Phase I Proposals Due: February 22, 2010 by 5:00 PM Eastern Time *

NYSERDA is seeking proposals from insurance brokerage companies to meet NYSERDA's property, liability, and certain other insurance requirements and to advise NYSERDA on addressing risk management requirements that are in the best interest of NYSERDA. NYSERDA will use a two-phase process to select an insurance broker and their coverage proposals.

In Phase I, proposers will be evaluated based on their qualifications and experience. Proposals submitted in Phase I must include a list of preferred carriers in order of priority. Proposers may not contact any carriers to obtain pricing until authorized to do so by NYSERDA.

Following Phase I, one or more companies will be asked to submit quotes for specified property, liability, and other insurance coverage from one or more insurance carriers designated by NYSERDA. These quotes will be the basis for the selection of the insurance broker under this RFP.

Proposal Submission: Proposers must submit five (5) copies of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposals must be clearly labeled and submitted to:

Roseanne Viscusi, RFP 1893
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Peter Mahar at (518) 862-1090, ext. 3224 or pvm@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 Peter Mahar at (518) 862-1090, ext. 3224 or pvm@nyserda.org. Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

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

I. Introduction

The New York State Energy Research and Development Authority (NYSERDA) is a public benefit corporation established pursuant to Title 9 of Article 8 of the Public Authorities Law of the State of New York.

Information on NYSERDA's programs is contained in the Annual Report available on its website at http://www.nyserda.org/publications/NYSERDA08report.pdf. The most recent audited financial statements for the fiscal year ended March 31, 2009 are available at http://www.nyserda.org/publications/AuditedFinancialStatementsMarch312009.pdf,or by written request.

NYSERDA currently maintains insurance policies for property, liability, umbrella (excess) liability, and long-term disability coverage with coverage amounts and terms as summarized in Attachment A.

II. Minimum Qualifications

Proposers must be duly licensed by, and in good standing with, the New York State Insurance Department. Proposers must have experience in providing broker of record services for commercial organizations, and preferably governmental or not-for-profit organizations. Proposers must describe and demonstrate their expertise and experience in placing insurance for each of the policies currently maintained by NYSERDA, included in Appendix A.

III. Program Requirements

The proposer(s) selected after Phase II of this RFP will be responsible for assisting NYSERDA with all aspects of its property and liability insurance coverages, including but not limited to:

1. Identifying issues and exposures and negotiating on NYSERDA's behalf with insurance carriers and keeping NYSERDA informed of significant developments. The Broker shall be authorized to represent and assist NYSERDA in discussions and transactions with all insurance carriers, provided that the Broker shall not place any insurance on behalf of NYSERDA unless so authorized in writing by NYSERDA.
2. Following up with insurance carriers for timely issuance of policies and endorsements. Following placement, deliver binders prior to expiration of the current policies.
3. Reviewing policies and endorsements for accuracy and conformity to specifications and negotiated coverages.
4. Providing coverage summaries for all new coverages and updates on changes to existing coverages.
5. Processing or facilitating the processing of certificates of insurance, as requested by NYSERDA.
6. All claims will be reported to the Broker who will forward the claim to the insurance carrier. The Broker shall monitor the claim status and assist NYSERDA in obtaining timely resolution of the submitted claim.

IV. Term

It is anticipated the initial term of the insurance policies ultimately awarded will be effective upon the expiration of the current policies: March 31, 2010 for the Commercial Property policies; March 31, 2010 for the Liability/Umbrella policies; and January 1, 2011 for the Long-Term Disability policy. NYSERDA desires for the new policies to be established with an annual policy renewal date of April 1 of each year thereafter. NYSERDA will consider, and prefers, proposals from insurance carriers to provide established renewal pricing for policy periods through March 31, 2016.

V. Proposal Requirements

Proposers must submit five (5) copies of their completed proposal for Phase I. **A completed and signed Proposal Checklist (see Attachment A) must be attached to the front of all copies.** At least one copy must contain an original signature. All proposals submitted in response to this RFP shall become the property of NYSERDA.

Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Each page of the proposal should state the name of the proposer, the RFP number, and the page number. NYSERDA may request additional data or material to support proposals.

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 may disqualify your proposal.

Proposal Format
To facilitate comparison of proposals, proposers must submit proposals in a format that corresponds to the following outline:

Section 1. Introduction: In this section, provide a brief description of the agency/company, its services, and its overall qualifications. Information provided in this section should include, but not be limited to: number of years providing similar services; number of employees; and approximate number of clients. For national or multi-office locations, provide information on both a firm-wide basis as well as the office from which the account will be serviced.

