



**PROPERTY MANAGEMENT SERVICES-
SARATOGA TECHNOLOGY + ENERGY PARK® (STEP®)
Request for Proposals (RFP) 3174**

Proposals Due: May 18, 2016 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (“NYSEERDA”) requests proposals from firms interested in providing full service, comprehensive professional building management services to maintain and preserve the grounds and building located at 10 Hermes Road, and the common areas of the 280-acre site known as the Saratoga Technology + Energy Park (“STEP”) in Malta, New York. It is expected the contract will commence on July 1, 2016. The term will be for three years, with two (1) year renewals at NYSEERDA’s option.

This is a Service Disabled Veterans Owned Business (“SDVOB”) set aside project. Only certified SDVOB proposals will be accepted. All others will be returned to the proposer.

Proposal Submission: Electronic submission is preferable. NYSEERDA will also accept proposals by mail or hand-delivery. If submitting electronically, proposers must submit the proposal in either PDF or MS Word format with a completed and signed Proposal Checklist and Disclosure of Prior Findings of Non-Responsibility, in PDF format. Proposal PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility, rather than scanning. For ease of identification, all electronic files must be named using the proposer’s entity name in the title of the document. Proposals may be submitted electronically by following the link for electronic submissions found on this RFP’s webpage, which is located in the “Current Opportunities” section of NYSEERDA’s website (<http://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>). Instructions for submitting electronically are located in that section as Attachment E to this RFP.

If mailing or hand-delivering, proposers must submit (2) paper copies of their proposal with a completed and signed Proposal Checklist, along with a CD or DVD containing both a PDF or MS Word digital copy of the proposal, following the above guidelines. Mailed or hand-delivered proposals must be clearly labeled and submitted to:

**Roseanne Viscusi, RFP 3174
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399**

If you have technical questions concerning this solicitation, contact Kevin Hunt at (518) 862-1090, ext. 3259 or kevin.hunt@nyserda.ny.gov. If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090, ext. 3507 or venice.forbes@nyserda.ny.gov.

No communication intended to influence this procurement is permitted except by contacting Kevin Hunt (Designated Contact) at (518) 862-1090, ext. 3259 or kevin.hunt@nyserda.ny.gov. Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

*Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned. 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.org.

I. 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, pursuant to Title 9 of Article 8 of the Public Authorities Law of the State of New York. NYSERDA’s principal mission is to develop innovative solutions to some of the State’s most difficult energy and environmental problems, in ways that improve the State’s economy.

In August 2001, the Governor announced the creation of the Saratoga Technology + Energy Park® (“STEP®” or the “Park”), a 280-acre parcel located in the town of Malta. NYSERDA holds title to the property on behalf of the People of the State of New York. NYSERDA has been developing STEP into a community to foster the development of clean-energy and environmental technologies.

Located in STEP, the building at 10 Hermes Road (sometimes referred to as the “Building”) is a +/- 23,676 square-foot (sf) single story building constructed circa 1972, consisting of office, manufacturing and laboratory space. Over the past eleven years, numerous improvements have been made to the building including a heating, ventilating and air conditioning system, windows and doors, a backflow preventer and roof membrane.

II. Scope of Services

The selected Contractor will be required to provide full service, professional building management services necessary to maintain and preserve the building and property located at 10 Hermes Road, along with performing certain duties throughout the common areas of STEP. The Contractor will be responsible for regularly assessing the conditions of the Building and its systems; developing and implementing building operations and preventive maintenance plans, and establishing capital improvement plans necessary to maintain and preserve the Building and Park in good repair and condition, including but not limited, to landscaping, mowing and snow removal. At NYSERDA’s request, the Contractor will also oversee the design and build-out of Building renovations and improvements.

The Scope of Services to be performed is identified below, and are subject to modification.

