



**The Bio-Fuel Station Initiative:  
Driving Energy Independence for the Empire State  
Program Opportunity Notice (PON): 2290  
Approximately \$1 Million Available**

Applications accepted beginning August 31, 2013 until 5:00 PM July 5, 2015.

**SUMMARY OF REVISIONS**

**The following changes have been made to PON 2290, “The Biofuel Station Initiative: Driving Energy Independence for the Empire State”:**

- The funding has changed from 50% of biofuel cost up to a maximum of \$50,000 to a fixed incentive of \$35,000 per facility.
- Biodiesel installations are no longer eligible.
- Technical assistance from NYSEERDA’s field consultant is no longer provided.
- The only items required at the post-construction inspection are:
  - 1) Building permit and/or certificate of occupancy
  - 2) Written certification from the local fire department, and
  - 3) Petroleum Bulk Storage certificate or revised application
  - 4) Station Owner Certification
- Attachment 3 has been updated to reflect the elimination of biodiesel and the fixed incentive amount of \$35,000.
- Attachment 5 – Sample Agreement has been updated to reflect the changes listed above.



**The Bio-Fuel Station Initiative:  
Driving Energy Independence for the Empire State  
Program Opportunity Notice (PON): 2290  
Approximately \$1 Million Available**

Applications accepted beginning September 27, 2013 until 5:00 PM July 5, 2015.

The objective of **The Bio-Fuel Station Initiative: Driving Energy Independence for the Empire State**, is to increase the number of retail E85 Ethanol service stations selling these fuels to the general public in New York State through a comprehensive approach. This PON solicits applications for funds to purchase and install equipment to store and dispense E85 Ethanol (Biofuels). It is estimated approximately 125 new retail E85 Ethanol fueling stations will be opened as a result of this initiative.

The Bio-Fuel Station Initiative ("Program") provides a fixed incentive of \$35,000 per site, for new installations of Biofuel dispensing equipment, storage tanks, and associated equipment which enable the station to sell E85 Ethanol to the general public. Funds will be issued on a first-come, first-served basis. Applications will be accepted from owners and operators of retail stations throughout the State that are open to the public. Funds will be committed based on approved applications, and then paid upon final inspection indicating that installation is complete.

**Application Submission:** Send **one (1)** applicant checklist (**Attachment 1**) attached to the front of Disclosure of Prior Findings of Non-responsibility (**Attachment 2**), and the project application (**Attachment 3**), which **must** contain original signatures, be clearly labeled, and submitted to:

**Biofuel Station Program  
David McCabe, PON 2290  
NYS Energy Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399**

All Program questions should be directed to: Patrick Bolton at (518) 862-1090, ext. 3322 or [ppb@nyserda.ny.gov](mailto:ppb@nyserda.ny.gov).  
All Contractual questions should be directed to: Nancy Marucci at (518) 862-1090, ext. 3335 or [nsm@nyserda.ny.gov](mailto:nsm@nyserda.ny.gov).

\*Late, incomplete, or unsigned applications will be returned. Faxed or e-mailed applications will not be accepted. Applications will not be accepted at any other NYSEERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSEERDA's website at [www.nyserda.ny.gov](http://www.nyserda.ny.gov).

## 1.0 INTRODUCTION

The New York State Energy Research and Development Authority (NYSERDA) is a public-benefit corporation established by the State Legislature in 1975 to address the State's energy and environmental challenges. NYSEDA is promoting deployment of renewable transportation fuels such as E85 Ethanol as a way to address the State's dependence on foreign sources of petroleum and to reduce emissions associated with the transportation sector. The funding was made available through the New York State Budget to establish the **Bio-Fuel Station Initiative: Driving Energy Independence for the Empire State**. The objective of this initiative is to support development of the distribution and delivery infrastructure for Biofuels in New York State.

There are about 400,000 Flex-Fueled vehicles capable of running on E85 Ethanol registered in New York State. Additionally, consumers can purchase E85 capable vehicles from many car manufacturers. Currently only a small percentage of vehicles use alternative fuels in New York and there are still relatively few stations open to the public.

Funding is available through PON 2290 to reimburse eligible applicants a fixed incentive of \$35,000 per site, for new installations of Biofuel dispensing equipment, storage tanks, and directly associated piping and equipment. Funds will be issued on a first come, first served basis until available funds are committed. Applications will be accepted from owners or operators of retail stations throughout the State. Funds will be committed based on approved applications, and then paid upon final inspection by a NYSEDA representative indicating that the installation is complete. (See the definition of a completed facility in Section 3.2).

Funding awarded through PON 2290 may be used in conjunction with certain Federal tax credits or other sources of federal funding that are in place for alternative fuel infrastructure improvements. (See Section 5.0 for more information.)

## 2.0 PROGRAM REQUIREMENTS

### 2.1 Eligibility Requirements

The Program is open to any entity that owns or operates one or more retail fueling stations that are registered with the New York State Department of Tax and Finance to sell gasoline to the general public and that is capable of accepting major credit cards as a form of payment for fuel. The entity that applies must be the entity that will own the biofuel equipment and must have the legal authority to make improvements to the site at which the Biofuel dispenser(s) will be located. If the entity leases the property or does not own the property, it must prove it has the right under the lease agreement to make improvements to the property. These rights should be in place for a minimum of 6 years going forward from the time the Program funds are dispersed to the applicant. If the applicant is a franchisee, it must present documentation of its franchise agreement.

