

Low-Income Forum on Energy (LIFE)
Implementation Services
Request for Proposals (RFP) #2495
Up to \$170,000 Available for Initial Two-Year Contract Term

Proposals Due: May 16, 2012 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (NYSERDA) requests proposals from interested parties to provide implementation services for the Low-Income Forum on Energy (LIFE), a unique outreach and education initiative that encourages an interactive exchange of information and collaboration among the programs and resources that assist low-income energy consumers. The selected contractor will provide Steering Committee support services, conference management, and content development services to the LIFE Program. NYSERDA anticipates awarding an initial two-year contract beginning July 2012, with annual options to renew through December, 2016. The proposal and corresponding budget should be submitted assuming an initial two-year contract term not to exceed \$170,000. One contract will be awarded as a result of this solicitation.

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

Roseanne Viscusi, RFP 2495 NYS Energy Research and Development Authority 17 Columbia Circle Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Christopher Coll at (518) 862-1090, ext. 3425 or czc@nyserda.org. If you have contractual questions concerning this solicitation, contact Elsyda Ahmed at (518) 862-1090, ext. 3232 or ela@nyserda.org.

No communication intended to influence this procurement is permitted except by contacting Christopher Coll at (518) 862-1090, ext. 3425 or czc@nyserda.org. Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

*Late proposals will be returned. Incomplete proposals may be subject to disqualification. It is the bidder's responsibility to ensure that all pages have been included in the proposal. Faxed or emailed proposals will not be accepted. Proposals will not be accepted at any other NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA's web site at www.nyserda.ny.gov.

I. INTRODUCTION

The Low-Income Forum on Energy (LIFE) is a unique statewide dialogue that brings together organizations and individuals committed to addressing the challenges and opportunities facing low-income New Yorkers as they seek safe, affordable, and reliable energy. Sponsored by the New York State Public Service Commission (PSC) and underwritten by the New York State Energy Research and Development Authority (NYSERDA), the LIFE program is guided by a Steering Committee that is comprised of 20 members that represent key low-income service providers and stakeholders throughout New York State.

At 14 years, LIFE has served as the nation's longest-running statewide organization dedicated to furthering the discussion and understanding of low-income energy issues. The LIFE program has encouraged an interactive exchange of information and collaboration among the programs and resources that assist low-income energy consumers, bringing together organizations and individuals committed to addressing the challenges and opportunities facing low-income New Yorkers through a variety of initiatives including conferences, meetings, newsletters, webinars, and case studies.

To further the LIFE dialogue, NYSERDA requests proposals for implementation services for the LIFE program. NYSERDA intends to award a two-year contract with annual options to renew, at NYSERDA's discretion, through June 2016. The proposal and corresponding budget should be submitted assuming a two year contract term. One contract will be awarded as a result of this solicitation.

II. BACKGROUND

The LIFE program was initiated by the NYS PSC in 1998, as New York prepared to move to a more competitive retail electric market. The PSC recognized the importance of identifying, discussing, and addressing issues of particular concern for low-income consumers given the changing energy marketplace. To that end, the PSC established LIFE to provide a forum for public dialogue on these issues and to assess the intended and unintended consequences of energy policy decisions on the low-income population.

According to the 2010 American Community Survey, of the nearly seven million households in New York State, more than 30% have income below 60% of the state median income and are considered income-eligible for payment assistance and weatherization services. The financial burden of paying monthly energy bills can leave low-income New Yorkers stretching every dollar. A household's energy burden, defined as the ratio of energy costs to income, can be more than 20% for low-income households, compared to the roughly 6% energy burden of middle-income households. As a result, lower-income households have a much smaller budget with which to pay for other necessities such as rent, groceries, medication, and childcare.

The LIFE program was included in the initial suite of Systems Benefit Charge (SBC) programs established by the PSC in Opinion No. 98-3², which was issued on January 30, 1998. In addition to establishing the SBC programs, the PSC named NYSERDA as the administrator of these programs. Subsequently, the PSC has extended the SBC programs, most recently in an October 24, 2011Order which extended the SBC through 2016.

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¹ Eligibility for the Home Energy Assistance Program (HEAP), the Weatherization Assistance Program (WAP), and EmPower New York are set at the greater of 60% of the state median income or 150% of the Federal Poverty Guidelines by household size.

² Opinion No. 98-3 specified funding for public benefit programs for energy efficiency, research, development, demonstration, low-income services, and environmental protection.

The LIFE program is directly managed by a Project Manager from NYSERDA, in consultation with a representative of the NYS Department of Public Service (DPS). The direction of the LIFE program and its initiatives are guided by the LIFE Steering Committee. The Steering Committee is chaired by a representative of the DPS and is comprised of 20 member organizations representing community-based organizations, non-profit organizations, electric and gas utilities, state and local government, and weatherization agencies. To accomplish the various LIFE initiatives, the Steering Committee often forms subcommittees to address specific tasks.

