"New York State Biofuel Distributor Program"
Program Opportunity Notice ("PON") 2454
Approximately $700,000 Available

Proposals Due: June 12, 2012 by 5:00 PM Eastern Time*

The objective of **The New York State Biofuel Distributor Program ("the Program"),** is to increase the number of petroleum terminals in New York State that offer renewable Biofuels such as ethanol or biodiesel ("Biofuels") to retail refueling stations and fleets throughout New York. PON 2454 solicits proposals for funds to purchase and install equipment for bulk storage, handling and blending of Biofuels by petroleum terminals in New York. It is estimated approximately five (5) new Biofuel terminals will be operational as a result of this PON.

The Program provides a reimbursement of 50 percent of the eligible capital costs including installation labor, up to $150,000 per site, for new equipment for Biofuels storage, handling, blending, and rack dispensing. Proposals will be accepted from owners and operators of petroleum distribution terminals throughout the State that intend to sell blended Biofuels to retail gas stations and fleets in New York. The equipment funded under the Program must allow the proposer to sell blended Biofuels at their terminal rack. NYSERDA funds will be awarded on a competitive basis. The Program does not pay for the costs of facility permitting or engineering.

NYSERDA expects to make multiple awards under PON 2454. A preference will be given to projects intending to install equipment for ethanol storage and blending in upstate New York (north of Westchester County) where there is currently a significant lack of this type of infrastructure (See Proposal Evaluation Section below).

SUBMISSION: Proposers must submit seven (7) clearly labeled copies of the full proposal with a completed and signed proposal checklist (**Attachment A**) attached to the front of each, one of which must contain an original signature. Proposals must be clearly labeled and submitted to:

Roseanne Viscusi, PON No. 2454
New York State Biofuel Distributor Program
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, New York 12203-6399

If you have technical questions concerning this solicitation, contact Patrick Bolton at (518) 862-1090, ext. 3322 or ppb@nyserda.org. If you have contractual questions concerning this solicitation, contact Nancy Marucci at (518) 862-1090, ext. 3335 or nsm@nyserda.org.

No communication intended to influence this procurement is permitted except by contacting Patrick Bolton (Designated Contact) at (518) 862-1090, ext.3322 or ppb@nyserda.org. Contacting anyone other than this Designated Contact (either directly by the applicant or indirectly through a lobbyist or other person acting on the applicant's behalf) in an attempt to influence the procurement: (1) may result in an applicant being deemed a non-responsible offerer, and (2) may result in the applicant not being awarded a contract.

*Late, incomplete, or unsigned applications will be returned. Faxed or e-mailed applications will not be accepted. Applications 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 website at www.nyserda.org.

I.0 INTRODUCTION

The New York State Energy Research and Development Authority ("NYSERDA") is a public-benefit corporation established by the State Legislature in 1975 to address the State's energy and environmental challenges. NYSERDA is promoting deployment of renewable transportation fuels such as E85 ethanol and blended biodiesel ("Biofuels"), as a way to address the State's dependence on petroleum and to reduce emissions associated with the transportation sector. Funding was made available through the New York State Budget to establish the **New York State Biofuel Distributor Program: Driving Energy Independence for the Empire State (the "Program").** The objective of this Program is to support development of the distribution and delivery infrastructure for Biofuels for transportation in New York State.

There are over 400,000 Flex-Fueled vehicles capable of running on E85 ethanol registered in New York State. Additionally, consumers can purchase E85 ethanol capable vehicles from many car manufacturers. Biodiesel, also made from renewable sources, can be blended with diesel at various levels and used in diesel vehicles with little or no modification to the engine or fuel system. Even with all of these vehicles capable of operating on Biofuels, currently only a small percentage of vehicles use alternative fuels in New York and there are a limited number of stations open to the public mainly due to a lack of Biofuel distributors in New York State. To address these issues NYSERDA is seeking to expand the Biofuels infrastructure in New York.