Section 2. Staffing: Identify the proposed account executive and any other staff who will provide regular services to NYSERDA in providing the insurance broker services described herein. For each person identified, include information indicating the length of time with the agency/company, length of service in insurance or risk management, approximate number of clients served, and any professional/associate designations.

Section 3. Qualifications and Relevant Experience: Briefly describe the agency/company's qualifications and relevant experience in providing insurance programs as described in this RFP and for organizations similar in size and risks to that of NYSERDA. Based upon your review of information about NYSERDA's programs and services and its existing insurance coverages, provide any comments or suggestions for NYSERDA's consideration for the specific insurance quotation coverages to be requested under Phase II of the RFP.

Section 4. References: Provide three (3) references from customers currently receiving insurance coverages from the agency/company. For each reference, provide an individual contact person name, address, and telephone number.

Section 5. List of Insurance Carriers: Proposers must list in order of preference the insurance carriers that the insurance brokerage company would prefer to be assigned if selected to provide a quote in Phase II of the RFP. Proposers may not contact any insurance carriers to obtain pricing until authorized to do so by NYSERDA. Following Phase I, one or more proposers will be asked to submit quotes for specified property, liability, and other insurance coverage from one or more insurance carriers designated by NYSERDA. These quotes will be used as the basis for the selection of the insurance brokerage companies and the insurance carrier and coverage.

VI. CONTRACTOR SELECTION AND PROPOSAL EVALUATION

A. Contractor Selection

Proposers selected in the Phase I evaluation process will be asked to provide quotes for specific insurance coverages, as requested, to become effective upon expiration of NYSERDA's current insurance policies, as summarized in Attachment C.

It is anticipated that this solicitation will result in one or more contract awards. NYSERDA may contact selected references to determine whether a proposer has the necessary expertise and ability to successfully provide the services requested through this RFP. After completion of the Phase I evaluation, all proposers will be notified of the results, which is expected to occur no later than February 22, 2010, and proposers selected to submit quotes for Phase II will then be requested to submit such quotes no later than March 18, 2009.

B. Proposal Evaluation

1. Phase I Evaluation

Proposals received by the due date will be evaluated by an evaluation panel of NYSERDA staff. The panel will evaluate the qualifications and experience of each proposer to provide the insurance brokerage services described herein. The evaluation criteria to be used and the relative weighting of the criteria are listed below:

Proposer Experience and Qualifications (Maximum 70 Points)

a. Background of the insurance brokerage company.
b. Experience in providing insurance services to organizations similar to NYSERDA including public sector clients.
c. Resources available to the firm, including number of employees, number and location of offices, and affiliated companies.
d. Past performance of firm and staff as determined by reference checks.
e. Background and experience of account executive and other support personnel, including professional qualifications and length of time working with the agency, and length of time working in insurance or risk management services

Responsiveness to the Request for Proposal (Maximum 30 Points)

a. Requested information included and thoroughness of response.
b. Understanding and acceptance of the services requested.
c. Clarity and conciseness of the response.
d. Demonstrated understanding of risk management issues facing NYSERDA, including any observations or recommendations on NYSERDA's current coverages.

Proposals must meet the Proposal Requirements as articulated in Section V: Proposal Requirements. Proposals that fail to meet one or more of the criteria may be determined to be non-responsive and may be disqualified from further consideration by the evaluation panel.

2. Phase II Evaluation

Proposals submitted under Phase II will be evaluated based upon an economic evaluation of the quote and the proposed insurance carriers (including policy premiums, rating of the proposed insurance carrier, coverage of terms and conditions of the policies, and references). NYSERDA prefers proposals that include coverage of all NYSERDA properties.

VII. GENERAL CONDITIONS

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

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

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

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

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

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

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

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

The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSERDA. *See,* ST-220-CA (available at http://www.nystax.gov/pdf/2007/fillin/st/st 220ca_507_fill_in.pdf). The Department has developed guidance for contractors which is available at http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf.

Contract Award - NYSERDA anticipates making one or more awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement to those specifically identified in the submitted proposal. NYSERDA expects to notify the proposers in approximately one week from the proposal due date for Phase I whether your proposal has been selected for Phase II of this process. The successful Phase II proposers are expected to be notified within three weeks of the Phase II proposal due date.

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. NYSERDA reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Agreement.