Outreach and education activities are key to the LIFE mission. Increasing the knowledge of frontline workers can help them to better assist their clients. At the same time, increasing the awareness of low-income energy issues amongst policy makers can impact decision making on matters concerning low-income energy consumers. Outreach takes place through a variety of vehicles including a website (www.lifenynews.org), conferences and meetings, newsletters, webinars, and program announcements. Since its commencement, LIFE has conducted seven sets of regional meetings (a total of 41 meetings) and seven statewide conferences, with an eighth statewide conference planned for 2012. The most recent statewide conference was held in May, 2010 in Albany, NY. At this event, there were more than 250 participants representing more than 114 community-based organizations, utilities, state agencies, local government, energy services companies, low-income advocates and other organizations. In addition, the 2011 LIFE Regional Meeting series hosted more than 350 participants in six cities.

NYSERDA and the DPS continue to actively support the dialogue on low-income energy issues. Through this RFP, NYSERDA and the DPS seek not only to continue to offer the quality outreach and education initiatives that have become the hallmark of LIFE, but to build on its success by continuing to engage human service workers and by providing additional resources to policy makers on issues that affect low-income energy consumers. Further, LIFE will continue to host statewide conferences in 2012, 2014 and 2016; and regional meetings (4 to 6 meetings per series) in 2013 and 2015.

III. PROGRAM REQUIREMENTS

In order to sustain and grow the LIFE program, NYSERDA requests proposals for implementation services that include support for the LIFE Steering Committee, stakeholder management, conference management for the Statewide Conference and Regional Meetings, and newsletter and webinar production. The Contractor should possess and demonstrate knowledge of low-income energy issues and be able to identify topics for webinars, newsletters, and case studies. The Contractor should also be able to contribute to the development of conference and meeting agendas, including identifying topics and speakers.

Services Requested

Consistent with the goals and needs of the LIFE program, NYSERDA seeks proposals from contractors to provide services for the following tasks during the initial two-year contract period:

Task 1: Stakeholder Management

The LIFE stakeholder database includes approximately 10,000 individuals interested in low-income energy issues. The database includes stakeholder information such as name, organization, mailing address, telephone number, e-mail address, and county of origin. The database currently contains e-mail addresses for approximately 5,000 individuals.

The Contractor shall be responsible for maintaining a database of stakeholder contact information and for facilitating communications with stakeholders. Tasks will include, but may not be limited to the following:

- Maintaining a database of stakeholder contacts using a client management system capable of sending e-mails and analyzing results of e-mails sent.
- Conducting periodic reviews and updates of stakeholder contact information, including the addition of e-mail addresses of those that are missing.
- Facilitating stakeholder communications such as sending emails, notifications, and announcements.
- Additional tasks, as directed by the NYSERDA Project Manager.

Task 2: Steering Committee and Program Support

The Contractor shall provide support services to LIFE Steering Committee that include but will not be limited to:

- Facilitating Steering Committee communications such as e-mails and telephone calls.
- Scheduling Steering Committee and Subcommittee meetings.
- Assisting NYSERDA Project Manager and LIFE Chairperson in developing agendas and other materials for Steering Committee and Subcommittee meetings.
- Attending Steering Committee and Subcommittee meetings.
- Preparing minutes of Steering Committee and Subcommittee meetings.
- Distributing materials and minutes to the Steering Committee.
- Developing and distributing quarterly and annual reports that document Program and Steering Committee activities.
- Coordinating with NYSERDA project management staff to identify and provide updates to the LIFE website and toll-free telephone line.
- Assisting the Steering Committee with identifying and recruiting new Steering Committee members representing sectors that have previously been under represented in the LIFE Steering Committee and in the LIFE dialogue.
- Additional tasks, as directed by the NYSERDA Project Manager.

Task 3: Conference Management

Central to the LIFE outreach and education effort is the Statewide Conference and Regional Meeting Series, which provides stakeholders with opportunities to learn about program developments, best practices, and energy and affordability issues, while also offering the ability to network with colleagues.

Task 3A – Regional Meeting Series

The Contractor shall implement a series of four to six regional meetings, across New York State during 2013. Specific dates of the Regional Meetings will be determined by the Steering Committee and will be dependent upon venue availability. It is anticipated that the 2013 regional meeting series will be conducted in May 2013. Each meeting will be one day and have a target audience of 50 -100 participants with up to 15 speakers.

The Contractor shall be responsible for working in cooperation with the Steering Committee to develop the format for the Regional Meetings. The Contractor shall coordinate site selection with the NYSERDA Consumer Services and Events Management (CSEM) department. All tasks are subject to review and pre-approval by the NYSERDA Project Manager. Specific tasks are expected to include, but not be limited to the following:

Pre-Regional Meeting Tasks:

- With input from NYSERDA Project Manager, LIFE Chairperson, and the Steering Committee, develop a schedule for the Regional Meeting series, including venues and dates for each regional meeting.
- Develop a detailed timeline of critical tasks required to implement the Regional Meetings.
- With direction from the NYSERDA Project Manager, LIFE Chairperson, and in coordination with the Steering Committee, facilitate the development of the meeting agendas.
- Identify topics for inclusion in the agenda for the Regional Meetings.
- Propose a budget for the Regional Meeting Series detailing costs for each individual meeting with recommended registration/exhibitor fees.
- Develop a site plan for each of the regional meetings, including meeting space, meals, breaks, materials, and needed equipment.
- Prepare and send speaker packets requesting bio, audio-visual equipment needs and a copy of each presenter's presentation.
- In coordination with the NYSERDA Marketing department and at the direction of the NYSERDA Project Manager, design Save-the-Date cards, conference brochures, press releases and other event marketing. Printing and distribution will be provided by NYSERDA.
- Provide the NYSERDA Project Manager with an up-to-date mailing list of stakeholders from the client management database for the purpose of mailing marketing materials.
- Develop strategies for reaching under-represented sectors and organizations in the Regional Meeting marketing materials.
- Maintain a registration database. Two months prior to the statewide conference, provide weekly registration report to the NYSERDA Project Manager and LIFE Chairperson
- Manage the registration process for attendees and exhibitors by accepting payments on-line, via e-mail, fax, and by mail. Have capacity to accept credit card payments. Process payments within 48 hours of receipt. Once payment is processed, send confirmation to registrant.
- Develop a meeting evaluation form.
- Coordinate scholarship donations from Steering Committee members.
- In coordination with the Steering Committee, NYSERDA Project Manager, and LIFE Chairperson, serve as the main point of contact with presenters and ensure that all presenters are prepared for the meetings.

On-site Regional Meeting Tasks:

- Manage the on-site registration process, including accepting credit card payments.
- Provide registrants with registration packets, name badges and proof of payment or an invoice for payment. Have capability to print name badges and registration confirmation on site for people who register in person.
- Provide all needed signage for the meeting.
- Develop and provide information packets on the presenters and sessions for the session moderators.
- Arrange and manage AV equipment: microphones, laptops, projectors, etc.
- Distribute and collect evaluation forms.
- Address any additional presenter or registrant conference need.

Post-Regional Meeting Tasks:

- At the end of each Regional Meeting, review and compile a report based on attendee evaluations.
- Submit Regional Meeting series summary reports to the Steering Committee within 30 days of the final regional meeting. The summary report shall include an executive summary and detail each regional meeting, including but not limited to the following information: members of the content subcommittee; regional agenda; marketing materials/press releases; speaker biographies; participant list; summary of participant evaluations, including recommendations for improvements and participant demographics, etc., and budget summary with all revenue, expenses, and accounts receivable, for each regional meeting.
- Provide a report to the NYSERDA Project Manager and LIFE Chairperson outlining any accounts receivable and with approval, send collection letters.
- Provide all meeting materials and speaker presentations to the NYSERDA Project Manager for inclusion on the LIFE website within a week of the last Regional Meeting.

Task 3B – Statewide Conference

The Contractor shall implement a statewide conference during 2014. The conference will be a two day event and have a target audience of 300 participants, with approximately 30 speakers. The Contractor shall work with the Steering Committee to develop the format for the Conference.

The Contractor shall coordinate with NYSERDA's Consumer Services and Events Management (CSEM) department, as directed by the NYSERDA Project Manager, to identify and secure a venue for the Conference. NYSERDA CSEM Events Coordinator will negotiate and execute the contract with the venue and the Contractor shall be responsible for conference implementation including attendee registration. On-site conference management responsibilities will be coordinated with NYSERDA's CSEM department, as directed by the NYSERDA Project Manager.

All tasks associated with the implementation of the Statewide Conference are subject to review and pre-approval by the NYSERDA Project Manager and may require additional coordination with the NYSERDA CSEM department. Specific tasks are expected to include, but not be limited to the following:

Pre-Conference Tasks:

- With input from the NYSERDA Project Manager and Steering Committee Chairperson, determine the dates for the statewide conference and develop a timeline of critical tasks required to implement this conference.
- Propose a budget for the statewide conference detailing all costs with recommended registration/exhibitor fees.
- Identify topics for inclusion in the agenda for the Statewide Conference.
- With direction from the NYSERDA Project Manager and LIFE Chairperson, and in coordination with the Steering Committee, facilitate the development of the conference agenda.
- Coordinate the site selection process for the conference in coordination with the NYSERDA Consumer Services and Events Management (CSEM) Department and the NYSERDA Project Manager.
- Develop a site plan for the conference, to include meeting space, meals, breaks, materials, and equipment.
- Prepare and send speaker packets requesting a biography, audio-visual equipment needs, and a copy of each presenter's presentation.