Funding is available through PON 2454, to reimburse eligible proposers for 50 percent of the costs, up to $150,000 per site, for new installations of Biofuel bulk storage, handling, blending, and directly associated piping and rack dispensing equipment. Funds will be allocated on a competitive basis. Proposals will be accepted from owners or operators of permitted and registered petroleum distribution facilities throughout New York State. The Program does not pay for the costs of general permitting, engineering, or project management for the installation of the equipment and those costs cannot be used to fulfill the proposer's 50 percent cost share requirement.

Under a separate PON 2290, cost-shared assistance will continue to be provided to retail refueling stations that install equipment to sell E85 ethanol and blended biodiesel to make these fuels available to the general public. Currently there are over 130 stations participating in this program around the state with over 85 of these stations currently selling Biofuels: http://www.afdc.energy.gov/afdc/progs/ind_state.php/NY/E85. Proposers to PON 2454 should collaborate with potential applicants of PON 2290 to develop an outlet for the Proposers' Biofuels when their project is completed. The details of PON 2290 can be found on NYSERDA's website at:

http://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities/PON-2290-The-BioFuel-Station-Intiative-Driving-Energy-Independence-for-the-Empire-State.aspx

2.0 PROGRAM REQUIREMENTS

2.1 Eligibility Requirements

The Program is open to any entity that owns or operates one or more petroleum distribution terminal(s) located in New York State and registered with the New York State Department of Taxation and Finance to sell gasoline or diesel fuel to retail gas stations and fleets in New York State. The entity that applies must have the legal authority to make improvements to the site at which the Biofuel equipment will be located. If the entity leases the property or does not own the property they must prove they have the right under the lease agreement to make improvements to the property. These rights should give the proposer the rights to make improvements at the facility for a minimum of 6 years going forward from the time the Program funds are disbursed to the applicant.

Terminals that propose to install eligible equipment to only sell biodiesel for heating applications are not

eligible to apply to the Program. Terminals must have the ability and clear intention to sell the blended Biofuel products for on-road vehicle use. The equipment used to sell biofuels for on-road use may also be used to assist with the sale of biodiesel for heating applications but the Program will not pay for equipment solely used for heating fuels.

Terminals that propose to install eligible equipment to only sell low level blends of ethanol such as E10 are not eligible to apply to the Program. Terminals must have the ability and clear intention to sell high level blends such as E85 or B20 for on-road vehicle use. The equipment used to sell E85 for on-road use may also be used to assist with the sale of E10 but the Program will not pay for equipment solely used for E10.

2.2 Available Funds

NYSERDA anticipates awarding funding for five (5) or more projects under this PON.

2.3 Reporting

Recipients of funds will be required to provide progress reports to NYSERDA during the period that work is performed and a final detailed report covering all of the work after completion of the project. Reporting requirements will include appropriate information such as: descriptions of any difficulties encountered during the reporting period, and statements of cost of the work performed during the reporting period. Following completion of the equipment installation, reports must include information pertaining to the amount of fuel dispensed and sale price. These updated fuel sales reports must be submitted at least semi-annually for a period of six years after the equipment enters service.

2.4 Program Incentive Schedule

NYSERDA will provide a reimbursement incentive of 50 percent of the eligible costs (defined in Section 2.5), up to $150,000 per site, for a Biofuel Distributor Project (defined in Section 2.7) for Biofuels.

There is no cap on the total amount of funds that any one entity can receive. Proposals from entities that own or operate multiple terminals in New York State are encouraged to apply, but no single facility or site can receive more than $150,000.

2.5 Eligible Costs

Costs for the following are eligible under this Program: piping, rack dispenser equipment, fire suppression systems, and directly related site work such as: patching pavement that had to be torn up to install tanks or piping and concrete slabs for rack islands; new storage tanks; cleaning of existing tanks; pumps; fittings; sumps; new equipment to retrofit tanks, piping and pumps; installation-related labor; containment berms, special fire fighting foams for the local first responders if required; and any other equipment that NYSERDA determines is necessary to properly store, blend, and dispense the Biofuel at the rack. Only eligible cost items can be used to meet the applicant's required 50 percent cost-share contribution. Applicants will be required to justify costs.