### 2.2 Available Funds

NYSERDA anticipates awarding approximately \$1 million under the Program, but may award more than, or less than that amount. **Only stations that have submitted an application are considered to be included in the program. The program may run out of money or be closed at any time. Stations that complete work and apply to the program after it is closed or runs out of funding will not be eligible for any program funds. Applicants are encouraged to apply to the program as soon as possible to ensure their place in the funding line is secured and their application is received prior to the program closing down.**

### 2.3 Reporting

Applicants will be required to provide semiannual reports to NYSEDA detailing the amount of fuel dispensed and operation of the equipment funded under the Program. A sample of the semi-annual report

is included as **Attachment 4**. These reports must be submitted on a semi-annual basis for 6 years after the Program funding is dispensed to the Applicant.

#### 2.4 Program Incentive

NYSERDA will provide a fixed incentive, of \$35,000 per site, for a Biofuel Station Project (defined in Section 2.6).

There is no cap on the total amount of funds that any one entity can receive. Applications from entities that own or operate multiple fueling sites in New York State are encouraged to apply, but no single facility or site can receive more than \$35,000.

#### 2.5 Recapture Provision

Entities receiving funds through the Program are required to offer the Biofuel for sale to the public (further described in Section 2.6, Station Requirements) for a minimum of six years from the date the dispenser(s) are operational. If the Biofuel is offered for sale for any period less than six years, the funds are subject to recapture. The recapture amount will be based upon the proportion of time the fuel was actually available for sale against the minimum amount of time, six years, that the fuel was obligated to be available for sale. (See the formula following.)

Recoupment payment = [6 years – number of years biofuels available / 6] x \$35,000

#### 2.6 Station Requirements

- A Biofuel Station Project must be comprised of: one or more above- or below-ground tanks capable of storing a minimum of 2,000 gallons of E85 Ethanol fuel; one or more dispenser systems for dispensing E85 Ethanol; and a card reader/payment system that accepts major credit cards for sale of the fuel to the general public.
- Code Compliance: All installations of Biofuel equipment must comply with applicable local and State Building and Fire Codes or have a waiver from the local authority having jurisdiction (“AHJ”).
- § First Responder Preparation: Stations owner/operators awarded Program funds for E85 must ensure that the local first responders have the proper fire fighting foam equipment to respond to an E85 fire or other incident related to the storage or dispensing of the Biofuel. This includes purchasing special fire fighting foam for the local responders, if needed. A letter from the local fire chief stating they have the necessary equipment is required as part of the stations invoice to NYSERDA.
- Signage: Each site receiving funds through the Program must install proper signage to notify the public of the availability and price of the Biofuel. Signs should be placed on the marquee of the fueling facility, however if such placement is prohibited by local jurisdiction, another appropriate sign which is NYSERDA approved must be prominently displayed on the property, in order to provide uniformity.

A signage kit for E85 comprised of items such as pump toppers, decals, and banners, developed by Growth Energy, must be used at the site. These items can be viewed at the following site. . [www.Ethanolretailer.com/store](http://www.Ethanolretailer.com/store) then click **NYSERDA Compliance Items** on the upper left hand side. To purchase these items, contact Growth Energy by the information listed below. Ask for the New York/NYSERDA Pump Imaging Package. These station kits are usually complimentary with the exception of the purchase of one of the three signs offered plus shipping cost. Station owners and operators are also encouraged to make promotional information about Biofuels available as

take-aways for the public. For additional information on the signage kit please contact the Market Development Coordinator at:

Growth Energy  
Sara Brenden  
PH: 402.932.0567 ext 211  
[order@growthenergy.org](mailto:order@growthenergy.org)

- Sale of Biofuel: Station owner and operators must offer the Biofuel for sale on a continual basis, without interruption, for at least 12 hours per day for a period of six years. The Biofuel must be offered at the lowest possible retail price to the general public. Applicants need to keep in mind the significant public investment in these upgrades. Every reasonable attempt must be made to keep the gross margin for E85 no higher than the gross margin the station charges for premium gasoline. Stations are subject to NYSERDA audits regarding pricing margins. Stations that are found to be charging higher than allowed margins will be notified by NYSERDA in writing. Any stations that consistently continue to charge higher margins on E85 will be subject to recoupment of incentive funds.
- Public Announcement: Station owner and operators should announce the opening of the site through the local media, local automobile dealerships, and other appropriate venues, and schedule events to highlight the availability of the Biofuel. All announcements, press releases, and advertisements must be approved by NYSERDA prior to release and must include a statement pre-approved by NYSERDA noting support given by NYSERDA through the Program.

### 3.0 DEFINITIONS

#### 3.1 E85 Ethanol

E85 is a blend of typically 85% denatured ethanol [ethyl alcohol (C<sub>2</sub>H<sub>5</sub>OH) containing 5% hydrocarbon denaturant] and 15% hydrocarbon by volume. The hydrocarbons must meet all applicable State and Federal requirements. Total hydrocarbon volume must range from 15% to 30% of the total volume of the E85 based on information provided at <http://www.afdc.energy.gov/afdc/ethanol/specs.html> . Such specifications are incorporated by reference, are available upon request, and located on the Growth Energy Market Development website at [www.ethanolretailer.com](http://www.ethanolretailer.com).