- In coordination with the NYSERDA Marketing department and at the direction of the NYSERDA Project Manager, design Save-the-Date cards, conference brochures, press releases and other event marketing. Printing and distribution will be provided by NYSERDA.
- Provide the NYSERDA Project Manager with an up-to-date mailing list of stakeholders from the client management database for the purpose of mailing marketing materials.
- Develop strategies for reaching under-represented sectors and organizations in the conference marketing materials.
- Maintain a registration database. Two months prior to the statewide conference, provide weekly registration report to the NYSERDA Project Manager and LIFE Chairperson
- Manage the registration process for attendees and exhibitors by accepting payments on-line, via e-mail, fax, and by mail. Have capacity to accept credit card payments. Process payments within 48 hours of receipt. Once payment is processed, send confirmation to registrant.
- Develop a conference evaluation form.
- Develop an exhibitor feature for each conference and solicit exhibitors from but not limited to low-income energy service providers, weatherization providers, state agencies, human service providers, etc.
- Coordinate exhibitor logistics.
- Coordinate scholarship donations from Steering Committee members.
- Determine volunteer needs and coordinate volunteer recruitment with NYSERDA Project Manager and LIFE Chairperson.
- In coordination with the Steering Committee, NYSERDA Project Manager, and LIFE Chairperson, serve as the main point of contact with presenters and ensure that all presenters are prepared for the meetings.

On-Site Conference Tasks:

- Manage the onsite registration process, including accepting credit card payments.
- Provide registrants with registration packets, name badges and proof of payment or an invoice for payment. Have capability to print name badges and registration confirmation on site for people who register in person.
- Provide all needed signs for workshops.
- Develop and provide information packets on the conference presenters and sessions for the session moderators.
- Arrange and manage AV equipment: microphones, laptops, projectors, etc.
- Distribute and collect evaluation forms.
- Coordinate exhibitor logistics.
- Coordinate volunteer responsibilities.
- Address any additional presenter or registrant conference need.

Post-Conference Tasks:

• Submit statewide conference summary report to the Steering Committee within 30 days of the statewide conference. The summary report shall detail the statewide conference, including but not limited to the following information: members of content committee; conference agenda; marketing materials/press releases; speaker biographies; participant list; summary of participant evaluations, including recommendations for improvements and participant demographics, etc., and budget summary with all revenue, expenses, and accounts receivable.

- Provide a report to the NYSERDA Project Manager and LIFE Chairperson outlining any accounts receivable and with approval, send collection letters.
- Provide all conference materials and speaker presentations to the NYSERDA Project Manager for inclusion on the LIFE website within one week from the end of the conference.

Task 4: Newsletter Development and Distribution

The Contractor shall work with the NYSERDA Project Manager, LIFE Chairperson, and the Steering Committee to produce a monthly electronic newsletter. Content areas are expected to include, but not be limited to, updates of NYS low-income energy programs, announcements, best practices, marketing of LIFE events, links to other internet resources, etc. The newsletter will be distributed to stakeholders on the LIFE mailing list and will be posted on the LIFE website. All tasks are subject to review and pre-approval by the NYSERDA Project Manager. Specific tasks shall include, but not be limited to:

- Developing a schedule for newsletter publication and distribution allowing appropriate lead time for NYSERDA and DPS review and approval.
- Requesting submission from outside parties for content to be included in the newsletter.
- Conducting research for and identifying content for inclusion in the newsletter.
- Editing all content and provide layout of each newsletter.
- Submitting newsletter drafts to NYSERDA Project Manager and LIFE Chairperson for review and approval.
- Distributing the newsletter electronically to the individuals in the database of stakeholder contacts.
- Meeting with the LIFE Newsletter Subcommittee periodically to plan newsletter content and discuss improvements.
- Working with the NYSERDA Project Manager to post newsletters to the LIFE website.
- Developing a mechanism for soliciting feedback on the newsletter.

Task 5: Webinar Development and Management

The Contractor shall work with the NYSERDA Project Manager, LIFE Chairperson, and the Steering Committee to produce a monthly webinar to present information relevant to the low-income energy community. Content areas may include updates of state and federal low-income energy programs, research on issues related to or affecting low-income energy consumers, and best practices. The webinars will be offered at no charge to the stakeholders in the LIFE database and will be posted on the LIFE website. The contractor should have familiarity with webinar software and systems. All tasks are subject to review and pre-approval by the NYSERDA Project Manager. Specific tasks shall include, but will not be limited to:

- Researching appropriate topics and presenters for the webinar series.
- Developing a schedule for the webinar series and submit to NYSERDA Project Manager and LIFE Chairperson for approval.
- Coordinating logistics for webinar presenters.
- Conducting research and identifying content for inclusion in the newsletter.
- Working with NYSERDA Project Management team to host the webinar.
- Developing and distributing webinar announcements to the stakeholders in the LIFE database.

- Providing follow up to webinar attendees including emailing a recording of the webinar.
- Working with the NYSERDA Project Manager to post webinar materials to the LIFE website.
- Developing a mechanism for soliciting feedback on the webinars.

Task 6: Coordinate Outreach through Social Media

In 2012, the LIFE program will explore the use of social media such as Facebook, Twitter, and Youtube as an additional outreach tool. Proposers are invited to include innovative and creative strategies to use social media to further the outreach and education goals of the LIFE program. The Contractor will be responsible for coordinating social media initiatives with NYSERDA's marketing department. All social media tasks will be conducted at the direction of the NYSERDA Project Manager and may include:

- Managing social media accounts.
- Developing a plan to further engage stakeholders through the use of social media.
- Drafting messages and announcements for distribution through social media avenues.
- Evaluating the effectiveness of social media outreach.