Task 1. Operating Expense Account

The Contractor shall establish and maintain in a fiduciary capacity with a New York State bank, subject to NYSERDA approval, an account (the “Operating Expense Account”) for deposit of funds necessary to pay for supplies, equipment, and services associated with the Building operations of 10 Hermes Rd and STEP as identified in Tasks 7, 9, 10, 11, 12, 13 and 15. Such account shall be segregated from other funds maintained by the Contractor, and any interest earnings in the Operating Expense Account shall accrue to NYSERDA, and shall be used for the benefit of paying costs as herein described.

The Contractor shall purchase from funds available in the Operating Expense Account all supplies and replacement equipment which shall be necessary to properly clean, maintain and operate 10 Hermes Rd and STEP, and which is not a capital improvement, as specified in the budget, the cost of such supplies to be net of any discounts or commissions obtained for purchases.

The Contractor will review all invoices received for services, work, and supplies ordered in connection with maintaining and operating 10 Hermes Rd. and STEP, and cause such invoices to be paid from funds deposited in the Operating Expense Account.

The maximum amount to be maintained in the Operating Account is \$20,000, and minimum amount to be maintained in the Operating Expense Account is \$8,000. The Contractor will notify NYSERDA, in writing, when

the Operating Expense Account balance either reaches or will soon reach the minimum \$8,000 balance, and invoice NYSERDA for the amount required to bring the balance to the maximum amount of \$20,000.

The Contractor will not be obliged to make any advance to, or for the account of, NYSERDA, or to pay any amount except out of funds held or provided in the Operating Expense Account.

Deliverable: The Operating Expense Account will be opened within 10 business days of contract execution, and will be in the name of the Contractor. Contractor shall provide NYSERDA with instructions to deposit funds into the Operating Expense Account via electronic funds transfer. Contractor will invoice NYSERDA periodically in accordance with the Operating Account balances above, and NYSERDA will deposit the funds into the Operating Account.

By the tenth of each month, the Contractor shall forward a summary of all invoices paid through the Operating Expense Account for the previous month. Payments shall be represented on an item-by-item basis, comparing the actual cost to the budgeted cost. The summary shall also include the item-by-item aggregate costs for all such payments made during the fiscal year in question, comparing actual cost to the budgeted cost.

Task 2. Miscellaneous

2. Within the first thirty (30) days of contract execution, the Contractor will undertake the following:

1. Complete a detailed property inspection, taking a physical inventory of all NYSERDA- owned equipment. The inspection shall include an assessment of the conditions of 10 Hermes Rd. and its systems;
2. Create and update the emergency contact list, including names, and telephone and cell phone numbers;
3. Assess and review all Building- and Park-related service contracts and manufacturer's instructions and warranties;
4. Develop and implement the preventative maintenance schedule in accordance with the manufacturer's recommendations and a comprehensive Building and Park operation plan; and
5. Place two separate waste cans clearly labeled Waste and Recyclable, in the beak room at the Building.

Deliverable: Within 30 days of contract execution, the Contractor shall submit to NYSERDA the following:

1. An inventory listing. The Contractor shall keep a copy of this list, and update it annually. An updated inventory list shall be presented to NYSERDA no later than May 15 of each year of the contract;
2. The emergency contact list will be provided to NYSERDA and posted at the north, south and east entrances to 10 Hermes Rd. Should NYSERDA lease all or a portion of 10 Hermes Rd, then Contractor is to provide the tenant(s) with the emergency contact information, and review with tenant(s) all relevant building operational protocols.

Task 3. Budgeting

Two separate budgets are to be established and reported on as stipulated in Task 1, Operating Expense Account: one for the site and Building, and one for the STEP common areas.

By November 30 of each year throughout the contract, the Contractor shall prepare a draft operating budget (the "Operating Budget") for both 10 Hermes Rd and the STEP® common areas for the 12 month period from April 1 to March 31 for the following year. Once approved by NYSERDA and the Contractor has been so notified in writing, and as of April 1, the Contractor is to implement the Operating Budgets and shall be authorized to incur the obligations provided for in the approved budget. NYSERDA reserves the right to make further revisions in the approved budget at any time provided it notifies the Contractor of any such further revisions.