#### 3.2 Completed Facility

NYSERDA will determine a site is a completed facility based on the following: all necessary equipment has been installed, all necessary State and local permits have been received, appropriate signage has been installed, a card reader system that takes major credit cards is activated, and the station is open to the general public. Additional requirements for fueling stations are described in Section 2.6. All facilities are subject to inspection by NYSERDA's Consultant to determine if the Biofuel Station Project is completed. The facility must meet all conditions set forth in section 2.6.

#### 3.3 NYSERDA Consultant

NYSERDA's consultant for this Program is Bergmann Associates, P.C. and the contact person is Gary Flisnik. Gary's contact information is listed below:

Bergmann Associates, P.C.  
Attention: Gary Flisnik  
200 First Federal Plaza  
28 East Main Street

Rochester, New York 14614  
Phone: 585-232-5137 ext. 346  
Fax: 585-232-4652  
E-mail: [gflisnik@bergmannpc.com](mailto:gflisnik@bergmannpc.com)

#### 4.0 APPLICATION REQUIREMENTS AND PROGRAM STEPS

##### 4.1 Your application **MUST** contain the following in order:

1. Applicant Checklist (**Attachment 1**) that must contain an original signature
2. Disclosure of Prior Findings of Non-Responsibility (**Attachment 2**) that must contain an original signature
3. Project Application Form (**Attachment 3**) that must contain an original signature
4. Exceptions to Standard Terms and Conditions if applicable (**See Attachment 5**)

Applications that fail to follow the requirement guidelines may be rejected as non-responsive.

Applicant Checklist - Complete the Applicant Checklist (**Attachment 1**) and include it as the front cover of the application. Be sure that the individual signing the Applicant Checklist is authorized to commit the applicant's organization to the application as submitted. This form must contain an original signature.

**Disclosure Requirement** – Complete the Disclosure of Prior Findings of Non-Responsibility Form (**Attachment 2**). 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 that 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.

Project Application Form - Complete the Project Application Form (**Attachment 3**) in its entirety. Be sure that the individual signing the Project Application Form is authorized to commit the applicant's organization to the application as submitted. This form must contain an original signature.

Indicate whether you accept the Standard Terms and Conditions as contained in the attached Sample Agreement (**Attachment 5**). If you do not accept the Standard Terms and Conditions, alternate terms with justification based on the risk and benefit to NYSERDA and New York State must be submitted with the application. Applicant does not need to fill out and complete **Attachment 5**. It is for applicant review only.

Mail these forms with a cover sheet to

Biofuel Station Program  
David McCabe, PON 2290  
NYS Energy Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399

- 4.2 Applications will be reviewed for compliance with Program rules and procedures, eligibility, and completeness. For those applications deemed eligible, NYSERDA will assign its Consultant to schedule a site visit at the soonest possible date and the Consultant will subsequently provide NYSERDA with a site review report composed of a project check-list and brief narrative. The

purpose of the site visit is to determine the suitability of the proposed location, including an assessment of the local market, for the installation of Biofuel dispensing equipment, and whether the proposed project is consistent with the objective of the Program to increase the number of retail E85 Ethanol service stations selling these fuels to the general public. The Consultant will review the specifications for the proposed equipment to determine if such equipment will meet applicable code, if waivers are required, budget costs for the project, and if the proposed equipment is adequate to meet the applicant's expected fueling operation parameters. Please use this checklist to ensure the following information will be available at the initial site visit:

- \_\_\_ Copy of recent reconciliation
- \_\_\_ Copy of the Petroleum Bulk Storage Certificate
- \_\_\_ Copy of the As-Built site plan for the facility
- \_\_\_ Existing tanks: Capacity/Fuels Stored
- \_\_\_ Existing dispensers: Type and number of each
- \_\_\_ Existing piping: Material
- \_\_\_ Existing fire suppression system: Type
- \_\_\_ Existing point of sale system: Type
- \_\_\_ Description of proposed upgrade
- \_\_\_ Cost estimate for proposed upgrade

**4.3** Once NYSERDA receives the site review report, NYSERDA will review the information for reasonableness of the overall project scope and fuel use estimates. If the information and the scope of work included in the report is approved, and if Program funds are available, NYSERDA will issue a Funding Letter notifying the applicant they are eligible for funding under the Program. The Funding Letter does not obligate the applicant to participate in the Program. **If the Applicant does not receive a funding letter they are not included in the program and funding for their project is not secured.**

**4.4** Before NYSERDA will issue an Agreement to the applicant for Program funds, the applicant must submit estimates for the installation of all equipment, including the biofuel equipment, and labor costs for the complete project. The applicant should make every effort to receive more than one estimate for the project scope. Once NYSERDA has all the information necessary to proceed, NYSERDA will forward an agreement with the applicant for signature. Once executed by NYSERDA, this Agreement will remain in effect for one year only. Applicants may apply for extensions after the one-year expiration, which may or may not be approved at NYSERDA's sole discretion. NYSERDA has no commitment to fund any portion of the project until an Agreement is executed.