Contractor's Responsibility

The selected contractor will be responsible for timely completion of the requirements described in this RFP.

NYSERDA's Responsibility

The NYSERDA Project Manager will be responsible for managing and overseeing all tasks undertaken by the selected contractor, including but not limited to reviewing and approving tasks and subsequent deliverables. The NYSERDA Project Manager will also facilitate any coordination between the Contractor and the NYSERDA CSEM and Marketing departments.

Available Funds

Up to \$170,000 is available for the initial two year contract term, as outlined in this RFP. Additionally, up to \$85,000 per year is available for each of the two option years, which may be renewed at the discretion of NYSERDA. The total funding available through this solicitation is \$340,000.

IV. PROPOSAL REQUIREMENTS

Proposers must submit **ten** (**10**) **copies** of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this Request for Proposal. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist may 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.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html). In compliance with \$139-j and \$139-k of the State Finance Law, for proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of \$15,000, additional forms

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

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

Proposal Format

- RFP Proposal Checklist
- Executive Order 127 Forms
- Section 1: Introduction and General Information
- Section 2: Statement of Work
- Section 3: Management Structure and Staffing Plan
- Section 4: Qualifications
- Section 5: Cost Proposal
- Appendices: Resumes of Key Personnel

Summaries of Prior Work

References

Other Supporting Materials

Proposal Checklist: The Proposal Checklist to be completed is attached to this RFP. The checklist must be attached to all ten (10) copies of Part I of the proposal. At least one (1) copy must contain an original signature.

Section 1. Introduction and General Information: Proposers should summarize their understanding of the objectives and requirements of this RFP. Proposers should *briefly* identify key information about their organization and any proposed subcontractors. Proposers should describe why they believe that they are qualified to perform and complete the services requested under this RFP.

Section 2. Statement of Work: The Statement of Work is a detailed work plan of how the Proposer will accomplish the Program's objectives. It is the primary contractual document that identifies the deliverables and provides a basis for payment. The Statement of Work should clearly articulate strategies consistent with the requested Tasks and Program Requirements sections of this solicitation. The Proposer should describe their approach/methodology and define the rationale for the proposed approach. The Statement of Work must be prepared as an ordered set of tasks, including subtasks if necessary. Therefore, each action item should be identified, indicating who will perform it, how it will be performed, when it will be performed, and its anticipated deliverables. In addition to responding to the tasks defined for the requested services, proposers are invited to present additional tasks as long as they promote, or are consistent with, the goals and objectives of the Program.

Section 3. Management structure: Proposals should identify the Program Manager and all key team members. Provide a clear description of the roles and responsibilities of each staff position in completing the work plan, including percentage of time devoted to this program. Provide an organization chart for this program and plan for filling vacant positions in the organizational chart if any. Resumes of all key personnel should be provided as an appendix.

Section 4. Qualifications: Describe how the proposer meets the required experience, skills and abilities. State the individual and combined expertise that would enable successful completion of the objectives outlined in this RFP. List and briefly explain any relevant experience or projects that have been completed by the proposer. Indicate which individuals were responsible for each project described. Include the name and telephone number of at least three (3) references for whom your organization has completed relevant projects. Summaries of prior work requested in this RFP may be submitted as an appendix.

Section 5. Cost Proposal: A two year total project budget, including cost elements, must be provided using the attached Contract Pricing Proposal Form (CPPF), (see Attachment B). Provide a task budget that shows total costs and cost elements per task (*i.e.*, complete a CPPF for the total project **and** for each task identified in the Statement of Work). If applicable, provide a budget for each subcontractor involved in the project. Provide detailed budget breakdowns (using the Supporting Schedule for the CPPF) for materials, equipment, and travel.

Attach supporting documentation to support indirect cost (overhead) rate(s) 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 indirect costs.

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

V. PROPOSAL EVALUATION

All proposals received by the due date, and meeting the submission requirements established in this RFP will be reviewed by a Technical Evaluation Panel (TEP) consisting of NYSERDA staff and selected outside reviewers.

Final rankings and contract award to one contractor will be based on the following criteria, in order of importance:

Relevant Experience and Qualifications:

- Has the Proposer displayed knowledge of or familiarity with low-income energy issues?
- Has the Proposer displayed knowledge of or familiarity of low-income issues in New York State?
- Does the Proposer have sufficient resources located in New York State to respond in a timely and efficient manner to all requirements of the scope of work?
- Has the Proposer demonstrated experience working with low-income or energy issues in New York State or elsewhere?
- Does the Proposer demonstrate recent experience in the conduct of similar programs?
- Are key personnel's education, skills, abilities, and experience relevant to the program's needs?
- Does the Proposer have adequate capacity to handle the Program needs, as outlined in the RFP?
- What is the quality of the Proposer's performance on existing or past programs, or their achievement related to the proposed work?