Disclosure Requirement - The proposer shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When a proposer is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSERDA after the award of a contract, NYSERDA may exercise its stop-work right pending further investigation, or terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the particular circumstances. Proposers must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

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VIII. Attachments:

Attachment A	Proposal Checklist
Attachment B	Disclosure of Prior Findings of Non-Responsibility Form (mandatory)
Attachment C	Listing of Present Insurance Coverages
Attachment D	Sample Purchase Order Agreement

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

ATTACHMENT A - RFP No. 1893 PROPOSAL CHECKLIST (MANDATORY)

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

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

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

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

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

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

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

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

1. Section 1: Introduction: Page No.___
2. Section 2: Staffing: Page No.____
3. Section 3: Qualification and Relevant Experience: Page No.___
4. Section 4. References Page No.___
5. Section 5. List of Insurance Carriers: Page No.___

Indictment/Conviction of Felony (if applicable)
Exceptions to Terms & Conditions (if applicable)
Disclosure of Prior Findings of Non-responsibility Form

AUTHORIZED SIGNATURE & CERTIFICATION

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

Signature	Name
Title	Organization
Phone	

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

Attachment B
Disclosure of Prior Findings of Non-responsibility Form

(Mandatory)

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

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

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

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

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

By:_____ Date:_____
Signature

Name:_____ Title:_____

Attachment C
Present Insurance Coverages

COMMERCIAL PROPERTY

Covered Location Addresses/Description
17 Columbia Circle, Albany, NY 12203-6399 > 66,000 sq. ft. office space (including 12,000 sq. ft. of partially finished basement) owned and occupied by NYSERDA.
485 7th Avenue, Suites 1006, 1011 and 1012, New York, NY 10018 > 7,877 sq. ft. office space leased by NYSERDA.
726 Exchange Street , Buffalo, NY 14210 > 2,829 sq. ft. office space leased by NYSERDA.
Corporate Plaza West, 210 Washington Ave. Ext., Albany, NY 12203 > 10,000 sq. ft. office space leased by NYSERDA.
15 Columbia Circle, Albany, NY 12203 > 9,785 sq. ft. office space leased by NYSERDA.
9030 RT. 219, West Valley NY 14171 >4,824 sq ft. office space leased by NYSERDA
Saratoga Technology + Energy Park, 10 Plains Road, Malta, NY 12020-4400 > NYSERDA owns on behalf of New York State, a 280 acre parcel of land in Malta (Saratoga County), New York. The site, once used for rocket and weapons-testing programs and space-research activities and later subject to certain remediation measures under a March 1998 Consent Decree as a "Superfund" site, was designated in 2001 as a business park devoted to the development of new, clean energy technologies. The site currently contains two buildings: the first building is approximately 23,000 sq. ft. (10 Hermes Road), which is subleased to two tenants. The second building is approximately 43,338 sq. ft. (345 Hermes Road), which is subleased to one tenant.
Western New York Nuclear Service Center, West Valley, NY 14171 > NYSERDA owns on behalf of New York State, a 3,340-acre site located in West Valley (Cattaraugus County), New York. During the 1960s and early 1970s, a commercial operator, Nuclear Fuel Services, Inc., ran a nuclear fuel reprocessing plant and low-level radioactive waste disposal area at the site. In 1980, Congress enacted the West Valley Demonstration Project Act (West Valley Act) authorizing the U.S. Department of Energy to carry out a demonstration project to solidify more than 600,000 gallons of liquid high-level radioactive waste stored at the site as a byproduct of the reprocessing activities and to decontaminate and decommission the premises. Under an implementing Cooperative Agreement, DOE pays 90% of the project costs (with the State paying 10%) and provides indemnification to the State and NYSERDA for the project premises. In addition, NYSERDA manages the State Licensed Disposal Area (SDA), a former commercial low-level radioactive waste disposal site.

Blanket limit coverage of $12,560,033 replacement cost at 100% coinsurance, $500 deductible

CRIME

	Limit	Deductible
Employee Dishonesty	$250,000	None
Forgery or Alteration	$25,000	$250
Broad Form Money and Securities	$250,000	$250
Outside the Premises	$250,000	250

COMPUTERS

	Limit	Deductible
Data Processing Equipment	$1,200,000	$250
Data Processing Media	$500,000	$250
Extra Expense	$300,000	$250

BOILER AND MACHINERY

$15,250,000 Limit, $1,000 deductible

GENERAL LIABILITY

$2,000,000	General Aggregate Limit (Other than Products-Completed Operations)
$2,000,000	Products/Completed Operations Aggregate Limit
$1,000,000	Each Occurrence Limit
$1,000,000	Personal and Advertising Injury Limit
$100,000	Damage to Premises Rented to you limit (any one premises)
$300,000	Fire Damage Legal Liability$10,000 Medical Expense Limit (any one person)

