

Proposals Due: April 15, 2011 by 5:00 PM Eastern Time *

New York State Energy Research and Development Authority (NYSERDA) is seeking proposals from independent certified public accounting firms to meet the Authority’s need for the audits of the Authority’s basic financial statements and the Other Post-Employment Benefits (OPEB) Trust for an initial one-year term with four annual one-year options to renew at NYSEERDA’s discretion for a possible total Agreement length of 5 years.

NYSERDA will award the contract based upon evaluation of all aspects of the proposal according to the needs of NYSEERDA and the best interests of the State. The award will go to the bidder whose proposal provides best value as determined by NYSEERDA.

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 2270
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 Elsyda Ahmed at (518) 862-1090, ext. 3232 or ela@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 will be returned, 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 NYSEERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSEERDA’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. NYSEDA is included in the State's basic financial statements as a discretely presented component unit.

Information on NYSEDA's programs is contained in the Annual Report available on its website at http://www.nyserda.org/publications/2010_annual_report.pdf.

The most recent audited financial statements for the fiscal year ended March 31, 2010 are available at <http://www.nyserda.org/publications/AuditedFinancialStatementsMarch312010.pdf>, or by written request.

OPEB Trust

NYSERDA provides health insurance benefits to current employees and retirees through the New York State Department of Civil Service.

In March 2010, NYSEDA's Board approved the establishment of the OPEB Trust to set aside assets to assist in paying NYSEDA's share of future health insurance premiums for eligible NYSEDA retirees (including their eligible dependents), based on actuarial valuations calculated under Governmental Accounting Standards Board Statement No. 45 (GASB 45). The OPEB Trust activity generally comprises quarterly contributions, monthly benefit payments, and periodic investment transactions. NYSEDA's trustee, The Bank of New York Mellon, holds trust assets and makes payments of eligible health insurance premiums and other Trust expenses upon approval from an authorized NYSEDA Officer. The OPEB Trust Administrator, Milliman, Inc., provides recommendations for Trust investments and assists in the monitoring of OPEB Trust investment performance. Pursuant to the Investment Policy Statement, investments are approved by a committee comprised of NYSEDA's Officers and a designee from NYSEDA's Audit and Finance Committee. The audit of the OPEB Trust for the fiscal year end December 31, 2010 has not been completed as of the date of this release.

II. Minimum Qualifications

- Be an independent certified public accounting firm.
- Demonstrate experience and expertise in providing similar auditing services, particularly for public authorities or organizations applying accounting and reporting methods prescribed by the Governmental Accounting Standards Board.
- Demonstrate financial resources to perform the proposed work and a good performance record.
- Be qualified for an award under applicable laws and regulations.

III. Program Requirements

Expected Deliverables

A contract with NYSEDA will include, but may not be limited to the following:

The successful bidder will perform an annual audit of NYSEDA's basic financial statements for the specified fiscal year, which ends March 31 of each year and an audit of NYSEDA's OPEB Trust which ends December 31 of each year.

The successful bidder shall prepare reports under both audits in conformance with Generally Accepted Auditing Standards and Government Auditing Standards, issued by The Comptroller General of the United States, as amended from time to time over the period covered by the Agreement. In addition, new Statements on Auditing Standards are issued regularly, and the successful bidder's reports shall be prepared in full conformity with then current auditing standards.

The annual audit of NYSERDA and the OPEB Trust's basic financial statements shall be completed following the end of the fiscal year in such time so as to allow the successful bidder to deliver all the reports to the NYSERDA Audit & Finance Committee at its June meeting.

NYSERDA's basic financial statements

The following required reports are:

- Independent Auditor's Report;
- Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*;
- Report on Compliance with the New York State Internal Control Act;
- Report on Compliance with Section 2925(3) of the New York Public Authorities Law; and
- Management Letter, including comments or recommendations for strengthening internal controls or operating efficiencies.

Copies of the auditor's various opinion letters are available at <http://www.nyserda.org/publications/IndependentAuditorsReportandManagementLetter2010.pdf>.

OPEB Trust basic financial statements

The following required reports are:

- Independent Auditor's Report;
- Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*.

In addition to the audit reports listed above, the successful bidder's services shall include:

- A conference with management to be held upon completion of the audit prior to the preparation of the final reports to communicate the results, to present and review the final reports, to communicate the results of the successful bidder's study and evaluation of NYSERDA's internal accounting controls performed as a part of the general purpose financial statements, and to provide recommendations about other aspects of NYSERDA's operation where the successful bidder observes opportunities for improvements.
- Attendance at NYSERDA's April Audit & Finance Committee meeting to discuss the scope of independent audit engagements that will be conducted and completed prior to the June Audit and Finance Committee meeting.
- Attendance at NYSERDA's June Audit & Finance Committee and Board of Directors meetings to present the final reports and answer pertinent questions.
- Advice to NYSERDA's management on financial matters and problems on an ongoing basis throughout the year.