Deliverable: By November 15 of each year of the contract, the Contractor shall meet with NYSERDA to review the current year's operational performance and discuss the Operating Budgets for the next fiscal year. Based on the discussion, and before November 30, Contractor shall submit to NYSERDA draft Operating Budgets for the 12 month period ending March 31. NYSERDA shall review the Operating Budgets and provide written comments within five business days. The Contractor shall submit the final Operating Budgets not later than December 15 for NYSERDA's approval.

Task 4. Maintenance, Repairs and Utility Payments

The Contractor is to maintain, preserve, and keep the Building in good repair and condition, and cause to be made all necessary and proper repairs, replacements and renewals, interior and exterior, thereto in performing the following services:

- (I) Hire, or cause to be hired, paid and supervised, all persons necessary to properly maintain and operate 10 Hermes Rd, who, in each instance, will be the Contractor's and not NYSERDA's employees; cause to be discharged all persons unnecessary or undesirable; and maintain a log of all hours of work completed by all employees and subcontractors at 10 Hermes Rd and STEP®. As applicable, Prevailing Wages for Saratoga County are to be paid for work done. See Attachment F for the current Prevailing Wages, Article 9.
- (ii) Maintain, or cause 10 Hermes Rd to be maintained, in such a condition as required by this Statement of Work and as otherwise may be deemed advisable by NYSERDA (all such work to be completed in accordance with applicable State and local laws and regulations), subject only to the limitations contained within this Statement of Work. The Contractor shall ensure that all required preventive maintenance work is performed in accordance with manufacturer's specifications and all warranty work is adhered to. The Contractor shall ensure that maintenance and repairs are performed by trained technicians, which maintenance and repair shall not, to the greatest extent possible, interfere with the operations of the Building tenants, whose normal hours of operation are 8:30 AM to 5:00 PM Monday through Friday. When possible, the tenants are to be notified in advance of any work, and the anticipated time and date of work, to be completed. Repairs or alterations shall require the prior approval of NYSERDA only if such expenditure is not included in the Operating Budget (as herein defined), and shall be paid from sums on deposit in the Operating Expense Account. Emergency repairs, i.e., those immediately necessary for the preservation or safety of 10 Hermes Rd or the STEP common areas, or for the safety of the occupants of 10 Hermes Rd., or other persons, or required to avoid the suspension of any necessary service in or to 10 Hermes Rd or to avoid exposure to criminal liability, shall be made by the Contractor, without the prior approval of NYSERDA, if the Contractor is unable to communicate with NYSERDA in order to obtain such approval.
- (iii) Recommend, and with the written approval of NYSERDA, undertake, or cause, all such act and things to be done in or about 10 Hermes Rd as shall be necessary or desirable to comply with any and all orders or violations affecting 10 Hermes Rd placed thereon by any Federal, State, County or Municipal authority having jurisdiction there over, except that if failure promptly to comply with any such order or violation would or might expose NYSERDA or the Contractor to criminal liability, without the prior approval of NYSERDA if the Contractor is unable to communicate with NYSERDA to obtain such approval, it being understood that the Contractor shall notify NYSERDA promptly after receipt of any order or notice of violation, as aforesaid.

- (iv) As detailed in the Operating Budgets, solicit, bid, review, and enter into contracts in the Contractor's name for any necessary equipment maintenance, janitorial, window cleaning, trash removal, vermin extermination, landscaping, lawn care and tree maintenance, snow removal, fire alarm testing/inspection, and other services as shall be advisable. Any such contract not described in the Operating Budget which cannot by its terms be cancelled on 30 days notice or less must be authorized in writing by NYSERDA.
- (v) Tenant(s) are responsible for payment of gas and electric utility payments. NYSERDA shall be responsible for (i) any property or school tax payments; (ii) the payment of all utilities attributable to vacancy; and (iii) invoicing and collecting from tenant(s) their proportional share of all property and school taxes and utilities payments.

To the greatest extent possible, all maintenance and repair items, including but not limited to painting, carpeting, fixture replacement, appliance replacement, etc., must conform with New York State Executive Order No. 111, which can be found at <http://ogs.ny.gov/BU/DC/docs/pdf/exorder111guidelines.pdf>. New York State Executive Order No. 111 follows standards set by the Leadership for Energy & Environmental Design (LEED™).