Responsiveness to the Program Components and Requirements of the RFP:

- Has the Proposer demonstrated a clear understanding of the program goals and objectives?
- Is there clear evidence that the Proposer possesses the capacity to implement, coordinate and monitor the Program?
- Is the proposal thorough, specific, and consistent with the stated objectives?
- Are deliverables clearly stated and consistent with the Proposer's activities?

Comprehensiveness of Approach and Management Plan:

- Does the proposer demonstrate the ability to meet the needs of the Program and complete all tasks outlined in the RFP?
- Has the proposer demonstrated the ability to institute appropriate data collection and monitoring procedures?
- Are appropriate management and coordination strategies articulated?
- Is the Program organization, including staffing plan and schedule, clear and well-defined?
- Does the proposal include a strategy for coordination and interaction with all relevant parties, including NYSERDA, NYS DPS, the LIFE Steering Committee, and stakeholders?

Cost:

- How cost effective is the proposal overall?
- How competitive is the cost estimate, relative to other proposals?
- Are indirect and travel costs reasonable?

Other:

• Is the proposal well organized, well written and complete?

VI. GENERAL CONDITIONS

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for

exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause <u>substantial injury to the competitive position</u> 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 "<u>Confidential</u>" or "<u>Proprietary</u>" 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.ny.gov/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 one award 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 six (6) 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. NYSERDA reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Agreement.

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

VII. Attachments:

- Attachment A- Proposal Checklist
- Attachment B- Disclosure of Prior Findings of Non-Responsibility Form
- Attachment C- Contract Pricing Proposal Form (CPPF)
- Attachment D- Intent to Propose Form (Optional)
- Attachment E- Sample Agreement



ATTACHMENT A - RFP 2495 PROPOSAL CHECKLIST (MANDATORY)

Proposal Title		Due Date			
Primary Contact (Prime Contractor)		Title			
Company			Phone	Fax	
			e-mail	•	
Federal Tax Identification #/Social Security				_	
Address	City		State or Province	Zip	
Secondary Contact			Title		
Company			Phone	Fax	
			e-mail		
Address	City		State or Province	Zip	
THE PRIME CONTRACTOR MUST SIGN THIS FO	ORM BE	LOW and A	NSWER THE FOLLOWING	QUESTIONS:	
Do you accept all Terms & Conditions in the Sample Agr (NYSERDA anticipates considering only specifically liste				Yes No	
Have you been indicted/convicted for a felony within the	past 5 ye	ears? (if yes,	explain on separate pg)	Yes No	
Are you a Minority or Women-Owned Business Enterpris	se?			Yes No	
Does your proposal contain Minority or Women-Owned E	Business	enterprises a	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 v (if yes, explain on se			and/or competing proposals)?	Yes No	
ON WHAT PAGE IN YOUR PROPOSAL CAN THE	ESE ITE	MS BE FOL	JND?		
Management Structure and Staffing Plan NYSERD Qualifications Exception Cost Proposal Appendices: Resumes of Key Personnel Summaries of Prior Work Proposes		Indictment/Conviction of Felony (if applicable) NYSERDA Contracts Awarded (if applicable) Prior and/or Competing Proposals (if applicable) Exceptions to Terms & Conditions (if applicable) Completed and Signed Contract Pricing Proposal Form(s) Disclosure of Prior Findings of Non-responsibility Form			
AUTHORIZED SIGNATURE & CERTIFICATION					
I certify that the above information, and all information so complete, true, and accurate, and that the proposal requ understand and will comply with NYSERDA's procedures that this proposal may be disqualified if the solicitation re organization to this proposal.	ıirements s under §	noted have to 139-j(3) and	peen completed and are enclos §139-j(6)(b) of the State Finance	ed. I affirm that I ce Law. I understand	
Signature		Name			
Title Organization		Organizatio	on		
Phone					

 ${f NOTE}$: This completed form ${f MUST}$ be signed and attached to the front of all copies of your proposal.

Attachment B

Disclosure of Prior Findings of Non-responsibility Form

(Mandatory)

Name of Individual or Entity seeking to enter the procurement c	ontract:
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	Yes
enter the Procurement Contract in the last four years? (Please indicate with an "X")	No
Was the basis for the finding of non-responsibility due to a	Yes
violation of §139-j of the State Finance Law? (Please indicate with an "X")	No
Was the basis for the finding of non-responsibility due to the	Yes
intentional provision of false or incomplete information to a Governmental Entity? (Please indicate with an "X")	No
If you answered yes to any of the above questions, please provid non-responsibility below.	le details regarding the finding of
Government Agency or Authority:	
Date of Finding of Non-responsibility:	
Basis of Finding of Non-responsibility: (Add additional pages as	s necessary)

Attachment B

Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the	Yes
above-named Individual or Entity due to the intentional provision of false or incomplete information? (Please indicate with an "X")	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 §139-k is complete, true, and accurate.	with respect to State Finance Law
By: Date:	
By: Date:	
Name: Title:	