The successful bidder shall communicate information regarding the following topics to the Audit & Finance Committee, to the extent applicable to the audit of NYSERDA:

- The auditor's responsibility under generally accepted auditing standards;
- Significant changes in accounting policies or financial statement presentation;
- Significant audit adjustments;
- Disagreements with management; and
- Difficulties encountered in performing the audit.

Special terms and Conditions

In conducting the audit, the successful bidder's auditors will work on a day-to-day basis with NYSERDA's accounting staff. NYSERDA will designate an employee to serve as liaison in obtaining the accounting records needed to perform the audit. With respect to the proper execution of the audit and the rendering of the required reports, the staff from the successful bidder will be responsible directly to the Audit and Finance Committee and the Board.

To assist the successful bidder's staff in completing the audit in an efficient and timely manner, NYSERDA staff shall prepare reconciliations and analyses of all major accounts, as well as prepare necessary workpapers. The financial statements and related footnotes shall be prepared directly by NYSERDA. The successful bidder's staff shall prepare the audit opinion letter and assemble fifteen (15) bound copies and an electronic copy of the complete financial statements. The statements need to be delivered to NYSERDA to allow sufficient time for a copy to be filed with the New York State Office of the State Comptroller by June 30 of each year.

Pursuant to the Section 2802 of the New York Public Authorities Law (as amended by the Public Authorities Accountability Act of 2005, Chapter 766 of the Laws of 2005), the successful bidder and its staff shall comply with the following requirements:

- The successful bidder's staff shall report timely to NYSERDA's Audit and Finance Committee: (a) all critical accounting policies and practices to be used; (b) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with NYSERDA management officials, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the successful bidder; and (c) other material written communications between the successful bidder and NYSERDA management, such as the management letter along with management's response or plan of corrective action, material corrections identified or schedule of audit differences, where applicable.
- The successful bidder will be prohibited from providing audit services if the lead (or coordinating) audit partner responsible for reviewing the audit has performed audit services for NYSERDA in each of the five previous fiscal years.
- The successful bidder shall be prohibited from performing any non-audit services to NYSERDA contemporaneously with the audit, unless receiving previous written approval by NYSERDA's Audit and Finance Committee including: (a) bookkeeping or other services related to the accounting records or financial statements of NYSERDA; (b) financial information systems design and implementation; (c) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (d) actuarial services; (e) internal audit outsourcing services; (f) management functions or human services; (g) broker or dealer, investment advisor, or investment banking services; and (h) legal services and expert services unrelated to the audit.
- The successful bidder shall be prohibited from providing audit services to NYSERDA if NYSERDA's President and CEO, Treasurer, or Controller was employed by the auditor and participated in any capacity in the audit of NYSERDA during the one year period preceding the date of the initiation of the audit.

On March 29, 2006, the State Comptroller adopted regulations (Regulation 2 NYCRR Part 201) setting forth certain accounting and reporting requirements applicable to NYSERDA. Pursuant to these Regulations, the successful bidder shall comply with the following requirements and any future legislative amendments:

- If NYSERDA reflects a change in an accounting principle(s) that requires disclosure in its notes to the financial statements, NYSERDA must present to the State Comptroller a plan to implement such change no later than 30 days after the end of the fiscal year for which such change is planned. The plan must set forth the reasons for the change and be accompanied by a letter from the successful bidder indicating that the planned change would be considered an improvement in financial reporting in accordance with generally accepted accounting principles.
- The successful bidder's report issued under Section 2925(3)(f) of the Public Authorities Law shall include: (1) a description of the scope and objectives of the audit; (2) a statement attesting that the

audit was conducted in accordance with generally accepted government auditing standards; (3) a description of any material weaknesses found in the internal controls; (4) a description of all non-compliance with NYSERDA's investment policies as well as applicable laws, regulations, the State Comptroller's investment guidelines requirements for public authorities, and such public authority accounting directives as may be issued by the State Comptroller; (5) a statement of positive assurance of compliance on the items tested; and (6) a statement on any other materials deficiency or finding identified during the audit not covered in (5).

The successful bidder's reports will be matters of public record, posted on NYSERDA's website, and available to all interested parties by request.