Site work not directly related to the installation of the equipment is not eligible under the Program for reimbursement or as cost-share. Examples of work that are not eligible for reimbursement are upgrades to buildings, general site paving, general aesthetic site work such as flower beds, and any other equipment not directly related to the Biofuel equipment required to store and dispense the Biofuels at the rack. The Program does not pay for permitting, project management or engineering expenses. Ineligible costs cannot be used to cover the required 50 percent cost share.

2.6 Recapture Provision

Entities receiving funds through the Program are required to offer the Biofuel for sale to retail gas stations and fleets for a minimum of six years from the date the equipment is operational. If the Biofuel is offered for sale for any period less than six years, the funds are subject to recapture. The recapture amount will be based upon the proportion of time the fuel was actually

available to be sold against the minimum amount of six years that the fuel was obligated to be available for sale. (See the formula following.)

$$\text{Recapture payment} = \frac{\text{Total NYSERDA incentive paid} \times \text{\# years Biofuels were available.}}{\text{6 years}}$$

2.7 Terminal Requirements

I. A Biofuel Terminal Project must be comprised of: one or more above- or below-ground tanks capable of storing a minimum of 10,000 gallons of Biofuel and one or more dispenser systems at the rack for dispensing any Biofuel for sale to retail gas stations or fleets in New York State.

II. Code Compliance. All installations of Biofuel equipment must comply with applicable local and State Environmental, Building, and Fire Codes.

III. For Biodiesel terminal projects, the terminal should be able to store both on road diesel and B100 Biodiesel on site and blend these two fuels into a blended mixture at minimum blends of B20 down to B2. The blending shall be done as the fuel flows from two separate tanks into the rack with a system capable of blending the fuels prior to being placed into the tanker truck such as in line injection blending at the rack.

IV. Sale of Biofuel: Terminal owner and operators must offer the Biofuel for sale on a continual basis, without interruption, for at least 12 hours per day for a period of 72 months. The Biofuel must be offered at the lowest possible price to retail stations and fleets. Every reasonable attempt shall be made to price E85 with a gross margin no higher than the gross margin the terminal charges for premium gasoline, and blended Biodiesel no higher than the gross margin the terminal charges for premium diesel.

V. Public Announcement: Terminal owner and operators should announce the opening of the site through the local media and other appropriate venues; and schedule events to highlight the availability of the Biofuel. All announcements, press releases, and advertisements must be approved by NYSERDA and must include a statement noting support given by NYSERDA through the Program.

VI. Proposers should make every attempt to submit applications with at least two partnering fleets or retail service stations that will use or sell the Biofuel. As an alternative, the proposer can include a brief marketing or business plan to sell the blended Biofuels, however significant project partnering is a factor in proposal evaluation. The proposal must be submitted by the terminal owner/operator that will own the equipment for which funds are requested. Partnerships must be fully described in the proposal and should include letters of support detailing each of the participating entities commitment to the project.

VII. Commencement of a project (defined as the execution of a purchase order or contract), for the purchase or installation of equipment, must not precede the date of the executed Purchase Order from NYSERDA (if the proposal is awarded funding). Projects must be implemented in the manner and location as stated in the mutually agreed upon Statement of Work or the full award amount may be recaptured by NYSERDA.