Deliverable:

1. On or about July 1 of each year of the contract, NYSERDA shall provide Contractor with a current copy of the Prevailing Wages, Article 9, to be paid in Saratoga County, as published by the New York State Dept. of Labor. Article 8 Prevailing Wages will be provided on an as-needed basis;
2. By the 15th day following the last day of the month the Contractor is to submit to NYSERDA a report itemizing all maintenance and repair items completed during the preceding month, the company completing the job, and the total cost of the job; and
3. If asked by NYSERDA, the Contractor shall provide NYSERDA with adequate and accurate documentation regarding conformity to Executive Order No. 111.

Task 5. Equipment Replacement and Guarantees/Warranties

The Contractor will be responsible for ensuring that any equipment to be replaced is manufactured by a reputable manufacturer. The Contractor is to ensure that any new equipment be guaranteed for a minimum of one (1) year from the date of replacement and replaced at no cost to NYSERDA if found defective during that time. The Contractor will obtain cost estimates for extended warranties on new installations and consult with NYSERDA regarding the purchase of such warranties.

Deliverable: The Contractor will submit any proposed equipment and warranty purchases to NYSERDA for its review and approval, unless the item is an expenditure in the Operating Budget. The Contractor shall ensure that all work on the equipment is conducted per the product guarantee or warranty.

Task 6. Contracts

The Contractor will be responsible for soliciting, bidding and entering into contracts on NYSERDA's behalf for any necessary equipment maintenance, and services including but not limited to, janitorial, window cleaning, trash removal, vermin extermination, landscaping, lawn care and tree maintenance, snow removal and salting, fire alarm testing/inspection, and other services as advisable. Saratoga County Prevailing Wages are to be paid as applicable.

When bidding work the Contractor shall follow the guidelines found below:

When the expected cost of service for the term of the contract is:

\$50,000 and less: The Contractor shall obtain and document a minimum of three verbal quotes.

\$50,001 and over: The Contractor is to obtain written permission from NYSERDA for work to be completed. Once received, the Contractor will competitively bid the project, and prior to award, consult with NYSERDA once all bids have been received.

No one contract shall exceed a period of one year without the express written consent of NYSERDA.

The following conditions apply to competitive bidding:

1. Each bid will be solicited in a form and manner so that the bid solicitation is uniform in all bids;
2. NYSERDA is to approve the bidders list, in writing, prior to mailing;
3. Contractor will be required to solicit bids from New York State certified Minority and Women Owned Enterprises (MWBE) for all contracted operational support. The MWBE directory is found at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>
4. Depending on the number of bids received from MWBE, Contractor may be required to contact a sampling of contacted MWBE's to ascertain the reason for lack of bids.
5. The Contractor may accept the low bid without prior approval if the expenditure is for a line item in the budget, and such expenditure together with previously incurred and estimated future expenditures for such line item, will not result in an excess of the annual budgeted amount for such line item; otherwise, written approval of a bid acceptance will be required;
6. If the Contractor desires to accept other than the lowest bid, or where competitive bids are not possible, written justification must be provided to NYSERDA for prior approval;
7. NYSERDA may accept or reject any proposed subcontractor; and
8. All bids shall be controlled and not opened until the time and date specified in the solicitation. Any variance greater than 15% between the lowest bid and the Contractor's estimate shall be evaluated to determine the validity of the bid solicitation. The Contractor shall maintain documentation of the solicitation of proposals of any and all contract awards.

All contracts for work or service requested by NYSERDA, or for work or service contemplated under the Operating Budget but in excess of the amount budgeted, shall only be undertaken with the prior written approval of NYSERDA.

The Contractor will maintain complete and accurate records of all bids received and contracts awarded, and the ensuing work scope.