Attachment C RFP 2495

New York State Energy Research and Development Authority Contract Pricing Proposal Form			Solicitation/Contract No.		Page
Contractor:			Name of Proposed Project:		
Address:					
Location (where work is to be performed):			NYSERDA funding:		
			Total Project C	ost:	
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					
Materials Overhead	Rate:				
3. Direct Labor (specify names/titles)	Hours	Rate/hr			
5. Breet Bassi (speem v manies, titles)	110010	Tutto/III			
Total Direct Labor					
4. Labor Overhead	Rate %	\$ Base			
Total Labor Overhead					
Outside Special Testing				1	
6. Equipment				<u>" </u>	
7. Travel				<u>"</u>	
8. Other Direct Costs				Ī	
9. Subcontractors/Consultants				Ī	
J. Buccommission Consuming					
Total Subcontractors/Consultants					
10. General & Administrative Expense	Rate %	Element(s)		1	
,					
11. Fee or Profit (If allowable) Rate:		<u>'</u>			I
12. Total Estimated Project Cost					
This proposal reflects our best estimates as of this date, in acc	ordance with the ins	structions to propose	ers.	-11	1
Typed Name and Title: Signature:					Date:

•	tive agency of the U.S. government performed any review of your contract within the past twelve months? Yes:	our records in connection with any prin No	ne
Supporting Sch	nedule - Contract Pricing Proposal Form		
Element No.	Item Description		Amount

INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE

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

A. GENERAL

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

B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL

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

1a. DIRECT MATERIALS - PURCHASED PARTS

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

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

1b. OTHER DIRECT MATERIALS

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

- 2. MATERIALS OVERHEAD (also applicable to other Indirect Rate categories: 4. LABOR OVERHEAD and 10. G&A EXPENSE)
 - o If Government-approved indirect rates are proposed, then supply a copy of an appropriate Government document verifying those rates.
 - o If Government-approved rates are not proposed, supply the following, unless previously provided, for the years comprising the proposed period of contract performance.
 - o A description (chart or other) of the organization of the indirect cost center.
 - o The budget of indirect costs, by account, for each proposed indirect expense rate.
 - o The budget for the base, for each proposed rate, (direct labor dollars, hours, costs, etc.) itemized as to contract hours or costs, research and development hours of costs, and any other direct base effort.
 - o Actual incurred rates for the prior three years, including actual base and pool amounts.

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 RFP 2495

INTENT TO PROPOSE

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

	17 Columbia (ate Energy Re Circle, Albar	2495 esearch and D ny, NY 12203- il rdv@nyserda	6399 [·]	nent Authority
Name:	,	Title:			
Organization:		1			
Address:					
Address:					
City:	County:		State:		Zip +4:
E-mail Address:			Phone No.: (()	
Web Site:			Fax No.: ()		
Authorized signature:					Date:
Please check all that apply:					
We do intend to submit a We do not intend to submit a		ecause:			
I did not receive a notice Please delete me from N			NYSERDA's d	atabase.	
How did you receive information ab	out this solicitati	on? (Please cl	heck all that app	oly.)	
announcement notice in mail NYSERDA's website notice in NYS Contract Reporter word-of-mouth notice in other media (please list): NYSERDA staff/booth at meeting (please			meeting (please specify):		
If you plan to submit a proposal,	, please provide	e the title and	d a brief abstra	act:	

Attachment E

New York State Energy Research and Development Authority RFP - 2495 SAMPLE AGREEMENT

1. Agreement Number:	5. Project Period:
2. Contractor:	6. Federal ID:
3. Contact:	7. Total Amount of Award:
4. Award Date:	
8. Commitment Terms and Conditions	
This Agreement consists of this form plus the	following documents:
 Exhibit A, Statement of Work; Exhibit B, General Contract Providence of Exhibit C, Standard Terms and Contract Providence of Exhibit D, Prompt Payment Policy of Exhibit E, Guidelines for NYSER 	onditions; y Statement; and
9. ACCEPTANCE	
[CONTRACTOR]	NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
By	By
Name	Jeffrey J. Pitkin Treasurer
Title	

STATE OF COUNTY OF)		
COUNTY OF) 55		
On the	_ day of	in the year	, before me, the undersigned, a Notary Public in and
for said State, per	sonally appeared		, personally known to me or proved to me on
the basis of satisfa	actory evidence to	be the individual((s) whose name(s) is/are subscribed to the within
instrument and ac	knowledged to m	e that he/she/they	executed the same in his/her/their capacity(ies), and that
by his/her/their si	gnature(s) on the	instrument, the ind	ividuals(s), or the person upon behalf of which the
individual(s) acte	d, executed the do	ocument.	
			Notary Public

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

Section 1.01. <u>Definitions</u>. 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.

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

Budget: The Budget set forth in Exhibit A hereto.

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

<u>Contract Data</u>: 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.

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

<u>Person</u>: 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.

<u>Proprietary Data</u>: 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.

<u>Subcontract</u>: 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.

<u>Subcontractor</u>: 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.

<u>Unlimited Rights</u>: 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.