**4.5** The applicant must notify NYSERDA when it believes it has a completed facility (see Section 3.2). NYSERDA will assign its Consultant to perform a final site inspection to ensure that the facility is fully operational and that it meets all Program requirements. If the facility meets all of the necessary requirements, the Consultant will forward the documentation to NYSERDA. After NYSERDA reviews the post-construction inspection report and all required documentation is in place, NYSERDA will request an invoice from the applicant. The invoice will be submitted and the authorized funding for that facility will be paid to the applicant. Facilities must be completed within 1 year of the execution of the Agreement. Extension requests for the Agreement must be submitted to NYSERDA in writing 30 calendar days prior to the Agreement expiration date. Extensions may be granted or withheld at NYSERDA's sole discretion. Please use this checklist to ensure the following information will be available at the final site inspection:

- \_\_\_ Building permit and/or certification of occupancy
- \_\_\_ Written certification by the local fire company on Fire Department letterhead stating that the first responder fire company is aware the fueling facility located at (insert address) is

storing and dispensing E85 Ethanol and they have the necessary equipment and proper fire fighting foam to handle an alcohol based fire or spill at this location.

- \_\_\_ Petroleum Bulk Storage Certificate or Revised Application
- \_\_\_ Station Owner Certification

- 4.6** The applicant is required to submit semi-annual reports to NYSERDA and the Consultant due on July 31 and January 31 detailing the amount of Biofuel sold and the average price of the fuel sold during the previous six months. Reports, to be submitted for a period of 6 years after the facility is completed, must also include information on the operation of the facility and equipment installed under the Program. Applicants that do not submit reports will be subject to a recapture of the Program funds given to them, as described in Section 2.5.

## 5.0 POTENTIAL TAX BENEFITS

**5.1** New York State may provide an exemption from state taxes on the sale of E85 and portions of the state taxes ([http://www.tax.state.ny.us/pdf/memos/petroleum/m06\\_2m.pdf](http://www.tax.state.ny.us/pdf/memos/petroleum/m06_2m.pdf)). Applicants are also encouraged to consult with their tax professional regarding a Federal income tax incentive of 50 percent of the cost of installing E85 Ethanol related equipment with a cap of \$30,000 per site (<http://www.irs.gov/pub/irs-pdf/f8911.pdf>). NYSERDA does not warrant that these tax incentives will be in place or applicable to the Applicant.

## GENERAL CONDITIONS

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

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

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

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

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

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

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

**State Finance Law sections 139-j and 139-k** - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain new procurement lobbying requirements which can be found at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>  
The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form (**Attachment 2**) 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.state.ny.us/pdf/2006/killin/st/st220td\\_606\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2006/killin/st/st220td_606_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.state.ny.us/pdf/2006/killin/st/st220ca\\_606\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2006/killin/st/st220ca_606_fill_in.pdf)). The Department has developed guidance for contractors which is available at [http://www.tax.state.ny.us/pdf/publications/sales/pub223\\_606.pdf](http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf).

**Contract Award** - NYSERDA anticipates making multiple awards 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.

**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.

## **ATTACHMENTS**

Attachment 1 - Applicant Checklist  
Attachment 2 – Disclosure of Prior Findings of Non-responsibility  
Attachment 3 - Project Application Form  
Attachment 4 – Sample Semi-Annual Report  
Attachment 5 – Sample Agreement

# ATTACHMENT 1

## PON 2290

### APPLICANT CHECKLIST

#### The Bio-Fuel Station Initiative: Driving Energy Independence for the Empire State

**Note:** ALL application fields are required.

<b>Applicant must be the entity that operates the station and will own the biofuel equipment.</b>			
Applicant Name		E-mail Address	
Contact Person		Phone	Fax
Street Address	City	State	Zip
Applicant's Federal Tax ID Number			
Do you accept all Terms & Conditions in the attached Sample Purchase Order? (if no, explain on separate page) <input type="checkbox"/> Yes <input type="checkbox"/> No			
Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate page) <input type="checkbox"/> Yes <input type="checkbox"/> No			
Have you been awarded other NYSERDA contracts? (if yes, list on separate page) <input type="checkbox"/> Yes <input type="checkbox"/> No			
Would you like to receive information about technical assistance for your project from a NYSERDA contractor? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Did you agree to provide semi-annual reports to NYSERDA regarding this project, fuel use and other related information? <input type="checkbox"/> Yes <input type="checkbox"/> No			
I certify that the above information is accurate, and that the Application requirements noted have been completed and are enclosed. I understand that this Application may be disqualified if the solicitation requirements are not met. In consideration of the benefit that I will receive as a result of this agreement, I agree to all requirements set forth in PON 2290 and all attachments thereto. I, the undersigned, am authorized to commit my organization to this Application.			
Applicant Signature		Name	
Title		Organization	
Phone		Date	

How did you hear about the Program PON 2290 (check one or more)

Workshops,  Program Participants,  Advertising,  NYSERDA staff,  Previous Participation,  Construction Contractor

Other (please specify) \_\_\_\_\_

## ATTACHMENT 2

### Disclosure of Prior Findings of Non-responsibility Form

(Mandatory)

