RENEWABLE PORTFOLIO STANDARD
CUSTOMER-SITED TIER
LARGE FUEL CELL PROGRAM

Revised October 2013
Program Opportunity Notice (PON) 2157
Total Program Funding $21 Million
$3.5 Million per Year Through 2015

Financial incentives are available to support the installation and operation of continuous duty fuel cell systems in New York State, with up to $1 million available per project for fuel cell systems rated larger than 25 kW. Funding is on a first-come, first-served basis until *December 31, 2015 at 5:00 PM* Eastern, or until all funding has been fully committed.

Generally, only electric customers that pay the Renewable Portfolio Standard (RPS) Program Surcharge on their electric bill are eligible to receive funding through this program.

In order to participate in PON 2157, applicants must comply with all program rules, procedures, and eligibility requirements, submit all required forms and supplemental documentation, and enter into a Standard Performance Agreement (SPA) with NYSERDA. Applicants must also adhere to the performance measurement requirements throughout the term of the SPA.

Application Submission: A digital copy of the application package on CD-ROM and one (1) printed copy (**which must contain an original signature**) of all project application materials must be sent to the following address:

Roseanne Viscusi, PON 2157
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

All Program Questions should be directed to: Scott Larsen, (518) 862-1090 ext. 3208, LSL@nyserda.ny.gov

All Contractual Questions should be directed to: Venice Forbes, (518) 862-1090 ext. 3507, vwf@nyserda.ny.gov.

*Applications lacking the appropriate completed and signed Application Form will be returned. Faxed or e-mailed applications will not be accepted. Applications will not be accepted at any NYSERDA location other than the **Albany** address above. 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 e-mailed proposals will not be accepted. Proposals will not be accepted at any other NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA's web site at www.nyserda.ny.gov.*

I. INTRODUCTION

The Customer Sited Tier Fuel Cell Program seeks to support the purchase, installation, and operation of continuous duty stationary fuel cell electric power generation equipment in New York State. This is one of several Customer-Sited Tier (CST) programs of the New York State RPS. The CST, commonly described as "behind the meter" generation, refers to generation that is sited at the electric customer's location and used primarily to serve the electric customer's load (i.e., not primarily exported to the utility grid).

For the purposes of PON 2157 Large Fuel Cell Program, a fuel cell module with a nameplate rating greater than 25 kW shall be considered "large". A "fuel cell system" may consist of one or more large fuel cell module(s) installed at a project site. Large Fuel Cell Program funding under the CST is $3.5 million per calendar year.

The CST Fuel Cell Program is aimed at quickly maximizing the amount of electricity produced by fuel cells in New York State, and therefore addresses rapid installation and long-term operation of mature, commercially-available continuous duty fuel cell systems. NYSERDA has other programs that are aimed at the development and product-testing of fuel cell prototypes. NYSERDA maintains a list of fuel cell systems which are eligible to participate in this solicitation (see Appendix E – check NYSERDA's website for periodic updates to Appendix E). Continuous duty, grid parallel fuel cell systems installed with funding from PON 2157 must be capable of running in stand-alone mode and providing power to the site during a grid outage as a resiliency feature.

Since the CST Fuel Cell Program is aimed at electric generation, the recovery and beneficial use of heat produced by the fuel cell is not mandated under this program, however, applicants are advised to consider maximizing the efficiency of their systems by including heat recovery features as an approach to optimizing the economic life cycle of their projects. Furthermore, the applicant is not prohibited from seeking support from other NYSERDA programs for certain benefits attributable to heat recovery, such as the electric peak load reduction which would occur if the recovered heat were used to drive an absorption chiller which displaces electric-driven chilling.

Renewable Portfolio Standard (RPS) Attributes: Orders issued by the NYS Public Service Commission provide that the RPS Program will support and promote an increase, to 30%, of the percentage of the energy consumed in NYS that comes from renewable sources. The implications for projects participating in this PON are specified in Section VII of this solicitation.

II. INCENTIVES

CAPACITY INCENTIVES

There are two capacity payments that large fuel cell systems may be eligible for:

BASIC CAPACITY PAYMENT

Capacity incentives ($/kW) will be based on the manufacturers nameplate rating of the fuel cell. Fifty percent of the approved basic capacity payment will be disbursed when the equipment is verified to be on site and permits are obtained. The remaining 50% of the basic capacity payment will be disbursed when the system is commissioned and approved by NYSERDA. Large fuel cells will have a basic capacity incentive of $1,000 per kW of installed capacity with an upper limit of $200,000 per project site.