For any capital improvements to 10 Hermes Rd that exceed \$20,000, the amount to be adjusted by notice from the New York State Office of General Services ("OGS"), a building permit is required from OGS. NYSERDA, in cooperation with the Contractor, shall be responsible for applying for and obtaining all building permits, to be displayed as instructed, and receiving the Temporary Approvals for Occupancy or Certificates of Occupancy, a copy of which will be kept on file at the Building.

For any contracts that the Contractor engages or enters into, the Contractor will also be responsible for ensuring that all systems drawings are in compliance with accepted drafting standards, obtain updates of all changes to wiring diagrams and drawings for the Building for both existing systems and any system that may be added to 10 Hermes Rd.

Deliverable: Prior to soliciting bids, Contractor shall provide NYSERDA with a

1. Draft of the solicitation and bid documents to be let for comment and approval; and

2. A copy of the bidder's list.

Prior to accepting a proposal, the Contractor will

3. Provide NYSERDA with a summary of all bids received, to include the company name and cost, along with other relevant information;
4. Recommend a contract awardee; and
5. Provide a copy of the executed contract.

Task 7. Emergency Services

The Contractor shall provide emergency services as needed on a twenty-four (24) hour, seven (7) days a week basis. The Contractor agrees to provide an emergency telephone service on a twenty-four (24) hour, seven (7) days a week basis. From the time of the call by NYSERDA or a tenant, the Contractor has a maximum of one hour to respond to the call. The Contractor may also request that a NYSERDA representative also respond to the emergency services request.

Emergency contact information shall be displayed at the north, east and west entrances of the building, and provided to any building tenant.

Deliverable: Should the Contractor respond to an emergency service request, within 24 hours the Contractor shall provide a written report detailing the emergency, parties involved and outcome, to NYSERDA.

Task 8. Employee Work Log

The Contractor shall maintain a log of all hours of work completed by all employees and subcontractors. As applicable, prevailing wages shall apply.

Deliverable: When requested, the Contractor shall submit to NYSERDA a report summarizing the number of all hours of work completed by all employees and subcontractors for the prior month. The employee summary shall be based on gross wages, and include benefits and payroll taxes.

Task 9. Right-to-Know/Hazard Communication Program

In accordance with the New York State Toxic Substance Act (Right-to-Know Law) and the United States Occupational Safety and Health Administration's Hazard Communication Standard, the State has established and implemented a Right-to-Know/Hazard Communication Program. The Contractor is to provide information and training to advise Contractor's employees and NYSERDA of potentially hazardous substances known to be in the work place, and supply Material Safety Data Sheets ("MSDS") for all chemicals used by the Contractor's employees or other contract vendors.

Deliverable:

1. Within 60 days of contract execution, the Contractor is to provide information and training to advise employees of the Contractor and NYSERDA of potentially hazardous substances known to be in the work place.
2. Contractor will file in a binder(s) all product labels and MSDSs for chemicals used in the Building and throughout STEP, and place the binder in a mutually acceptable location.
3. Contractor will work with Building tenant(s) to ensure that product labels and MSDSs for chemicals used by the tenant(s) on-site are filed in a binder(s) and stored at the agreed upon location. *It is not the Contractor's responsibility to obtain and file said information from Building tenant(s).* Should a Building tenant(s) resist the public storage of such information, Contractor is to so notify NYSERDA immediately.

Task 10. Building and STEP Common Area Management Services

The Contractor will be responsible for maintaining the following management services and systems, which include but are not limited to:

10 Hermes Rd:

- a. Janitorial services, as explained below;
- b. Rubbish (trash and recyclable) removal;
- c. Fire alarm and fire suppression systems;
- d. Maintain all drawings, as-builts, and other schematic drawings current as well as site/equipment manuals
- e. Plumbing;
- f. HVAC system;
- g. Window cleaning (spring and fall);
- h. Painting;
- i. Periodic carpet cleaning and replacement;
- j. Plowing of entry drives, parking lot, and delivery yard;
- k. Parking lot striping; and
- l. Providing staff to maintain and perform routine inspections and required interior and exterior maintenance.

