies, Funding Areas, and Range of Services 4. Statement of Work 5. Management Structure 6. Qualifications 7. Schedule and Staffing Plan 8. Cost Proposal and Budget 9. Reporting 		<p>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)</p> <p>Disclosure of Prior Findings of Non-responsibility Form</p>	
AUTHORIZED SIGNATURE & CERTIFICATION			
I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA's procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I the undersigned am authorized to commit my organization to this proposal.			
Signature		Name	
Title		Organization	
Phone			

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



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

Form with fields for: 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; Three Yes/No questions regarding non-responsibility findings; 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") (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: _____



INTENT TO PROPOSE (ATTACHMENT C)

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

Roseanne Viscusi - PON No. 1286
New York State Energy Research and Development Authority
17 Columbia Circle, Albany, NY 12203-6399
fax (518) 862-1091 e-mail rdv@nyserda.org

Form with fields for Name, Title, Organization, Address, City, County, State, Zip +4, E-mail Address, Phone No., Web Site, Fax No., Authorized signature, and Date.

Form with checkboxes for 'Please check all that apply' and 'How did you receive information about this solicitation?'.

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



NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
Contract Pricing Proposal Form
ATTACHMENT D

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

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

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

INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE

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

A. GENERAL

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

B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL

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

1a. DIRECT MATERIALS - PURCHASED PARTS

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

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

1b. OTHER DIRECT MATERIALS

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

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

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

3. DIRECT LABOR

- a. Commercial Enterprises

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

b. Educational Institutions

Provide the following for each calendar year of the contract:

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

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

5. OUTSIDE SPECIAL TESTING

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

6. EQUIPMENT

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

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

7. TRAVEL

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

8. OTHER DIRECT COSTS

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

9. SUBCONTRACTORS/CONSULTANTS

- a. Explain the specific technical area in which such service is to be used and identify the contemplated consultants.
- b. State the number of days and the hours per day of such service estimated to be required and the consultant's quoted rate per day. Document when/where the consultant has received the proposed rate in performing similar services for others.

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

11. FEE OR PROFIT

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

ATTACHMENT E

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

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

This Agreement consists of this form plus the following documents:

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

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 B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

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

Budget: The Budget set forth in 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. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA.

Article III

Deliverables

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

Article IV

Compensation

Section 4.01. Cost-Sharing. It is understood and agreed that NYSERDA and the Contractor are sharing the costs for the Work to be performed. In consideration for this Agreement and as full compensation for NYSERDA's share of 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 a maximum amount of \$_____ for the cost elements identified in the Budget to be funded with NYSERDA funds, 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.

Section 4.02. Title to Equipment. Title shall vest in the Contractor to all equipment purchased hereunder.

[OR, if specific equipment has been identified by the Project Manager for NYSERDA to retain title in, then use the following:]

Section 4.02. Title to Equipment. Title shall vest in NYSERDA to all of the following equipment purchased hereunder:

- 1)
- 2)
- 3)
- 4)

Upon the request of NYSERDA, the Contractor shall execute, acknowledge, deliver and perform, or cause to be executed, acknowledged, delivered or performed, all such bills of sale, assignments, conveyances or other documents or acts as NYSERDA may reasonably request in order to assure the better vesting in and confirming to NYSERDA, its successor and assigns, of title to and possession of such equipment. If, after six months following the completion of the Work or the termination of this Agreement, NYSERDA has not removed any such equipment, it will be deemed abandoned and become the property of the Contractor. Any such removal of equipment by NYSERDA shall be at NYSERDA's expense.

Section 4.03. 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 on the upper right hand corner of page one of the Agreement. Invoices shall set forth total project costs incurred. These shall be broken down into NYSERDA's Funding share and into the Cost-Share and Other Cofunding share, and 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 4.04. 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. An invoice for final payment shall include, in addition to the material required pursuant to Section 4.03 hereof, a statement as to whether any invention or patentable devices have resulted from the performance of the Work. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six months following Acceptance of Work pursuant to Section 6.02 hereof. 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 of \$_____ set forth in Section 4.07 hereof.

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

Article V

Assignments, Subcontracts and Purchase Orders

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

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

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

Article VI

Schedule

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

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

Article VII

Force Majeure

Section 7.01. Force Majeure. Neither party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request

of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, strikes, or the delay or failure to perform by any Subcontractor by reason of any cause or circumstance beyond the reasonable control of such Subcontractor.

Article VIII

Technical Data

Section 8.01. Rights in Technical Data.

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

(1) NYSERDA shall have:

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

(2) The Contractor shall have:

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

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

Article IX

Warranties and Guarantees

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

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

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

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

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

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

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

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

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

Article X

Indemnification

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

Article XI

Insurance

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

- (a) name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;
- (b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (c) be reasonably satisfactory to NYSERDA in all other respects.

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

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

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

Article XII

Stop Work Order; Termination

Section 12.01. Stop Work Order.

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

- (i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or
- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

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

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

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

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

Section 12.02. Termination.

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