3.0 DEFINITIONS

3.1 Biodiesel

Biodiesel is a domestic, renewable fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, which meets the specifications of ASTM D 6751 as

updated and revised. Biodiesel can be used in any concentration with petroleum based diesel fuel in existing diesel engines with little or no modification. Biodiesel is produced by a chemical process which removes the glycerin from the oil. Blended biodiesel is a blend of biodiesel fuel meeting ASTM D 6751 with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend. Download the Handling and Use Guidelines for Biodiesel at the National Renewable Energy Laboratory website. **http://www.nrel.gov/vehiclesandfuels/npbf/pdfs/43672.pdf**

Additional information about Biodiesel including how and where to purchase the fuel can be found on the National Biodiesel Board website. http://www.nbb.org/

3.2 E85

E85 is a blend of typically 85% denatured ethanol [denatured ethanol is ethyl alcohol (C2H5OH) containing 5% gasoline denaturant] and 15% gasoline by volume. The gasoline must meet all applicable State and Federal requirements. Total gasoline volume must range from 15% to 30% of the total volume of the E85 based on information provided at http://www.afdc.energy.gov/afdc/ethanol/specs.html . Such specifications are incorporated by reference, and located on the Growth Energy Market Development website at www.ethanolretailer.com.

3.3 Completed Facility

A completed facility is one for which all necessary equipment has been installed, all necessary State and local permits have been received, appropriate signage has been installed, and the terminal is able to load blended Biofuels into tanker trucks at the rack. Additional requirements for terminals are described in Section 2.7. All facilities are subject to inspection by NYSERDA to determine if the Biofuel Terminal Project is completed and operating according to the Statement of Work.

4.0 PROPOSAL REQUIREMENTS

Proposal narratives have two major components: Technical Proposal and Cost Proposal. Proposers must submit **seven (7)** copies of all required parts and forms together in one package, and one CD or DVD disc containing copies of these documents, to the attention of Roseanne Viscusi at the address on the front of this PON. These two parts **MUST** contain a completed and signed Proposal Checklist (**Attachment A**) attached to the front of all copies of the Proposal, **AT LEAST ONE OF WHICH must contain an original signature**. The Contract Pricing Proposal Form (**Attachment C**) must also be attached. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned.** Faxed or e-mailed copies will not be accepted.

Procurement Lobbying Requirements - **State Finance Law sections 139-j and 139-k**
Procurement lobbying requirements contained in State Finance Law sections 139-j and 139-k became effective on January 1, 2006. (The text of the laws are available at: http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html). In compliance with §139-j and §139-k of the State Finance Law, for proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of $15,000, additional forms must be completed and filed with proposals: (1) a signed copy of the Proposal Checklist (**Attachment A**) including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form (**Attachment B**). Failure to include a signed copy of the Proposal Checklist referenced in this solicitation will disqualify your proposal. Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal. Each page of the proposal should state the name of the proposer, the PON number, and the page number. The proposal must be in the following format:

YOUR PROPOSAL MUST CONTAIN ALL ITEMS, IN THE FOLLOWING ORDER:
Attachment A - Proposal Checklist with an original signature (Mandatory)
Attachment B - Disclosure of Prior Findings of Non-Responsibility Form (Mandatory)
Attachment C - Contract Pricing Proposal Form (Mandatory)
A two part narrative as described below in Part 1 and Part 2 (Mandatory)

Letters of project commitment from a combination of two retail gas stations or fleets that will use the Biofuel for which Program incentives will be paid to the proposer should be included. Letters are not mandatory but are a factor in proposal evaluation. These letters show the terminal has explored a market for their Biofuels. As an alternative, the proposer can include their marketing or business plan to sell the Biofuels.

PART 1: PROPOSAL NARRATIVE

Proposal Overview

Proposer contact information and address:	
Objectives:	Describe what you see as your specific objectives in this project.
Background:	Proposer History and company background.
Project Description:	Give a brief description of the tasks you will accomplish as your scope of work.
Benefits and Metrics:	Characterize and quantify, if possible, project benefits to NYS. Identify how success/benefits will be measured and verified during and after project completion.
Strengths:	List what you believe to be the specific strengths of your proposal.
Weaknesses:	List in priority order any identified weaknesses of your proposal and how your team will mitigate those weaknesses.
Funding:	Indicate the total amount of funding requested and any cost share being provided. List whether cost share is cash or in-kind services.