STEP® Common Areas:

- a. Plowing of Hermes Rd and Tech Trail, NYSERDA's 252 parking spaces at the TEC-SMART parking lot (345 Hermes Rd), utility corridor, and cell tower access road;
- b. Road striping, cross walk and intersection painting;
- c. Striping of the NYSERDA's 252 parking spaces at the TEC-SMART parking lot;
- d. Sweeping of the entire TEC-SMART parking lot (spring and fall);
- e. Signage maintenance;
- f. Trash pick-up; and
- g. Trail maintenance.

Both:

- a. Lighting systems, light poles and lamps;
- b. Pest management;
- c. Electrical switchgear and electrical systems;
- d. Landscaping, tree maintenance, and maintaining walkways;
- e. Daily responsiveness to problems identified by staff of NYSERDA and tenants
- f. Lawn care and landscaping;
- g. Security;
- h. Disposal of animal carcasses;
- i. Responding in a timely fashion to tenant requests and issues as they arise;
- j. Monthly site inspections and providing written verification of such inspection;
- k. Maintain inventory, supply lists and spare parts documentation;
- l. Providing a three year capital repair and improvement plan;
- m. Provide staff to maintain and perform routine inspections and maintenance;
- n. Provide timely monthly operating report with appropriate documentation;
- o. Provide operational and preventative maintenance plans; and
- p. Filing and storage of Right-to-Know data.

Where specifications or standards are not included herein, maintenance shall be in accordance with manufacturer's recommendations and standards.

Task 11. Janitorial Cleaning

While 10 Hermes Rd remains vacant, the Contractor will be responsible for the cleaning of all office and common areas at 10 Hermes Rd on a monthly basis. At such time as the Building is partially or wholly leased, leased areas and common areas are to be cleaned not less frequently than Monday, Wednesday and Friday of each week. Exceptions are allowed for national and state holidays, in which case 10 Hermes Rd is to be cleaned the next scheduled cleaning date.

Additional janitorial cleaning may be required for major events, as defined by NYSERDA and the tenants. For any major event, an attempt shall be made to notify the Contractor not later than seven days prior to the occurrence. For tenant-sponsored events, the tenant(s) will be invoiced for the cleaning service and is responsible for payment.

Janitorial cleaning includes, but is not limited to:

1. The emptying of all waste cans, and properly disposing of the waste and recyclables
2. Vacuuming all carpeted floors in offices and common areas;
3. Shampooing carpets on an annual basis, or more frequently as needed;
4. Cleaning and/or replacement of runners;
5. Dusting of window sills and baseboards;
6. Sweeping and mopping all tiled or linoleum offices, bathrooms, common areas, and break room
7. Cleaning all mirrors, counter tops, sinks, toilets, urinals, and tables using appropriate cleansing agents;
8. Bath room walls;
9. No less frequently than weekly all office waste can liners are to be replaced;
10. Bathroom waste can liners are to be replace with every cleaning, and
11. Emergency cleanings as they arise.

Task 12. Grounds Maintenance

The Contractor will be responsible for maintaining the exterior of 10 Hermes Rd, and the STEP® common areas, including but not limited to, both sides of Hermes Rd from Dunning Street to Stonebreak Rd Extension, Hermes Road to 107 Hermes Rd and 345 Hermes Rd, the TEC-SMART parking lot, the pathway, and forest. Grounds maintenance includes the:

1. Planting and the replacement of shrubs and flowers, and the spreading of mulch and weeding of the landscaped areas. Weeding shall occur not less frequently than weekly. All flowers and plants that are planted are to conform with the landscaping plans as described in the Design Guidelines for STEP, which will be provided to the selected Contractor;
2. Periodic application of herbicides and pesticides, and over-seeding. Not later than 48 hours prior to the application of any herbicide or pesticide, Contractor is to provide NYSERDA with a written notice of the timing of said application. Contractor will obtain and appropriately file all MSDS related to the herbicide or pesticide applied;
3. Watering of all landscaped areas on an as-needed basis;
4. Mowing of lawns. This is to occur on both sides of Hermes Rd from the Dunning St entrance to Stonebreak Rd Extension, including any mowing required along Hermes Rd to 107 and 345 Hermes Rd, Tech Trail, and any roads built at STEP throughout the term of the property management contract, and in the front, sides, and back of 10 Hermes Rd. This shall be on an as-needed basis, but in no instance shall the grass length exceed four (4) inches in length;