BONUS CAPACITY PAYMENT

An additional incentive of $500 per kW (up to $100,000 per project site for large systems) will be paid for approved systems that provide secure power/standalone capability at sites of Essential Public Services, such as police stations and hospitals, or where the fuel cell system will be an integral part of a documented and verifiable "facility of refuge". A facility of refuge is a structure or facility capable of providing shelter for a significant portion of the local population during times of man-made or natural disaster, and is cooperating and coordinated with county or city emergency management officials, as appropriate.

Bonus Capacity Payments will be disbursed upon commissioning of the system. Project sites wishing to be considered for the Bonus Capacity Payment must fill out the appropriate question box (*see Section FC.2 of the Application Form Worksheet*) to request a determination as to whether the project site constitutes a site of Essential Public Services and/or a facility of refuge.

LIST OF ESSENTIAL PUBLIC SERVICES

Emergency Services:
Emergency Communication Services
Repeaters and Communication Infrastructure
Police
Fire Services
Ambulance/Emergency Medical Services
Emergency Management Services
Facilities of Refuge
Emergency Shelters and Rest Centers
Public Utilities (Water, Gas, Electricity)

Health Care Services
Hospitals
Managed Care Facilities

Communication Services
Broadcasting/Public Information
Telecommunications

Food Distribution/Retail
Fuel Distribution/Retail

Project sites wishing to be considered for the Bonus Capacity Payment must provide any necessary supporting documentation to substantiate the request with their completed application package. Determination of host site eligibility is at NYSERDA's discretion.

PERFORMANCE-BASED INCENTIVES

Performance-based incentives will be paid to those facilities operating with an annual capacity factor greater than or equal to 50%. For any given year, performance based payments of $0.15 per net kWh are offered through this program for the system's net production (the portion of verified fuel cell electricity generation, which exceeds the fuel cell system's parasitic consumption) and may be provided for up to three consecutive operating years subsequent to commissioning. Each annual performance payment is capped at a maximum of $300,000 per year per project site. Facilities with annual capacity factors of less than 50% in a given year will not be eligible for performance payments for that year.

Annual Capacity Factors (ACF) will be determined by dividing the net output of the fuel cell system during a one-year period by the maximum rated output (nameplate rating) of the fuel cell times 8760 hours per year (see Equation 1 below).

Eq. 1: $ACF = \frac{Actual\ Net\ Annual Output}{Nameplate\ rating\ x\ 8760}$ where;

- *Actual Net Annual Output* is the total verified electrical energy delivered by the fuel cell system to the site per year (i.e., fuel cell stack production minus parasitic consumption)

Projects receiving performance-based payments will require performance measurement to ascertain appropriate payment. The site will be required to install and maintain on-site sensors and meters approved by NYSERDA or NYSERDAs designated agent, which will be used for monitoring and data acquisition to confirm the amount of energy production. All data acquired by NYSERDA will be made available to the general public.

Applicants will be responsible for the purchase and installation of necessary monitors and sensors (*e.g.*, revenue grade fuel and electric meters), and projects will provide the necessary instrumentation and communications systems (*e.g.*, phone lines, internet access) to monitor systems for remote data collection. If not provided by the project site, NYSERDA will arrange for connecting sensors and meters to data acquisition systems. Projects must provide monitoring data for a minimum of three consecutive years through an automated data collection and remote transfer mechanism that will compile 15-minute interval data and at least once per day transfer such data to NYSERDA whereat NYSERDA will make such data available to the general public by posting at http://chp.nyserda.ny.gov. See Appendix C for more details.

MAXIMUM TOTAL INCENTIVE

NYSERDA will calculate the Maximum Total Incentive based on the nameplate rating of the proposed system. NYSERDA will encumber the Maximum Total Incentive upon execution of the SPA. Projects accepted into the program will be reviewed annually to evaluate the electricity generated and calculate performance-based incentive payments. After each annual performance payment, NYSERDA will calculate NYSERDA's residual maximum financial obligation and may reprogram any surplus funds for use in other projects.