Communication during the audit is of the utmost importance given NYSERDA's desire to resolve promptly any issues that may affect the successful bidder's opinion. The successful bidder is expected to hold a conference with NYSERDA senior management at the conclusion of the audit, but prior to completion of the final reports to: review the financial statements and significant fluctuations or changes in accounting policies or presentation; review the draft opinion letters; and communicate to NYSERDA's management any financial or administrative problems identified or any suggestions for improvements.

The successful bidder is required to meet annually with the Audit and Finance Committee in executive session at its June meeting and may be asked to meet with the Board in executive session, on an ad hoc basis, to discuss the financial statements and accompanying reports, any financial or administrative problems identified during the course of the engagement, and offer any suggestions for improvement. The successful bidder's will also be required to respond to any questions by the full Board in connection with the Board's consideration of a resolution approving the financial statements. The Audit and Finance Committee and the Board at their discretion may require the successful bidder's attendance at other meetings.

As part of their services to the Audit and Finance Committee, the successful bidder's shall review the internal quarterly financial statements presented to the Board within 60 days of the end of each of the first three fiscal quarters. The successful bidder's shall review the statements and the accompanying explanation of significant fluctuations provided by NYSERDA accounting staff. No formal report is issued as a result of this review. Instead, the auditor shall communicate with the Treasurer their satisfaction based on the limited examination of the statements, no material errors appear to exist in the financial statements and nothing came to the attention of the auditor that would represent a serious fiscal matter requiring immediate attention of the Board; or explain what material errors or serious matters requiring Board attention they have found.

The auditor should be prepared to make available to the Audit and Finance Committee and the Board any significant analyses that may be prepared or are otherwise available during the course of the work performed.

In addition, the auditor should be prepared to keep NYSERDA management, the Audit and Finance Committee and the Board informed of significant proposals and changes in accounting standards or requirements that affect NYSERDA's accounting and financial reporting.

IV. Term

The term is an initial one-year engagement with four annual one-year options to renew at NYSERDA's discretion for a possible total Agreement length of 5 years as summarized below.

| | |
|------------|------------------------------------------------------------------|
| Year one | NYSERDA audit FYE 03/31/2012 and OPEB Trust audit FYE 12/31/2011 |
| Year two | NYSERDA audit FYE 03/31/2013 and OPEB Trust audit FYE 12/31/2012 |
| Year three | NYSERDA audit FYE 03/31/2014 and OPEB Trust audit FYE 12/31/2013 |
| Year four | NYSERDA audit FYE 03/31/2015 and OPEB Trust audit FYE 12/31/2014 |
| Year five | NYSERDA audit FYE 03/31/2016 and OPEB Trust audit FYE 12/31/2015 |

V. Proposal Requirements

Bidders must submit five (5) copies of their completed proposal. **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.

Evaluation criteria

NYSERDA will award the contract based upon evaluation of all aspects of the project according to the needs of NYSERDA and the best interests of the State. The award will go to the bidder whose proposal provides the best value as determined by NYSERDA. If two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. The basis for determining the award shall be documented in the procurement record.

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

Section 1. Technical Requirements including experience [70 points]: The evaluation criteria to be used to evaluate the Technical Requirements will included:

- Firm Qualifications and Technical Capabilities, including financial resources: describe the quality and depth of firm’s technical capabilities, credentials, background, and values that would qualify the firm for the audit services solicited. Include statement on firm’s financial resource and commitment to ensure completion of audit services.
- Relevant experience: describe firm experience in general and, in particular, as independent auditors on behalf of Public Authorities like NYSERDA, especially in transactions similar to the types NYSERDA has entered into.
- Approach to the specific project (Understanding the scope): describe firms overall understanding of NYSERDA and the Authority’s audit needs. Audit plan should clearly define audit approach, audit procedures, deliverables, and due dates.
- References: please provide three client references.
- Staffing offered/resumes, interviews if deemed necessary: describe overall experience and quality of staff assigned to the engagement. Interviews may be conducted if deemed necessary.

Section 2. Cost [30 points]: The proposer shall use the attached Audit Services Proposal Form to provide a fixed-price fee for NYSERDA’s basic financial statement audit and for the OPEB Trust’s basic financial statement audit for each of the five annual audits. The proposer shall also identify by title staff assigned to both engagements and the estimated number of hours expected to complete each audit for the first year only.

The basis for the cost proposal evaluation rankings will be the aggregate five-year total fee received from each proposer. The total price offers will be ranked with the low bid awarded the maximum of 30 points. The remaining proposals will be assigned scores based on the following formula:

$$\frac{\text{Total Fees and Expenses for Lowest Bidder}}{\text{Total Fees and Expenses Proposed by Bidder}} \times 30$$

As part of this RFP process, NYSERDA reserves the right to interview any and all staff proposed for an engagement and to approve or reject their participation in the engagement.