5. Spring and fall clean-up. This includes the raking and disposal of leaves at 10 Hermes Rd, in and around the gateway sign, and along the areas described in (3) above. This also includes keeping the sidewalks and access roads at 10 Hermes Rd clean of pine needles, dirt and debris;
6. Periodic power washing of the gateway sign; and
7. Removal of litter and debris. The Contractor will be responsible for picking up all litter and debris along all roads, structures (gazebo, signs, etc), pathways and trails at STEP, and as described in (3) above.

Task 13. Snow Removal

The Contractor will be responsible for snow removal (shoveling, snow blowing, plowing, and salting) in the following areas. Alternatives to road salt are to be explored and discussed with NYSERDA.

10 Hermes Rd

1. All sidewalks and parking lots;
2. The drives accessing the Building and delivery yard;
3. At and around all shipping and receiving docks;
4. Clearing snow to provide access to the shed and all storage containers; and
5. Clearing snow away from all HVAC equipment.

STEP®

8. Hermes Rd, from Dunning St to Stonebreak Rd Extension;
9. Tech Trail;
10. The cell tower access road off Stonebreak Extension;
11. 252 parking spaces at 345 Hermes Rd, taking care not to damage the islands;
12. Clearing snow to provide access to all fire hydrants throughout STEP; and
13. Clearing snow from the trailhead parking lot and access road.

The utility corridor is to maintained to the extent that it is accessible to and safe for emergency access vehicles.

Presently, there are +/- 1.5 miles of roads at STEP to maintain, along with one common parking lot. As STEP is built-out, the additional roads and common parking lots will need to be maintained as well

When plowing Hermes Rd., the Contractor will ensure that both lanes are cleared of snow and ice to the edge of the blacktop, and there is safe and sufficient room for 2-lane traffic. The Contractor will periodically shelf the snow banks on either side of the road.

Prior to November 1 of each year, Contractor will review with the plowing subcontractor those areas that are to be maintained, and how they are to be maintained.

Following the close of each plowing season, Contractor is to review with the plowing subcontractor those areas that were damaged by the plowing subcontractor, who will be expected to restore said areas to original condition at the plowing subcontractors' expense.

Deliverable: To the greatest extent possible, the Contractor or plowing subcontractor shall plow and salt as frequently as the Town of Malta. Should there be any questions regarding plowing and/or conditions, the Contractor is to contact the Malta Town Highway Superintendent at 899-2818. The Contractor will also remove snow at the request of NYSERDA and STEP tenants, either Building or other, or when health and safety is at risk.

On a monthly basis, the Contractor will submit a summary of the dates when shoveling and plowing occurred, the number of pushes during the month, and number of cumulative pushes.

Task 14. Construction Management Services

With the prior written consent of NYSERDA, the Contractor will draft, solicit and receive bids per Task 6, Contracts, and negotiate and enter into contracts on NYSERDA’s behalf for capital repairs and improvements to 10 Hermes Rd. Contractor will coordinate any work with Building tenants, supervise all work to be performed under such contracts, authorize payment for all work performed under such contracts, and maintain accurate time sheets and records of costs. As applicable, prevailing wages are to be paid, and MWBE requirements apply.

The Contractor will engage as necessary architects’ and engineering services required for the planning and supervision of alterations and/or improvements made or proposed to be made to 10 Hermes Rd. The Contractor will receive a fee, to be negotiated and established for the life of the agreement, of the actual costs incurred for overhead/profit for bidding and overseeing such capital related projects.