(Estimated Length, no more than 2 pages)

A. Statement of Work

Executive Summary: Briefly describe the project and list tasks that must be completed to accomplish the project. Give a description of the equipment that must be purchased and the required labor to install it. Will the work be done by subcontractors or the proposer's own personnel?

I. Include a monthly or quarterly project schedule in bar chart or milestone format indicating planned start and completion dates for each task relative to execution of the contract.
II. Define and indicate key milestones in the schedule.
III. Status of process to date: Have project plans been developed? Are engineering drawings or

site plans available on request? Have plans been approved by a qualified firm or individual (identify and provide credentials)? Have necessary permits been obtained? Note: Priority will be given to proposers with detailed project information and for projects which have already obtained appropriate permits.

IV. Identify the retail gas stations or fleets that will receive blended Biofuels from the proposer as a result of this project. As an alternative, the proposer can include a brief marketing or business plan to sell the blended Biofuels. Preference will be given to proposals that identify partnerships with existing retail stations and fleets and that further provide a letter of support confirming such partnership.

V. If the terminal has not fully developed the list of equipment and cost that is needed to upgrade the terminal to sell Biofuels, then an equipment cost estimate must be provided. A full description of the estimated project including work to be done must be provided.

B. Project Management

Identify the Project Manager (main point of contact for NYSERDA) and key participants in the project. Describe their individual expertise and explain how each will contribute to the successful completion of the project. Provide brief biographies describing their management and technical expertise and experience with terminal operations and equipment upgrades. List the tasks to be performed by the Project Manager and key participants.
(Estimated Length 1-2 pages)

C. Energy, Environmental, and Economic Benefits

I. Estimate the amount of petroleum to be displaced annually by Biofuel sales and describe the methodology for estimating and reporting petroleum displacement. NYSERDA requires semi-annual reporting on actual petroleum displacement data after the project has commenced operation and throughout the term of the contract. Describe the method of reporting this data and how often the data will be supplied to NYSERDA. Proposers offering data to NYSERDA on a more frequent basis such as weekly or monthly will receive preference.

II If applicable, indicate the number of jobs resulting from the project (e.g., jobs created, saved, and/or displaced).

(Estimated Length 1 page)

PART 2: COST PROPOSAL

All cost information must be provided on the attached Contract Pricing Proposal Form (**Attachment C**). Proposers may photocopy the Contract Pricing Proposal Form if additional space is necessary. Note, no reimbursement will be provided for costs incurred prior to proposer receiving an executed Agreement from NYSERDA (if they are awarded funds).

In addition to the Contract Pricing Proposal Form, include the following:

Cost and Equipment Narrative

I. Describe the equipment that will be needed for the project.
II. Describe the equipments function and necessity.
III. Give budget number for the cost to purchase the equipment.
IV. Give budget numbers for the cost of labor to install the equipment.
V. Who will do the work? Are they external subcontractors or internal personnel?
VI. Describe the cost share. What cost share is being provided and where it is coming from.
(Estimated Length 2 pages)

Direct Costs

Present full cost of all components including equipment and installation costs. Note: Costs associated with general site work, (i.e. paving, concrete pads, etc, not directly related to the infrastructure work for biofuels are not eligible for funding). Attach bids and preliminary engineering cost estimates. For major tasks, or in proposals that use direct labor personnel costs as a portion of the cost share contribution, indicate the number of hours each individual will spend on each task and an hourly rate of pay. Provide justification or verification for the rate of pay proposed.