BUSINESS AUTOMOBILE

$1,000,000	Liability limit
$1,000,000	Uninsured Motorist
$1,000,000	Underinsured Motorist
$50,000	Personal Injury Protection
$100,000	Additional PIP
$25,000	Optional Basic Economic Loss
$175,000	Aggregate No-Fault
$5,000	Auto Medical Payment
$4,000	Maximum Monthly Work Loss
$2000	Death Benefit
$50	Other Necessary Expenses (per day)

Auto Schedule: 7 vehicles

COMMERCIAL UMBRELLA

$10,000,000	Each Occurrence - Bodily Injury & Property Damage
$10,000,000	General Aggregate
$10,000,000	Products/Completed Operations Aggregate
$10,000	Retention Limit

Underlying Policies:

General Liability	$1,000,000/occurrence; $2,000,000 aggregate and Prod/Compl Operations
Automobile	$1,000,000 limit

COMMERCIAL INLAND MARINE

$1,200,000	Hardware Limit
$500,000	Software Limit
$300,000	Extra Exposure and Business Income

GROUP LONG TERM DISABILITY

Benefit Amount: 60% of monthly pay, subject to $6,000 maximum per month
Qualifying Period: 3 months
Maximum Interruption During Qualifying Period: 30 days

ATTACHMENT D – SAMPLE PURCHASE ORDER AGREEMENT
NEW YORK STATE
ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

17 Columbia Circle
Albany, New York 12203-6399
Phone: (518) 862-1090 Fax: (518) 862-1091

PURCHASE ORDER

Federal taxpayer ID #: 14-1731395
N.Y. State sales tax exemption #: 14740026K

TO: (The "Vendor")	DATE	PURCHASE ORDER NUMBER SHOW ON INVOICES AND SHIPMENTS

SHIP TO:

Unless otherwise indicated, all prices are F.O.B. Destination
DELIVERY DATE

ATTN:

PLEASE FURNISH THE FOLLOWING, SUBJECT TO THE CONDITIONS NOTED:

QTY	DESCRIPTION	UNIT COST	TOTAL COST
	TOTAL COST NOT TO EXCEED		

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY IS EXEMPT FROM PAYMENT OF ALL FEDERAL AND NEW YORK SALES TAXES, COMPENSATING USE TAXES AND EXCISE TAXES. DO NOT INCLUDE SUCH TAXES WHEN SUBMITTING INVOICES.

THE CONTRACT ESTABLISHED BY THIS PURCHASE ORDER IS GOVERNED BY EXHIBITS B AND C, WHICH ARE BOTH INCORPORATED HEREIN AND MADE A PART HEREOF. VENDOR SIGNIFIES ITS ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS PURCHASE ORDER AND EXHIBITS B AND C BY DELIVERY OF THE GOODS OR SERVICES AND BY THE ACCEPTANCE OF PAYMENT.

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By

AUTHORIZED SIGNATURE

EXHIBIT B

STANDARD TERMS AND CONDITIONS
FOR NYSERDA PURCHASE ORDERS

(Based on Standard Clauses for New York State Contracts)
- REVISED 9/06 -

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

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

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

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

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds $5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States

Commerce Department or any other appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

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

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

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

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

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

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

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

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

13. COMPLIANCE WITH STATE FINANCE LAW SECTIONS 139-j AND 139-k. Pursuant to State Finance Law Sections 139-j and 139-k the following provisions apply:

(a) 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.

(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.

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

(a) Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).

(b) Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).

(c) Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

(d) Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.

(e) NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

EXHIBIT C

PART 504

PROMPT PAYMENT POLICY STATEMENT

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

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

(1) under the Eminent Domain Procedure Law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 504.4 Payment procedures. (a) Unless otherwise specified by a contract provision, a proper invoice submitted by the contractor to the designated payment office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the designated payment office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by the Authority.

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

(1) any defects in the delivered goods, property or services;

(2) any defects in the invoice; and

(3) suspected improprieties of any kind.

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

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

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

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

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

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

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the contract, prior to payment, then the payment due date shall be extended by the number

of calendar days from the date of receipt of an invoice to the date when the State or Federal agency, or other contributing party to the contract, has completed the inspection, advised the Authority of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

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

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

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

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

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

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

Section 504.11 Court action or other legal processes. (a) Notwithstanding any other law to the contrary, the liability of the Authority to make an interest payment to a contractor pursuant to this Part shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

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

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