Incentives will only be paid for systems installed as approved by NYSERDA. Any system modifications or equipment changes must be approved by NYSERDA in writing before a system is installed. Failure to get NYSERDA approval on any and all modifications may result in revocation of the incentive reservation or nonpayment of the incentive.

Large Fuel Cell System Incentive Summary

Definitions: Fuel cell modules greater than 25 kW
CST Program Funding Allocation: $3.5 million per year
Project Funding Caps: $1 million per project site.

Basic Capacity Incentives:

- Large Fuel Cells: $1,000 per kW of capacity with a cap of $200,000 per project site.
- 50% of approved basic capacity payment disbursed when equipment is on site and permits are obtained.
- Remaining 50% of basic capacity payment is disbursed when the system is commissioned and approved by NYSERDA

Bonus Secure Power/Standalone Capability Incentive for Sites of Essential Public Services:

- Additional $500 per kW of Capacity with a cap of $100,000 per project site.
- 100% of approved bonus capacity payment is disbursed when the system is commissioned and approved by NYSERDA

Performance Incentives (three consecutive annual payments):

- **$0.15/kWh** for operation with an annual capacity factor greater than or equal to 50%
- Maximum Performance payment: $300,000 per year per project site

III. PROGRAM STEPS

This section describes the program steps for participation in the CST Large Fuel Cell Program. The steps and associated milestones are shown pictorially in *Figure 1*.

NYSERDA will place applicants in a queue for contracting. An applicant's spot in the queue will be secured only when NYSERDA deems their application package to be full and complete. Thereafter, the applicant must adhere to a rapid-paced timeline in order to remain in the program; timely execution of NYSERDA's SPA is essential for an applicant to maintain their spot in the queue for entering the program. Applicants must meet all of the deadlines outlined in the Program Steps (see figure 1) to avoid being ejected from the program (if ejected, projects will be eligible to re-enter the rear of the queue and seek re-admittance to the program contingent upon the availability of funds).

1. Submit Application Package

The applicant's first step is to submit a completed application package to NYSERDA. Procedures for submitting the application package are described in *Section V*. NYSERDA or its Agent may conduct a site inspection to verify the accuracy of the information in the application package.

2. Provide Purchase Agreement from OEM or Manufacturer

Once NYSERDA has informed the applicant their application has been approved and sufficient funds are available and have been set aside, the applicant has thirty (30) days to furnish documentation that they have signed a purchase agreement with a fuel cell manufacturer and a letter from the fuel cell OEM confirming the delivery date of the fuel cell system to the applicant's site. If the applicant fails to provide this information within the time allotted the applicant will automatically forfeit their position in the queue and be placed at the rear of the queue – such a forfeiture of position in the queue may result in the release of funds to the next eligible applicant.

3. Sign Standard Performance Agreement (SPA)

Upon acceptance and approval of a completed application package and signed purchase agreement, NYSERDA will offer the applicant an SPA. The SPA will specify the Maximum Total Incentive. The applicant must sign and return the SPA to NYSERDA. Funds for a project will be encumbered only upon issuance of a fully-executed SPA, a sample of which is included as *Appendix B*.

4. Develop Performance Measurement Plan

The applicant will develop a Performance Measurement Plan (as described in *Appendix C*) in conjunction with NYSERDA and/or its Agent. The Performance Measurement Plan must be received and approved by NYSERDA prior to submittal of any invoices to NYSERDA.

5. Equipment Delivery

The applicant *has 9 months* upon transmittal of the fully executed SPA to demonstrate to NYSERDA that the fuel cell system has been delivered on site. If delivery is not completed within this timeframe, the applicant must request an extension from NYSERDA for continued reservation of the incentive funding. This request must describe the reasons for the delay and the expected timeframe to complete the delivery. *Continuation will be at NYSERDA's option. Only a limited number of short term extensions will be granted. Requests for extensions will only be granted upon demonstration of sufficient and reasonable cause for the delay.* NYSERDA will notify the applicant in writing whether or not the extension has been granted.

6. Request First Basic Capacity Incentive Payment
After all major equipment is on-site and necessary permits and interconnection approvals are obtained, the applicant may request a payment of up to 50% of the Basic Capacity Incentive stipulated in the SPA. Documentation of permits, interconnection approval and of expenditures such as equipment invoices/Bills of Lading/photographs of equipment on site must be presented to NYSERDA when the request for the First Basic Capacity Incentive payment is made.