Cost share information

Cost Sharing - The proposal must show non-NYSERDA funding of at least 50 percent of the total eligible cost of the project. Cost-sharing can be from the proposer, other team members, and other government or private sources. Contributions of direct labor (for which the laborer is paid as an employee) and purchased materials may be considered "cash" contributions. Unpaid labor may be considered "in-kind" contributions. NYSERDA will not pay for efforts which have already been undertaken. The proposer or proposing team cannot claim as cost-share any expenses that have already been incurred prior to the date of execution of a Contract with NYSERDA.

Requested funds, cash cost-share, and in-kind contributions together must account for 100% of the cost of eligible expenses for implementing the project. Contributions can come from any source. Other funds used as cost-share must be used directly to implement the project for which funding is sought and increase the value of the project.

1. Provide the following information about cost-share contributions.
   a. Type of cost-share(s): cash, services, other (define);
   b. Source(s) of cost-share contribution(s);
   c. Dollar value of in-kind contribution(s);
   d. If services, fully define how value of services was estimated; and
   e. If other, provide full identifying information and define how value of contribution was estimated.

2. Include documentation of cost share support from entities other than the proposer. Absence of documentation of funding will be construed as a lack of commitment to the project by that entity. Include a completed cost share chart as shown below.

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

Attach supporting documentation to support labor rates of internal personnel to install equipment, if any, included in your proposal as follows:

1. Describe the basis for the rates proposed (i.e., based on prior period actual results; based on projections; based on federal government or other independently-approved rates).
2. If rate(s) is approved by an independent organization, such as the federal government, provide a copy of such approval.
3. If rate(s) is based on estimated costs or prior period actual results, include calculations to support

proposed rate(s). Calculation should provide enough information for NYSERDA to evaluate and confirm that the rate(s) are consistent with generally accepted accounting principles for labor costs.

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

All recipients of awards for projects will receive funds on a reimbursement basis based on submission of invoices and documentation of payments to subcontractors and project completion.

Indicate whether you accept the Standard Terms and Conditions as contained in the attached Sample Agreement (**Attachment D**). If you do not accept the Standard Terms and Conditions, alternate terms with justification based on the risk and benefit to NYSERDA and New York State must be submitted with the application. Applicant does not need to fill out and complete **Attachment D**. It is for applicant review only. If you do not provide exceptions to the standard terms in your application, no exceptions will be allowed to these terms to the award contract, if the project is selected for funding.

5.0 PROPOSAL EVALUATION

Proposals will be reviewed by NYSERDA to determine whether the proposal meets the Program's qualifications. Proposals that do not meet the minimum qualifications for review will be removed from consideration. Reasons for not being reviewed will be provided to the Proposer in writing.

A Technical Evaluation Panel (TEP) made up of NYSERDA personnel and outside experts will evaluate all proposals which meet the qualifications. Eligible proposals will be evaluated by the following criteria, (Not in ranked or weighted order):

- Offset the greatest amount of petroleum-derived fuel per year;
- Affect Clean Air non-attainment or maintenance areas;
- Number of partnering fleets or retail gas stations that have provided commitment letters to purchase the Biofuel from the Proposer;
- Does the proposal benefit multiple retail fueling stations and/or fleets in a wide geographic area;
- Provide ethanol distribution capability in an area where such capability is currently lacking (north and west of Westchester County in New York);
- Does the proposal contain unique partnerships or innovative project financing;
- Does the proposal contain WBE or MBE contractors;
- Is the level of cost share provided beyond the 50 percent minimum required for eligible expenses;
- Does the proposal enhance the goals of increasing the infrastructure for renewable fuels around all of New York.
- Does the proposal include a data reporting plan that reports data to NYSERDA on a more frequent basis than semi-annually.

6.0 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 http://nyserda.ny.gov/~/media/Files/About/Contact/NYSERDARegulations.ashx
. 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.tax.ny.gov/pdf/current_forms/st/st220td_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.tax.ny.gov/pdf/2006/fillin/st/st220ca_606_fill_in.pdf). The Department has developed guidance for contractors which is available at http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf.

Contract Award - NYSERDA anticipates making up to five possible 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 proposers in approximately ten weeks from the proposal due date whether your proposal has been selected to receive an award.