<u>Work</u>: 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. <u>Manner of Performance</u>. 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. <u>Project Personnel</u>. 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. <u>Deliverables</u>. All deliverables shall be provided in accordance with the Exhibit A Statement of Work.

Article IV

<u>Payment</u>

Section 4.01. <u>Compensation</u>. In consideration for this Agreement and as full compensation for the costs for the performance of all Work and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor the actual cost incurred as set forth in 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) <u>Staff Charges</u>: 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) <u>Direct Charges</u>: 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) <u>Indirect Costs</u>: 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. <u>Progress Payments</u>. 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.

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

In accordance with and subject to the provisions of such Exhibit D, NYSERDA shall pay to the Contractor, within the prescribed time after receipt of an invoice for a progress payment, 90% of NYSERDA's share of the amount so requested, unless NYSERDA should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement or the Budget.

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

Section 4.04. <u>Final Payment</u>. 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. <u>Release by the Contractor</u>. 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. <u>Maintenance of Records</u>. 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. <u>Maximum Commitment</u>. 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. <u>Audit Adjustment</u>. 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. <u>General Restrictions</u>. Except as specifically provided otherwise in this Article, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Contractor's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA.

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

shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit B to the extent required by law, and all other provisions now or hereafter required by law to be contained therein.

Section 5.03. <u>Performance</u>. 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. <u>Schedule</u>. 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. <u>Acceptance of Work</u>. 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. <u>Force Majeure</u>. 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. <u>Warranties and Guarantees</u>. 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. <u>Indemnification</u>. 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. <u>Maintenance of Insurance; Policy Provisions</u>. 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 <u>Types of Insurance</u>. 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. <u>Types of Insurance</u>. The types and amounts of insurance required to be maintained under this Article are as follows:

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

Section 11.03. <u>Delivery of Policies; Insurance Certificates</u>. 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 <u>Acceptance of Work</u>, 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 <u>Payment</u> 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

<u>Independent Contractor</u>

Section 13.01. <u>Independent Contractor</u>. 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. <u>Laws of the State of New York</u>. The Contractor shall comply with all of the requirements set forth in Exhibit C hereto.

Section 14.02. <u>All Legal Provisions Deemed Included</u>. 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** ®, and any related logo, without NYSERDA's prior written consent.

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

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

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 nondiscrimination 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. <u>WAGE AND HOURS PROVISIONS</u>. 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. <u>INTERNATIONAL BOYCOTT PROHIBITION</u>. 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. <u>SET-OFF RIGHTS</u>. 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. <u>CONFLICTING TERMS</u>. In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit B, the terms of this Exhibit B shall control.
- 7. <u>GOVERNING LAW</u>. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
- 8. <u>NO ARBITRATION</u>. 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. <u>SERVICE OF PROCESS</u>. 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. <u>CRIMINAL ACTIVITY</u>. 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. <u>PERMITS</u>. 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. <u>PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS</u>. 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. <u>COMPLIANCE WITH TAX LAW SECTION 5-a</u>. 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.
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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.

EXHIBIT E

GUIDELINES FOR NYSERDA PRINT DELIVERABLES

PURPOSE

This document briefly describes editorial and production procedures and gives electronic data-transfer information. NYSERDA's contractors prepare the reports describing NYSERDA research and development projects that NYSERDA publishes. Please direct questions about format and style to Diane Welch of NYSERDA's Technical Communications unit: (518) 862-1090, ext. 3276; fax (518) 862-1091; e-mail dlw@nyserda.org

COPYRIGHTS

All material borrowed or adapted from other sources should be properly identified (i.e., document, source, date, and page). The contractor must obtain and submit to NYSERDA the copyright owner's written permission to use copyrighted illustrations, tables, or substantial amounts of text from another publication.

GENERAL INFORMATION

The first reference to NYSERDA should read "the New York State Energy Research and Development Authority (NYSERDA)." Subsequent references should read simply "NYSERDA." When it is clear that you are referring to New York State, use State; otherwise, use New York State or the State of New York.

- Material borrowed or adapted from external sources must be identified (i.e., document, source, date, and page). Written permission to use copyrighted illustrations, tables, or text taken from another publication must be submitted with the report.
- Avoid half-page and one-sentence paragraphs.
- Do not use contractions.
- Acronyms must be spelled out the first time used, followed by the acronym in parentheses.

ELECTRONIC REQUIREMENTS

- Material must be submitted in any of the following formats:
 - Compact disc
 - Iomega 100 PC-Zip disk
 - IBM personal computer-compatible 3.5-inch, double-sided (DS), high-density (HD) diskette
- Textual material should be created in a format compatible with WordPerfect 9. While other word-processing programs may be able to be converted, results may vary. Characteristics such as underlining, bold, italics, and special characters that often appear in equations may be lost if WordPerfect 9 is not used.

If you are unable to meet these electronic transfer requirements, before submitting material, please contact Diane Welch of NYSERDA's Technical Communications unit at (518) 862-1090, ext. 33276; fax (518) 862-1091; e-mail dlw@nyserda.org

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