7. Installation and Commissioning
The applicant *has 15 months* upon transmittal of the fully executed SPA to complete Installation and Commissioning of all system equipment. *Installation and Commissioning* is defined as the completion of installation of the fuel cell system, interconnection of the System with the utility grid, and at least one month of satisfactory operation of the system according to its design intent with performance data flowing to NYSERDA's website. If Installation and Commissioning are not completed within this timeframe, the applicant must request an extension from NYSERDA for continued reservation of the incentive funding, which describes the reasons for the delay and the expected timeframe for completion of this task. *Continuation will be at NYSERDA's option. Only a limited number of short term extensions will be granted. Requests for extensions will only be granted upon demonstration of sufficient and reasonable cause for the delay.* NYSERDA will notify the applicant in writing whether or not the extension has been granted.

8. Submit Project Installation Report
After Installation and Commissioning have been completed, the applicant must submit a Project Installation Report to NYSERDA, which includes As-Built Drawings of the system. Details on the requirements for the Project Installation Report are located in *Appendix D*. NYSERDA's approval of the Report is contingent upon the result of a Post-Installation Site Inspection, which will confirm the information provided in the Project Installation Report, the post-installation inspection will be performed by NYSERDA and/or NYSERDA's designated agent.

9. Request Second Basic Capacity Incentive Payment
Once the Project Installation Report is approved the applicant may request a payment of the remaining Basic Capacity Incentive. If the project site is eligible for the secure power/standalone Bonus Capacity Incentive payment as stipulated in the SPA, such payment may also be requested at this time.

10. Annual Performance Reporting
The applicant is responsible for monitoring and reporting during the performance period as specified in Appendix C: Performance Measurement Requirements. The verified electric generation will provide the basis of the performance incentive payments. In addition, all fuel cell system related data collected will be made available to the public on NYSERDAs CHP Data Integration Website (http://chp.nyserda.ny.gov). At the end of each annual performance period, the applicant shall produce a performance report summarizing the performance of the system based on the data collected during that period.

11. Requesting Performance Incentive Payments
Based on the information provided in the three required Annual Performance Reports, three annual Performance Incentive payments will be made for the verified electricity generated. These payments will be made after the Annual Performance Reports have been approved by NYSERDA, and invoices have been submitted to NYSERDA for payment.