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

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

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

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

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_ Title: \_\_\_\_\_

# ATTACHMENT - 3

## PROJECT APPLICATION FORM

### Biofuel Station Initiative: Driving Energy Independence for the Empire State

<b>1. APPLICANT'S INFORMATION:</b> Applicant must be the entity that operates the station and will own the biofuel equipment.		
Applicant's Name:		
Contact Person		
Applicant's Address:		
City, State & Zip+4:		
Phone Number:		Fax Number:
E-mail Address:		
Existing Facility or Proposed New Facility:		
<b>2. CONTACT INFORMATION FOR LOCAL AUTHORITY HAVING JURISDICTION (Such as Fire Marshal)</b>		
Contact's Name:		
Contact's Address:		
City, State & Zip+4:		
Phone Number:		Fax Number:
E-mail Address:		
<b>3. FACILITY DESCRIPTION (Retail Fueling Facility Location Information)</b>		
Facility Name:		
Facility Address:		
City, State, & Zip+4:		
Phone Number:		Fax Number:
No. of Dispensers:		
Monthly Fuel Sales (Gallons):	Regular Unleaded:	Mid-Grade Unleaded:
	Premium Unleaded:	Diesel Fuel:
DEC and State Permits in Place:	Yes:            No:	Local Permits in Place:            Yes:            No:
Require Technical Assistance:	Yes:            No:	Brand Name of Station:
Retrofit of Existing Tank and Dispensers or New Installation:		
Type of biofuel to be sold:	E85 Ethanol:	

<b>4. BUDGET INFORMATION</b>			
<b>PROJECT COST ESTIMATES</b>	<b>Total Equipment/ Installation Costs</b>	<b>Applicant Cost-share</b>	<b>** NYSERDA Funds Requested</b>
Equipment Costs:			
Installation Costs:			
Total Project Costs:			

Give a brief description of the project including cost estimates and cost-share information (attach estimates):

\*\* NYSERDA reimbursement is a fixed \$35,000 per site.

Applicant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Attachment 4

BIO-FUEL STATION INITIATIVE: DRIVING ENERGY INDEPENDENCE FOR THE EMPIRE STATE  
SEMI-ANNUAL REPORTING

REPORTING PERIOD: \_\_\_\_\_

STATION: \_\_\_\_\_

PO NUMBER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SITE NUMBER: \_\_\_\_\_

CONTACT: \_\_\_\_\_

PHONE: \_\_\_\_\_

INITIAL DATE OF OPERATION: \_\_\_\_\_

E85 ETHANOL

B20 BIODIESEL

TANK SIZE: \_\_\_\_\_

TANK SIZE: \_\_\_\_\_

# OF DISPENSERS: \_\_\_\_\_

# OF DISPENSERS: \_\_\_\_\_

DISPENSER MODEL \_\_\_\_\_

DIESPENSER MODEL: \_\_\_\_\_

GALLONS SOLD: \_\_\_\_\_

GALLONS SOLD: \_\_\_\_\_

WEEKLY AVERAGE: \_\_\_\_\_

WEEKLY AVERAGE: \_\_\_\_\_

AVERAGE PRICE: \_\_\_\_\_

AVERAGE PRICE: \_\_\_\_\_

UNLEADED AVERAGE PRICE: \_\_\_\_\_

DIESEL AVERAGE PRICE: \_\_\_\_\_

PLEASE RESPOND TO THE FOLLOWING QUESTIONNAIRE

	Yes	No	Explain
Do you actively market biofuels?	_____	_____	_____
Have you had any operational issues?	_____	_____	_____
Have you had any maintenance issues?	_____	_____	_____
Have you had any customer complaints?	_____	_____	_____
Are there problems finding distributors?	_____	_____	_____
Have you applied for NYS tax credits?	_____	_____	_____
Have you applied for IRS tax credits?	_____	_____	_____
How can NYSERDA improve the biofuels program?			_____
			_____
			_____

Return by \_\_\_\_\_ by fax, mail, or E mail to:

Bergmann Associates, P.C.  
Attention: Gary A. Flisnik  
200 First Federal Plaza  
28 East Main Street  
Rochester, New York 14614

Phone: 585-232-5137 ext. 346  
Fax: 585-232-4652  
E-mail: [gflisnik@bergmannpc.com](mailto:gflisnik@bergmannpc.com)

Attachment 5 – Sample Agreement

Date

Contractor Name (“Contractor” or “Vendor”)

Contractor Address

City, State Zip

Attn: Contractor Contact

Subject: BioFuel Station Project

For the Contractor Name Biofuel Station Project located at Contractor Address. The incentive will be paid upon completion of all deliverables listed in the attachments to this Agreement and in PON 2290. Final payment will be calculated as described in PON 2290 and in Exhibit A, Statement of Work, attached hereto and made a part hereof.

The incentive shall be paid upon receipt and approval of invoices for deliverables as defined in Exhibit A, Statement of Work, and PON 2290 and subject to the limitations contained in the attachments to this Agreement. Along with such invoices, Contractor shall provide documentation required in Exhibit A, Statement of Work. Payment shall be made to the Vendor in accordance with the terms of Exhibit C, Prompt Payment Policy Statement, attached hereto.

This Contract expires 12 months from the date on this Agreement. NYSERDA will not make payment on an expired Agreement.

Please send Invoices to: NYS Energy Research and Development Authority, 17 Columbia Circle, Albany, NY 12203-6399, Attn: David McCabe

By its signature below, the Contractor agrees to all terms, conditions and obligations set forth herein and in the attachments hereto.