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

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

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Attachments:

Attachment A - Proposal Checklist
Attachment B - Disclosure of Prior Findings of Non-Responsibility Form (Mandatory)
Attachment C - Contract Pricing Proposal Form
Attachment D - Sample Agreement

ATTACHMENT A - PON No. 2454 PROPOSAL CHECKLIST (MANDATORY)

CIRCLE **BIODIESEL ETHANOL**		Due Date: **June 12, 2012**	
Proposal Title:			
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
Federal Tax Identification # or 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 contract negotiations.)

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

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

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

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

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

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

PART I	Indictment/Conviction of Felony (if applicable) _____
Proposal Checklist ____	NYSERDA Contracts Awarded (if applicable) _____
Disclosure of Prior Findings of Non-responsibility Form ____	Prior and/or Competing Proposals (if applicable) _____
Completed and Signed Contract Pricing	Exceptions to Terms & Conditions (if applicable) _____
Proposal Form(s) ____	Commitment Letters _____
Proposal Narrative ____	Resumes of Main Project Participants _____
Cost Proposal ____	Cost Share Chart _____

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	Date

ATTACHMENT B

PON 2454: Biofuel Distributor Program
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

New York State Energy Research and Development Authority Contract Pricing Proposal Form			Solicitation/Contract No. **PON 2454**		Page
Contractor:			Name of Proposed Project:		
Address:					
Location (where work is to be performed):			NYSERDA funding:		
			Total Project Cost:		
Cost Element			Total Project Cost	Funding & Co-funding via NYSERDA	Cost-sharing & Other Co-funding
1. Direct Materials					
a. Purchased Parts					
b. Other					
Total Direct Materials					
2. Materials Overhead	Rate:				
3. Direct Labor (specify names/titles)	Hours	Rate/hr			
Total Direct Labor					
4. Labor Overhead	Rate %	$ Base			
Total Labor Overhead					
5. Outside Special Testing					
6. Equipment					
7. Travel					
8. Other Direct Costs					
9. Subcontractors/Consultants					
Total Subcontractors/Consultants					
10. General & Administrative Expense	Rate %	Element(s)			

11. Fee or Profit (Not allowable) Rate:----------	----------		
12. Total Estimated Project Cost			
This proposal reflects our best estimates as of this date, in accordance with the instructions to proposers.			
Typed Name and Title:	Signature:		Date:
Has any executive agency of the U.S. government performed any review of your records in connection with any prime contract or subcontract within the past twelve months? ____ Yes ____ No If yes, identify:			

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

INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE

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

A. GENERAL

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

B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL

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

1a. DIRECT MATERIALS - PURCHASED PARTS

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

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

1b. OTHER DIRECT MATERIALS

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

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

- If Government-approved indirect rates are proposed, then supply a copy of an appropriate Government document verifying those rates.
- If Government-approved rates are not proposed, supply the following, unless previously provided, for the years comprising

the proposed period of contract performance.

- o A description (chart or other) of the organization of the indirect cost center.
- o The budget of indirect costs, by account, for each proposed indirect expense rate.
- o The budget for the base, for each proposed rate, (direct labor dollars, hours, costs, etc.) itemized as to contract hours or costs, research and development hours of costs, and any other direct base effort.
- o Actual incurred rates for the prior three years, including actual base and pool amounts.

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

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

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

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

6. EQUIPMENT
   Capability to perform the work with existing facilities and equipment is assumed. It is NYSERDA's policy not to compensate for general purpose facilities or equipment. If some special purpose items are needed solely for this contract and are not available by other means (contractor assets, lease, etc.), then provide the following information for each item of required equipment.
   - o vendor
   - o model number
   - o quantity
   - o competitive selection process
   - o unit cost and source of cost/price (i.e., quote, catalog, purchase history)
   - o description of the use or application (NYSERDA dedicated, contract dedicated, other)

7. TRAVEL
   a. NYSERDA will accept as a direct charge only that travel required to perform the statement of work.

b. Attach a schedule indicating the need for the proposed travel, the estimated number of person-trips required, destinations, mode and cost of transportation, and number of days subsistence per trip for each destination.
c. Identify and support any other special transportation costs required in the performance of this project.