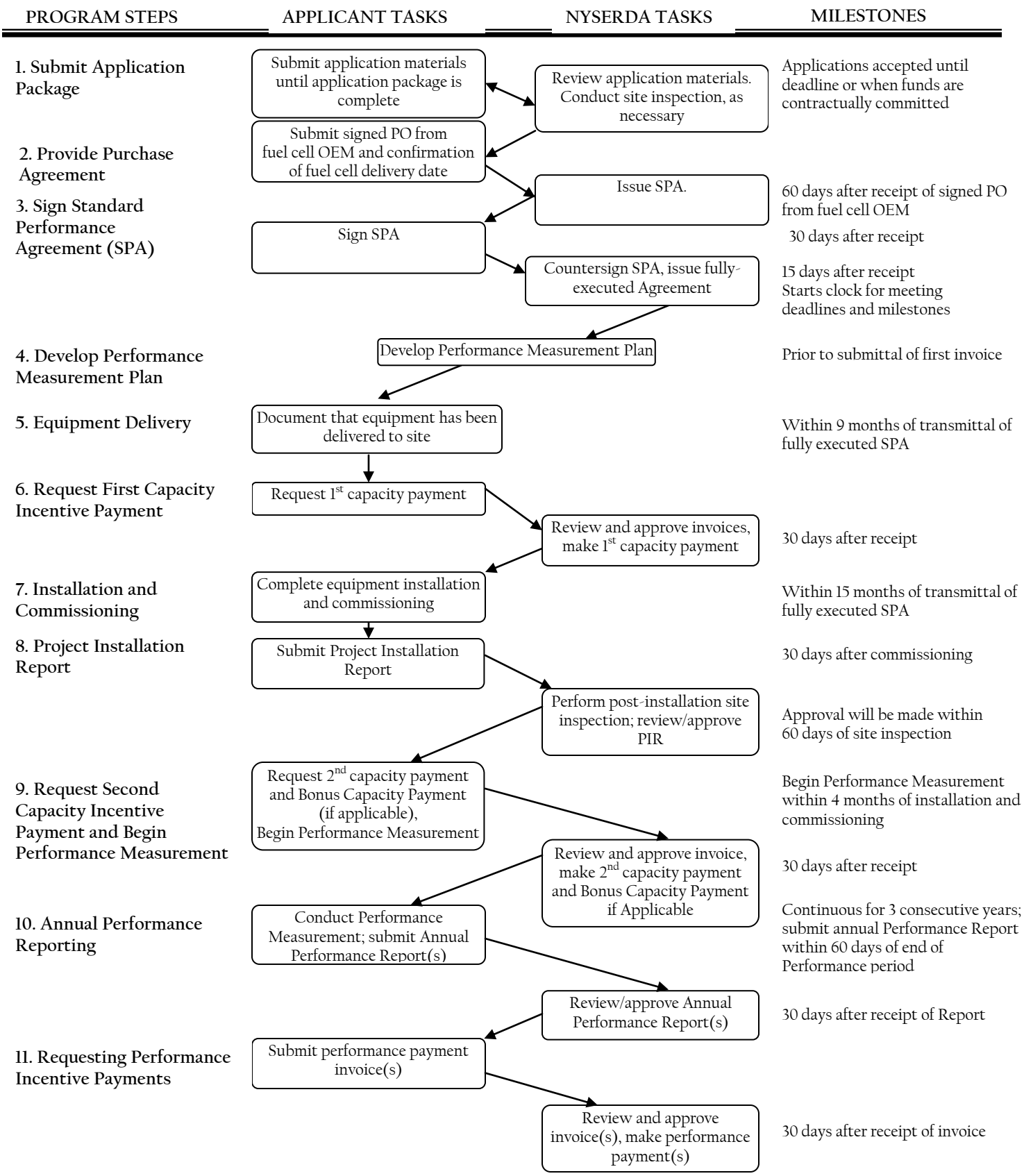

Figure 1: Large Fuel Cell Program Steps

IV. ELIGIBILITY

Projects eligible under the RPS CST Fuel Cell Program may also be eligible under the RPS Main Tier. However, once a project application or proposal has been approved by NYSERDA or becomes the subject of an award under this CST Program, for which funds are available, that project is ineligible for funding under the RPS Main Tier Program. Applicants will not be permitted to withdraw or cancel a project application or proposal, or seek to nullify a contract in order to apply or pursue an application or proposal in the RPS Main Tier for the same project (or for the same portion of the project).

To participate in PON 2157 Large Fuel Cell Program, the following criteria must be met:

- Only new generation equipment purchased or installed under a fully executed PON2157 Large Fuel Cell Program Standard Performance Agreement will be eligible for the program;
- Fuel cell modules must be greater than 25 kW;
- Project sites must be located in New York State;
- In general, projects must be located at sites that pay the NYS RPS Program Surcharge
- Fuel cell electricity must be generated and used primarily by the project sites, where the utility meter, which is interconnected with the grid, is located;
- Fuel cell systems must:
  - Consist of commercially available technologies as listed at Appendix E,
  - Be warranted for continuous duty for the duration of the 3 consecutive year performance period by the original equipment vendor, and
  - Have a detailed maintenance agreement with a factory service provider for the duration of the project.
  - Be designed and installed to be capable of providing grid independent operation using the fuel cell system to supply priority loads during periods of grid outage. A priority load may be any load that provides a health, safety, and/or economic benefit to the project site, for example: lighting, space conditioning, food storage refrigeration, communications, and assisting in the orderly shutdown of industrial processes.
- Applicants (and project sites, if different) must comply with all applicable:
  - Federal, State and Local codes, rules, and regulations;
  - Federal, State and Local permitting requirements; and
  - Federal, State and Local emissions limits

Eligibility Note 1: THIRD PARTY OWNERSHIP
Under a third-party ownership scenario, contractors that meet the eligibility requirements included in this solicitation may be permitted to build, own and operate a fuel cell project at a customer's site if the customer pays the RPS surcharge and if the contractual relationship between the customer and the third party clearly indicates that the entire incentive payment is being passed on to the customer.