TOTAL COST NOT TO EXCEED: \$35,000

**[CONTRACTOR]**

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Jeffrey J. Pitkin  
Treasurer

Title \_\_\_\_\_

RE: Contract ID: xxxxx

STATE OF \_\_\_\_\_ )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

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

\_\_\_\_\_  
Notary Public

# **EXHIBIT A**

## **Statement of Work**

### **Biofuel Station Program**

#### **1.0 PROGRAM REQUIREMENTS**

##### **1.1 Eligibility Requirements**

The Biofuel Station Program ("Program") is open to any entity that owns or operates one or more retail fueling station that is registered with the New York State Department of Tax and Finance to sell gasoline to the general public and that is capable of accepting major credit cards as a form of payment for fuel. The entity that applies must be the entity that will own the biofuel equipment and must have the legal authority to make improvements to the site at which the Biofuel dispenser(s) will be located. If the entity leases the property or does not own the property, it must prove it has the right under the lease agreement to make improvements to the property. These rights should be in place for a minimum of 6 years going forward from the time the Program funds are dispersed to the Contractor. If the Contractor is a franchisee, it must present documentation of its franchise agreement.

##### **1.2 Program Incentive**

NYSERDA will provide a fixed incentive of \$35,000 per site, for a Biofuel Station Project (defined in Section 1.4).

There is no cap on the total amount of funds that any one entity can receive. Applications from entities that own or operate multiple fueling sites in New York State are encouraged to apply, but no single facility or site can receive more than \$35,000.

##### **1.3 Recapture Provision**

The Contractor shall offer the Biofuel made available as a result of this Program for sale to the public (further described in Section 1.4, Station Requirements) for a minimum of six years from the date the dispenser(s) are operational. If the Biofuel is offered for sale for any period less than six years, or any of the requirements in Section 1.4 below are not met, the funds are subject to recapture. The recapture amount will be based upon the proportion of time the fuel was actually available for sale over the six years required. (See the formula following.)

Recoupment payment = 6 years – # years biofuels available/6] x \$35,000

##### **1.4 Station Requirements**

§ A Biofuel Station Project must be comprised of: one or more above- or below-ground tanks capable of storing a minimum of 2,000 gallons of E85 Ethanol fuel; one or more dispenser systems for dispensing E85 Ethanol; and a card reader/payment system that accepts major credit cards for sale of the fuel to the general public.

Code Compliance: The Contractor shall ensure all installations of Biofuel equipment must comply with applicable local and State Building and Fire Codes or have a waiver from the local authority having jurisdiction ("AHJ").

§ First Responder Preparation: The Contractor shall ensure that the local first responders have the proper fire fighting foam equipment to respond to an E85 fire or other incident related to the storage or dispensing of the Biofuel. This includes purchasing special fire fighting foam for the local responders, if needed. A letter from the local fire chief stating they have the necessary equipment is required as part of the stations invoice to NYSERDA.

§ Signage. The Contractor shall install proper signage to notify the public of the availability and price of the Biofuel at the site receiving funds through the Program. Signs should be placed on the marquee of the fueling facility, however if such placement is prohibited by local jurisdiction, another appropriate sign, approved by NYSERDA, must be prominently displayed on the property, in order to provide uniformity.

A signage kit for E85 comprised of items such as pump toppers, decals, and banners, developed by Growth Energy, must be used at the site. These items can be viewed at the following site. [www.Ethanolretailer.com/store](http://www.Ethanolretailer.com/store) then click **NYSERDA Compliance Items** on the upper left hand side. To purchase these items, contact Growth Energy by the information listed below. Ask for the New York/NYSERDA Pump Imaging Package. These station kits are usually complimentary with the exception of the purchase of one of the three signs offered plus shipping cost. Station owners and operators are also encouraged to make promotional information about Biofuels available as take-aways for the public. For additional information on the signage kit please contact the Market Development Coordinator at:

Growth Energy  
Sara Brenden  
PH: 402.932.0567 ext 211  
[order@growthenergy.org](mailto:order@growthenergy.org)

§ Sale of Biofuel: The Contractor shall offer the Biofuel for sale on a continual basis, without interruption, for at least 12 hours per day for a period of six years. The Biofuel must be offered at the lowest possible retail price to the general public. Contractors need to keep in mind the significant public investment in these upgrades. Every reasonable attempt must be made to keep the gross margin for E85 no higher than the gross margin the station charges for premium gasoline. Stations are subject to NYSERDA audits regarding pricing margins. Stations that are found to be charging higher than allowed margins will be notified by NYSERDA in writing. Any stations that consistently continue to charge higher margins on E85 Ethanol will be subject to recoupment of incentive funds.

§ Public Announcement: The Contractor shall announce the opening of the site through the local media, local automobile dealerships, and other appropriate venues, and schedule events to highlight the availability of the Biofuel. All announcements, press releases, and advertisements must be approved by NYSERDA prior to release and must include a statement pre-approved by NYSERDA noting support given by NYSERDA through the Program.