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.

VI. Format

The proposal should be presented in this order.

Section 1. Technical Requirements including experience [70 points]:

- Firm Qualifications and Technical Capabilities, including financial resources
- Relevant experience
- Approach to the specific project (Understanding the scope)
- References: please provide three client references
- Staffing offered/resumes, interviews if deemed necessary
-

Section 2. Cost [30 points]

VII. Administrative Requirements

Assessment of workspace required

The successful bidder will be provided adequate workspace at NYSERDA's main offices (17 Columbia Circle, Albany, New York), or any of its regional offices if necessary, to complete the necessary on-site field work. The successful bidder will have necessary furniture, telephone access, and access to fax and photocopy equipment.

Identification of any Project Related Travel

Reimbursement for successful bidder's travel and meals/lodging expenses is subject to the same limitations, which apply to New York State Management/Confidential (M/C) employees. These limitations including the current available rates may be found by accessing the following web site: <http://www.gsa.gov/portal/category/21287>.

Insurance

Prior to commencing work, the successful bidder shall file with NYSERDA, Certificates of Insurance evidencing compliance with all requirements contained in the Sample Agreement. Such Certificates shall be of form and substance acceptable to NYSERDA.

VIII. 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/st220ca_507_fill_in.pdf). The Department has developed guidance for contractors which is available at http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf.

Contract Award - NYSERDA anticipates making one award under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA 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 five weeks from the proposal due date your proposal has been selected for 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. 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.

IX. Attachments:

| | |
|--------------|---------------------------------------------------------------------|
| Attachment A | Proposal Checklist |
| Attachment B | Disclosure of Prior Findings of Non-Responsibility Form (mandatory) |
| Attachment C | Audit Services Proposal Form |
| Attachment D | Sample Agreement |

ATTACHMENT A - RFP No. 2270 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 |
| <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 (NYSERDA anticipates considering only specifically listed exceptions in negotiations.)</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> | | | |
| ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND? | | | |
| Technical requirements: -Firm qualifications and technical capabilities, including financial resources -Relevant experience -Approach to specific project -References -Staffing/Resumes -Cost | | Indictment/Conviction of Felony (if applicable) NYSERDA Contracts Awarded (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") | <input type="checkbox"/> | Yes |
| | <input type="checkbox"/> | 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") | <input type="checkbox"/> | Yes |
| | <input type="checkbox"/> | 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") | <input type="checkbox"/> | Yes |
| | <input type="checkbox"/> | 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 D

**SAMPLE AGREEMENT
NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
PERSONAL SERVICES 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: | |

The 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; and
- ! Exhibit D, Prompt Payment Policy Statement.

9. ACCEPTANCE

[CONTRACTOR]

[NYSERDA]

By:

By:

Name:

Name:

Title:

Title:

STATE OF)
) SS.:
COUNTY OF)

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

Notary Public

Exhibit A

Statement of Work

[Engagement Letter will be inserted as Exhibit A.]

Exhibit B
General Contract Provisions, Terms and Conditions

The New York State Energy Research and Development Authority ("NYSERDA") hereby offers to retain the Contractor on the terms and conditions set forth in this Agreement, to perform the services set forth in the Statement of Work attached hereto as Exhibit A and made a part hereof (the "Work").

1. Term. This Agreement will be deemed to be effective as of the date shown in Item 4 of page one of the Agreement, and the services to be rendered by the Contractor will be provided for the period shown in Item 5 of page one of the Agreement. NYSERDA reserves the option to renew the term for one year increments through the fiscal year ending March 31, 20___. Such renewals of the term shall be effective upon the execution of an amendment to this Agreement by both parties hereto. This Agreement may be terminated by NYSERDA upon 30 days prior written notice to the Contractor. In the event of such termination, the Contractor shall cease the performance of Work and compensation shall be paid to the Contractor in accordance herewith for services rendered by the Contractor up to the date of termination.
2. Project Personnel. It is understood and agreed that the person listed as the Contact in Item 3 of page one of the Agreement shall serve as Engagement Partners and as such shall have the responsibility of the overall supervision and conduct of the Work on behalf of the Contractor. NYSERDA shall be notified in writing of any change of Engagement Partners by the Contractor as soon as practicable.
3. Compensation.
 - a. The Contractor will be paid an annual fee for the Work performed by the Contractor as set forth in Exhibit A.
 - b. The total amount presently obligated and available for payment under this Agreement is shown in Item 7 of page one of the Agreement.
 - c. The Contractor may submit invoices for payment no more than once each month for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable." Such invoices shall make reference to the Agreement number shown in Item 1 of page one of this Agreement. The Contractor shall be notified by NYSERDA in accordance with Section 5.04(b)(2) of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, of any information or documentation which the Contractor did not include with such invoice.
 - d. In accordance with and subject to the provisions of such Exhibit D, NYSERDA shall pay to the Contractor, within the prescribed time after receipt of an invoice for a progress payment, the amount so requested, unless NYSERDA should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement or the Budget.
4. Release by the Contractor. The acceptance by the Contractor of final payment with respect to Work hereunder shall constitute and operate as a release by the Contractor in favor of NYSERDA for any and all claims against NYSERDA that the Contractor might otherwise have or assert for Work, materials or