Eligibility Note 2: It is preferred that the fuel cell electric power generation equipment be located at project sites owned or operated by customers who currently pay the NYS RPS Program Surcharge, however, projects located in New York State at project sites owned or operated by customers who currently do not pay the NYS RPS Program Surcharge may request special dispensation seeking eligibility. Projects will be evaluated depending upon the circumstances involved and whether a significant amount of **widespread** public benefit will result. Exceptions that demonstrate significant public benefit consistent with NYSERDA's program objectives may be considered on a case by case basis. Applicants are directed to fill out the appropriate question box on Section FC.2 of the Application Form Worksheet (see Appendix A) and provide any necessary supporting documentation

to substantiate the request. Determination of host site eligibility is at NY State Department of Public Service (DPS) Staff's discretion. Applicants will be notified in writing of DPS's decision. Project sites seeking exemption from the RPS program surcharge requirements will not be deemed full and complete, and therefore, will not be admitted to the queue until DPS staff has rendered a decision regarding the host site's eligibility.

V. APPLYING FOR THE PROGRAM

APPLICATION PACKAGE

Detailed application package requirements are included in *Appendix A*. The application package consists of the following:

- Completed, signed, and notarized Application Form (2157Large-appform.xls);
- Description of Tariff Impacts and Interconnection Requirements;
- Site Plan;
- Applicable Permits;
- Environmental Assessment Form; and
- Other forms as applicable – i.e. Form Requesting Addition to the List of Eligible Fuel Cells

The submitted application package shall consist of one (1) hard copy of the entire application package with the original signatures and a CD in a format viewable on Windows 98 containing a PDF of the entire application and the digital versions of the completed 2157Large-appform.xls in Microsoft Excel format.

All project application materials must be sent to the following address:

Roseanne Viscusi, PON 2157
New York State Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

NYSERDA will date/time-stamp and log all application materials as they are received. NYSERDA recommends that all application materials be sent via delivery service, certified or registered mail. Applicants should retain proof of delivery (such as a return receipt for certified, registered, or overnight mail) for all application materials submitted.

APPLICATION PACKAGE REVIEW

Upon receipt of application materials, NYSERDA will review the materials to ensure the following requirements are met:

- The project meets the CST Large Fuel Cell Program requirements;
- The application package is complete; and
- The *Maximum Total Incentive* and *Estimated Annual Production* estimates (from *Section FC.6 of the Application Form Worksheet*) and related assumptions and projections are reasonable and supportable, and the supporting data and calculations are correct.

NYSERDA or its Agent may conduct a site inspection to verify the accuracy of the information in the application package.

VI. PROCESSING OF APPLICATIONS

Funds are provided to the program on an annual (funding year) basis. NYSERDA anticipates that there may be times when there will be more requests for funds than there are funds available, and therefore establishes the following rigid procedure for establishing and managing a queue of applicants.

a) An application will be entered into the rear of the queue when NYSERDA deems the application to be full and complete. If two or more applications are deemed to be full and complete on the same day, the position in the queue for each application will be determined by the time and date that the application was surrendered to a carrier service that provided a tracking number that can be used to track a shipment on-line, or the time and date received by NYSERDA if such a carrier service was not used or if a suitable tracking number was not provided. If an application had previously been deemed by NYSERDA to be deficient, the time and date of receipt of the supplemental application materials that resolve such deficiencies will be used.

b) Unprocessed applications will retain their position in the queue from one funding year to the next.

c) NYSERDA has an interest in promoting diversity of equipment in the program. As such, if a queue exists at the beginning of a funding year, applications in the queue will be processed in the following order:

1. The first application for each fuel cell original equipment manufacturer (OEM) represented in the queue at the start of the funding year will be processed based on their relative positions in the queue.
2. Once one application representing each fuel cell OEM in the queue as of the start of the funding year has been processed, any remaining applications will be processed in queue order. Otherwise, applications will be processed in queue order.

d) NYSERDA will inform the applicant when it is its application's turn to be processed and sufficient funds are available and have been set aside. The applicant will then have thirty (30) days to provide NYSERDA with:

1. A copy of the signed purchase agreement with a fuel cell OEM; and
2. A letter from the fuel cell OEM confirming the scheduled delivery date of the fuel cell system to the project site. Such scheduled delivery date shall not be more than 9 months after the start of this thirty (30) day period.

e) If the applicant fails to provide this information within the time allotted, the applicant will automatically forfeit its position in the queue and be placed at the rear of the queue – such a forfeiture of position in the queue will result in the release of funds to the next eligible applicant.

f) For those applications where funds have been set aside, and the applicant has furnished the required documentation within the prescribed thirty (30) days, NYSERDA will then enter into a Standard Performance Agreement with the applicant.