## 2.0 DEFINITIONS

### 2.1 E85 Ethanol

E85 Ethanol is a blend of typically 85% denatured ethanol [ethyl alcohol (C<sub>2</sub>H<sub>5</sub>OH) containing 5% hydrocarbon denaturant] and 15% hydrocarbon by volume. The hydrocarbons must meet all applicable State and Federal requirements. Total hydrocarbon volume must range from 15% to 30% of the total volume of the E85 based on information provided at <http://www.afdc.energy.gov/afdc/ethanol/specs.html> . Such specifications are incorporated by reference, are available upon request, and located on the Growth Energy Market Development website at [www.ethanolretailer.com](http://www.ethanolretailer.com).

### 2.2 Completed Facility

NYSERDA will determine a site is a completed facility based on the following: all necessary equipment has been installed, all necessary State and local permits have been received, appropriate

signage has been installed, a card reader system that takes major credit cards is activated, the station is open to the general public, and additional requirements for fueling stations as described in Section 1.4 have been met. All facilities are subject to inspection by NYSERDA's Consultant to determine if the Biofuel Station Project is completed. The facility must meet all conditions set forth in Section 1.4.

### **2.3 NYSERDA Consultant**

NYSERDA's consultant for this Program is Bergmann Associates, P.C. and the contact person is Gary Flisnik. Gary's contact information is listed below:

Bergmann Associates, P.C.  
Attention: Gary Flisnik  
200 First Federal Plaza  
28 East Main Street  
Rochester, New York 14614  
Phone: 585-232-5137 ext. 346  
Fax: 585-232-4652  
E-mail: [gflisnik@bergmannpc.com](mailto:gflisnik@bergmannpc.com)

## **3.0 INVOICING AND REPORTING REQUIREMENTS**

**3.1** The Contractor must notify NYSERDA when it believes it has a completed facility (see Section 2.2). NYSERDA will assign its Consultant to perform a final site inspection to ensure that the facility is fully operational and that it meets all Program requirements. If the facility meets all of the necessary requirements, the Consultant will forward the documentation to NYSERDA. After NYSERDA reviews the post-construction inspection report and all required documentation is in place, NYSERDA will request an invoice from the Contractor. The invoice will be submitted and the authorized funding for that facility will be paid to the Contractor. Facilities must be completed within one year of the execution of this Agreement. Extension requests for this Agreement must be submitted to NYSERDA in writing 30 calendar days prior to the Agreement expiration date (12 months from the date on the first page of this Agreement). Extensions may be granted or withheld at NYSERDA's sole discretion. The Contractor shall use this checklist and shall ensure the following information will be available at the final site inspection and submitted with its invoice:

- \_\_\_ Building permit and/or certification of occupancy
- \_\_\_ Written certification by the local fire company on Fire Department letterhead stating that the first responder fire company is aware the fueling facility located at (insert address) is storing and dispensing E85 Ethanol and they have the necessary equipment and proper fire fighting foam to handle an alcohol based fire or spill at this location.
- \_\_\_ Petroleum Bulk Storage Certificate or Revised Application
- \_\_\_ Station Owner Certification

**3.2** The Contractor shall submit semi-annual reports to NYSERDA and the Consultant due on January 31 and July 31 after the dispenser(s) are operational, detailing the amount of Biofuel sold and the average price of the fuel sold during the previous six months. The Contractor shall submit reports for a period of six years after the facility is completed, and shall include information on the operation of the facility and equipment installed under this Agreement. If the Contractor fails to submit reports, funds awarded will be subject to the recapture provisions described in Section 1.3 above.

# Sample Station Owner Certification Facility Owner's Letterhead

Month, Day, Year

David S. McCabe, Project Coordinator  
NYSERDA Biofuel Station Initiative  
17 Columbia Circle  
Albany, New York 12203

RE: Station Name  
Station Street Address  
Station City, State, Zip  
Date of Completion: Month, Day, Year

Mr. McCabe:

Please be advised that all work pertaining to the installation of new storage and dispensing equipment at the above referenced service station has been completed and the station is fully operational. All equipment has been installed according to all local, State, and Federal codes. All grant funds received from NYSERDA have been expended consistent with the terms and conditions of the Biofuel Station Initiative.

Regards,

Name  
Title

This document Must be Notarized

EXHIBIT B

REVISED 5/12

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 Agreement agree to be bound by the following clauses which are hereby made a part of the Agreement:

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

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and

supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

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

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

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

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law (“FOIL,” Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to 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.” [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.state.ny.us/coog/foil2.html>) and NYSERDA’s Regulations, Part 501 (<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.ashx>).

7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. As a condition to NYSERDA’s obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is

found in Section 5 of the State Tax Law. Disclosure of this information by Contractor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

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

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

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

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

12. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare

the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

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

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

15. 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 contracts.

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

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7th Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.esd.ny.gov>

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245

Telephone: 518-292-5250

Fax: 518-292-5803

<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Contractors certify that whenever the total amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

16. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

17. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

18. PROCUREMENT LOBBYING. To the extent this Agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this Agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, NYSERDA may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

- a) Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- b) Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- c) Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

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

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.

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created

pursuant to paragraph (b) of subdivision 3 of [section 165-a of the State Finance Law](#) (See [www.ogs.ny.gov/about/regs/ida.asp](http://www.ogs.ny.gov/about/regs/ida.asp)).

21. ADDITIONAL TERMS AND CONDITIONS. The following terms and conditions shall apply to this Purchase Order:

(a) Release by the Contractor. The acceptance by the Contractor of final payment pursuant to this Purchase Order shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to this Agreement.