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

9. SUBCONTRACTORS/CONSULTANTS
   a. Explain the specific technical area in which such service is to be used and identify the contemplated consultants.
   b. State the number of days and the hours per day of such service estimated to be required and the consultant's quoted rate per day. Document when/where the consultant has received the proposed rate in performing similar services for others.
10. GENERAL & ADMINISTRATIVE (G&A) EXPENSE (Same as instructions for 2. MATERIALS OVERHEAD)

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

ATTACHMENT D

New York State Energy Research and Development Authority
SAMPLE AGREEMENT

1. Agreement Number:

2. Contractor:

3. Contact:

4. Award Date:

5. Project Period:

6. Federal ID:

7. Total Amount of Award:

8. Commitment Terms and Conditions

This Agreement consists of this form plus the following documents:

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

9. ACCEPTANCE

[CONTRACTOR]	**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**
By _____	By _____
Name _____	Jeffrey J. Pitkin Treasurer
Title _____	

STATE OF)
) SS.:
COUNTY OF)

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

_____
Notary Public

Exhibit A

Statement of Work

To be developed

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

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

Budget: The Budget set forth in Exhibit A hereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article II

Performance of Work

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

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

Article III

Deliverables

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

Article IV

Compensation

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

(a) Staff Charges: The Contractor shall be compensated for the services performed by its employees under the terms of this Agreement at the employee's actual wage rate.

(b) Direct Charges: The Contractor shall be reimbursed for reasonable and necessary actual direct costs incurred (e.g., equipment, supplies, travel and other costs directly associated with the performance of the Agreement) to the extent required in the performance of the Work in accordance with the provisions of the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs should generally not exceed the daily per diem rates published in the Federal Travel Regulations. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate.

(c) Indirect Costs: The Contractor shall be reimbursed for fringe benefits, overhead, general and administrative (G&A), and other indirect costs included in the Budget at such rates as the Contractor may periodically calculate, consistent with appropriate federal guidelines or generally accepted accounting principles.

Furthermore, NYSERDA shall have no liability under this Agreement to the Contractor or to anyone else beyond funds paid to NYSERDA by third parties for the purposes of this Agreement.

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

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

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

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

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

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

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

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

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

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

Section 4.08. Audit Adjustment. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.06 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and Purchase Orders

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

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling under $50,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the

management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit B to the extent required by law, and all other provisions now or hereafter required by law to be contained therein.

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

Article VI

Schedule

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

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

Article VII

Force Majeure

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

Article VIII

Technical Data

Section 8.01. Rights in Technical Data.

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

(1) NYSERDA shall have:

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

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

(2) The Contractor shall have:

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

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

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

Article IX

Warranties and Guarantees

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

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

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

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

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

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

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

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

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

Article X

Indemnification

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

Article XI

Insurance

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

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

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

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

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

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

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by this Article and bearing notations evidencing

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

Article XII

Stop Work Order; Termination

Section 12.01. Stop Work Order.

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

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

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

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

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

(ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

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

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

Section 12.02. Termination.

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon 30 days prior written notice to the Contractor. In such event, compensation shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Compensation 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 therefore).

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

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

Article XIII

Independent Contractor

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

Article XIV

Compliance with Certain Laws

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

Section 14.02. All Legal Provisions Deemed Included. It is the intent and understanding of the Contractor and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any

such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Contractor, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

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

Article XV

Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Publicity.

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

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

Section 15.02. 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: 518-862-1091
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.

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

EXHIBIT C

REVISED 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 C, the terms of this Exhibit C 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.