NYSERDA will promptly review applications and supplemental application materials in the order that they are received, and applications deemed full and complete in their "as received" form will be entered into the queue in the order the application was received. Deficient applications will not be entered into the queue until the application has been revised to become full and complete (at which point the applicant will be placed at the rear of the queue).

Applicants should be "ready to go" when submitting their application so that the applicant will be capable of complying with the thirty (30) day requirement to submit a signed purchase agreement with the fuel cell OEM along with a letter from the fuel cell OEM confirming the delivery date of the fuel cell system to the project site.

VII. ADDITIONAL INFORMATION AND REQUIREMENTS

RENEWABLE PORTFOLIO STANDARD (RPS) ATTRIBUTES: Orders issued by the NYS Public Service Commission provide that the RPS Program will support and promote an increase, to 30%, of the percentage of the energy consumed in NYS that comes from renewable sources. When assessing and reporting on progress towards that goal, or on the composition of the energy generated and/or consumed in NYS, NYSERDA and the NYS Department of Public Service will include all electrical energy created by any project receiving funds through the NYS RPS Customer-Sited Tier Program, for the life of such projects, and the environmental attributes associated with such energy, whether metered or projected, as a part of any report, evaluation, or review of the RPS Program, whenever any such report, evaluation, or review may be conducted or issued, as renewable energy consumed in NYS. No party, including but not limited to owners, lessees/lessors, operators, and/or associated contractors shall agree to or enter any transaction that would or may be intended to result in the exportation or transmittal of any electrical energy created by any project receiving funds through the NYS RPS Customer-Sited Tier Program to any party or system outside of New York State.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)
NYSERDA is required under SEQRA to consider the environmental implications of all funded projects. All proposals must include a completed SEQRA Short Environmental Assessment Form (Appendix G).

VIII. GENERAL CONDITIONS

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes.

The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 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

If State Finance Law lobbying amendment and Tax Law 5-a provisions apply, include the following two sections:

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 new 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 perspective 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 [or multiple, as it applies to solicitation] award under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA expects to notify [proposers/applicants] in approximately [XXX] weeks from the [proposal due date/receipt of an application] whether your [proposal/application] has been selected to receive an award.

Limitation - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to

accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest.

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

IX. OTHER OPPORTUNITIES

Potential non-NYSERDA Opportunities

Customers may be eligible for State and federal tax credits.

Tax Incentives: If the applicant has been provided with information regarding the expected tax benefits (real property, federal or state tax incentives, or sales and use tax exemptions), as with any tax issue, the applicant is encouraged to consult the Internal Revenue Service (See, www.irs.gov), the NYS Department of Taxation and Finance (See www.tax.state.ny.us) and with an accountant/tax adviser for details on eligibility for the credit provided in the law). NYSERDA does not provide tax advice.

X. APPENDICES

Appendix A: Application Form
- Section FC.1: Contact Information
- Section FC.2: Project Site
- Section FC.3: Fuel Cell System Definition
- Section FC.4: Environmental Questionnaire
- Section FC.5: Costs and Schedule
- Section FC.6: Estimated Incentive
- Section FC.7: Project Site Control Letter
- Section FC.8: Applicant Agreement

Appendix B: Sample Standard Performance Agreement
Appendix C: Performance Measurement Requirements
Appendix D: Project Installation Report Requirements
Appendix E: List of Eligible Fuel Cell Modules by Manufacturer Make and Model
Appendix F: Instructions to Manufacturers of Fuel Cells – How to Request Addition of Your Equipment to the List of Eligible Fuel Cells
Appendix G: SEQRA Short Environmental Assessment Form

XI. ATTCHMENTS

Attachment A: Proposal Checklist
Attachment B: Disclosure of Prior Findings of Non-responsibility Form