(b) Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Purchase Order 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 Purchase Order, 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.

(c) Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Purchase Order 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 paragraph (b) hereof. Any payment made under the Purchase Order 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.

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

(e) Insurance

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

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

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

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

(ii) The types and amounts of insurance required to be maintained under this Article are as follows: 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.

(iii) Delivery of Policies; Insurance Certificates. Prior to commencing work on the project, 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 payment by NYSERDA pursuant to Section 3.1 of Exhibit A, Statement of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

(f) Responsibility. Contractor shall at all times during the Agreement term remain Responsible. For the purposes of this Agreement, "Responsible" or "Responsibility" shall mean the financial ability, legal capacity, integrity and past performance of Contractor and as such terms have been interpreted relative to public procurements. See NYS Finance Law § 163(1)(c). Contractor agrees, if requested by NYSERDA, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(g) Termination. This Purchase Order may be terminated by NYSERDA at any time during the term of this Purchase Order, with or without cause, upon 30 days prior written notice to the Contractor. In such event, compensation shall be paid to the Contractor for allowable costs incurred prior to the effective date of termination.

(h) Suspension or Termination for Non-Responsibility.

(a) Suspension. NYSERDA, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the Responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as NYSERDA issues a written notice authorizing a resumption of performance under the Contract.

(b) Termination. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate NYSERDA officials or staff, this Agreement may be terminated by NYSERDA at the Contractor's expense where the Contractor is determined by NYSERDA to be non-Responsible. In such event, NYSERDA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

(i) Independent Contractor. The status of the Contractor under this Purchase Order shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor and its subcontractors, and their respective officers, agents, employees, representatives and servants, shall at all times during the term of this Purchase Order conduct themselves in a manner consistent with such status and by reason of this Purchase Order 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.

(j) Laws of the State of New York. The Contractor shall comply with all of the requirements set forth in this Exhibit B. References to particular laws of the State of New York in this Exhibit B and elsewhere in this Purchase Order, however, are not intended to be exclusive and nothing contained in such Exhibit and Purchase Order shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

(k) Executory Clause. In accordance with Section 41 of the New York State Finance Law, NYSERDA shall have no liability under this Agreement to the Contractor or to anyone else beyond funds appropriated and available under this Agreement.

## Exhibit C

### NYSERDA PROMPT PAYMENT POLICY STATEMENT

**504.1. Purpose and Applicability.** (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.<sup>1</sup>

(b) This Exhibit applies generally to payments due and owing by the NYSERDA to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA is exercising a Set-Off against all or part of the Payment, or if a State or Federal law, rule or regulation specifically requires otherwise.

**504.2. Definitions.** Capitalized terms not otherwise defined in this Exhibit shall have the same meaning as set forth earlier in this Agreement. In addition to said terms, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

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

(b) "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(c) "Payment" means payment properly due and owing to Contractor pursuant to Article IV, Exhibit B of this Agreement.

(d) "Prompt Payment" means a Payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Exhibit in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(e) "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 Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(f) "Proper Invoice" means a written request for 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 NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

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<sup>1</sup> This is only a summary; the full text of Part 504 can be accessed at:  
<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.ashx>

(g)(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, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.

(ii) if the Agreement 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 Agreement 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 NYSERDA for the portion working, completed or delivered, NYSERDA 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.

(h) “Set-off” means the reduction by NYSERDA of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to NYSERDA.

**504.3. Prompt Payment Schedule.** Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Exhibit, the Date of Payment by NYSERDA of an amount properly due and owing under this Agreement shall be no later than thirty (30) calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

**504.4. Payment Procedures.**

(a) Unless otherwise specified in this Agreement, 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 NYSERDA.

(b) NYSERDA shall notify the Contractor within fifteen (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; or
- (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 NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) 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 NYSERDA 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, NYSERDA shall make Payment, consistent with any such correction or resolution and the provisions of this Exhibit.

**504.5. Exceptions and Extension of Payment Due Date.** NYSERDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the Payment Due Date:

(a) If this Agreement provides Payment 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 this Agreement or other State or Federal mandate has not been submitted to NYSERDA 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 NYSERDA and the date when NYSERDA 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 this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA 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, NYSERDA 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 NYSERDA 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 NYSERDA, 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 NYSERDA.

**504.6. Interest Eligibility and Computation.** If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Contractor on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). 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.

**504.7. Sources of Funds to Pay Interest.** Any interest payable by NYSERDA pursuant to Exhibit shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related Payment.

**504.8. Incorporation of Prompt Payment Policy Statement into Contracts.** The provisions of this Exhibit shall apply to all Payments as they become due and owing pursuant to the terms and conditions of this Agreement, notwithstanding that NYSERDA may subsequently amend its Prompt Payment Policy by further rulemaking.

**504.9. Notice of Objection.** Contractor may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. 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 notice address set forth in Exhibit B to this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSERDA'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 thirty (30) working days.

**504.10. Judicial Review.** Any determination made by NYSERDA pursuant to this Exhibit that 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 Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

**504.11. Court Action or Other Legal Processes.**

(a) Notwithstanding any other law to the contrary, the liability of NYSERDA to make an interest payment to a Contractor pursuant to this Exhibit 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 NYSERDA 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.