equipment furnished by the Contractor and for services rendered by the Contractor pursuant to or in connection with the Work for which such final payment is made.

4. Representations. The Contractor represents and warrants to NYSERDA that:
 - a. it shall perform the Work in an efficient and expeditious manner with high diligence and skill in accordance with the best professional standards;
 - b. it has no, and shall not obtain during the course of this Agreement any, interest, financial or otherwise, direct or indirect, nor is the Contractor engaged in any business or transaction or professional activity, nor has the Contractor incurred any obligation of any nature, which is in substantial conflict with the rendering of services under this Agreement; and
 - c. 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.
5. Rights to Data. All reports, records, documents, and other papers and materials prepared in connection with this Agreement, and all Work, and the product of all Work performed hereunder, shall be the property of NYSERDA, and the Contractor shall not use or disclose same except upon the prior written approval of NYSERDA. The Contractor may not take any action, including signing any agreement, that has the effect of restricting or limiting in any way NYSERDA=s rights unless it receives written approval from NYSERDA.
6. Publicity. Under no circumstances shall the Contractor issue, or permit to be issued, any press release, advertisement or literature of any kind, or conduct or permit to be conducted any interview or news conference referring to the Work, except upon prior written approval of NYSERDA.
7. 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 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.
8. Assignment. 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.
9. Maintenance of Records. The Contractor shall keep, maintain and preserve throughout the term of this 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 this Agreement. NYSERDA will have the right

from time to time and at all reasonable times during the term of this Agreement and such period thereafter to inspect and audit any and all such books, accounts and records.

10. Audit Adjustment. Any payment made hereunder shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.
11. 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.
12. Insurance.
 - 1.1 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 subparagraph (b) hereof. All such insurance shall be evidenced by insurance policies, each of which shall:
 - (i) name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;
 - (ii) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
 - (iii) be reasonably satisfactory to NYSERDA in all other respects.
 - b. The types and amounts of insurance required to be maintained under this Article are as follows:
 - (I) 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
 - c. 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 Paragraph 7 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 Paragraph 7 will expire on a date prior to the termination of this Agreement, 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.

13. Compliance with Applicable Laws. In the performance of the Work hereunder, the Contractor shall comply with all applicable Federal, State and local laws and regulations, including, without limitation, the provisions set forth in Exhibit C attached hereto and made a part hereof. Further, it is the intent and understanding of the parties hereto 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. Accordingly, every such provision is deemed to 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. The references to particular laws of the State of New York in this paragraph, in Exhibit C and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such paragraph, Exhibit and Agreement shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.
14. Termination. 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. Further, 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 in either event, NYSERDA may exercise its termination right by providing written notification 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 Paragraph hereof entitled Term 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).
15. Notices.
 - (a) 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 in writing and shall be transmitted either:
 - (i) via certified or registered United States mail, return receipt requested;
 - (ii) by facsimile transmission;
 - (iii) by personal delivery;

- (iv) by expedited delivery service; or
- (v) by e-mail, return receipt requested.

Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

NYSERDA

Name: Cheryl L. Earley
Title: Director of Contract Management
Address: 17 Columbia Circle, Albany, New York 12203
Facsimile Number: 862-1090
E-Mail Address: cle@nyserda.org
Personal Delivery: Reception desk at the above address

[Contractor Name]

Name:
Title:
Address:
Facsimile Number:
E-Mail Address:

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

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

EXHIBIT C

REVISED 9/06

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

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

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

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

responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.

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

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

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

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

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

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

10. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to

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

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

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

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

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

EXHIBIT D

PART 504

PROMPT PAYMENT POLICY STATEMENT

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

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

(1) under the Eminent Domain Procedure Law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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