In such instances when construction is completed by the Contractor, NYSERDA will reimburse the Contractor for direct construction costs plus a negotiated fee of the total cost for overhead and profit. Direct construction costs will be accounted for by completing Daily Labor, Material, Equipment and Subcontract time sheets. These time sheets are to be submitted to NYSERDA when requested. Direct labor rate costs for plumbers, electricians, carpenters, and other union represented trades shall be paid at the Saratoga County Prevailing Wage rate for the particular trade involved plus statutory labor burdens. MWBE requirements apply. The Contractor is to maintain accurate records of time sheets and materials costs.

Deliverable: Prior to undertaking any capital improvement, the Contractor is to obtain estimates as outlined in Task 6, Contracts. The Contractor is to submit the estimates to NYSERDA, who will authorize work in writing. Not more than monthly the Contractor is to invoice NYSERDA for progress payments. Each invoice submitted for capital repairs shall represent 95% of the total amount of the invoice. The remaining 5% shall represent the retainage, to be paid within 30 days of satisfactory installation and inspection of the entire job.

Task 15. Meetings

The NYSERDA project Manager and Contractor will periodically meet at 10 Hermes Rd. for the following purposes:

1. Review building management progress and quality of work;
2. Identify and resolve problems;
3. Coordinate the efforts of all concerned so that these services are rendered efficiently and effectively; and
4. Maintain a sound working relationship between the Contractor and NYSERDA.

Task 16. Change in Tenancy

As soon as it is known, a NYSERDA will notify the Contractor of any change in tenancy, including the vacating of existing tenants, change in tenants’ physical space, or leasing to new tenants. NYSERDA, Contractor and the tenant will coordinate any build-out requirements.

In instances when new tenants take possession of space, and within 7 days of same, the Contractor is to meet with the tenant’s principal employee or designee to

1. Review building procedures and schedules;
2. Provide the principal or designee with an Emergency Contact List, as described in Task 2; and

3. Notify tenant of MSDS requirements per Task 9.

Task 17. Records

The Contractor will file quarterly MWBE reports with NYSERDA, and assist NYSERDA in the preparation of any governmental filing that may be pertaining to the Building or STEP®.

The Contractor will set up and maintain orderly books, records and files containing correspondence, receipted bills, contracts and vouchers and all other documentations and papers pertaining to 10 Hermes Rd and STEP, and the operation and maintenance thereof. The Contractor shall upon request of NYSERDA make same available, and will deliver same to NYSERDA or its agents on demand from NYSERDA, provided, however, the Contractor will have no duty to maintain records or files for a period longer than six (6) years after the fiscal year in which they were created.

III. Minimum Qualifications

To be considered for award under this RFP, the Proposer must demonstrate to the satisfaction of NYSERDA's evaluation team that the Proposer has successfully managed a minimum of three commercial or industrial buildings consisting of at least 20,000 square feet in each of the past three years for other property owners. The Proposer must have a direct contractual agreement for the referenced properties and the scope of building management services must be at least as extensive as the services required by this RFP.

The Proposer must have experience in the operation of commercial or industrial building mechanical, HVAC and control systems, encompassing

- Successful troubleshooting and/or performance verification of mechanical control systems and HVAC systems;
- Successful trouble shooting and/or performance verification of other building systems including but not limited to energy management systems, fire alarm/fire suppression/security systems, and general building and lighting electrical control systems;
- Testing instrumentation;
- Performance of testing and balancing of HVAC systems;
- Planning and delivery of property management services;
- Producing capital repair and improvement plans for commercial and industrial building-oriented systems;
- Maintaining regular liaison with tenants and resolving building-oriented complaints; and
- Implementing cost control and savings measures to ensure the building is operated effectively, efficiently and within budget.

IV. Proposal Requirements

If mailing or hand-delivering, proposers must submit two (2) paper copies of their proposal with a completed and signed Proposal Checklist, along with a CD or DVD containing both a PDF or MS Word digital copy of the proposal to the attention of Roseanne Viscusi at the address on the front of this Request for Proposal. A completed and signed Proposal Checklist (Attachment A) must be attached to the front cover of all both paper copies of your proposal, one of which must contain an original signature. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned.** Faxed or e-mailed copies will not be accepted. Be sure that the individual signing the checklist is authorized to commit the Proposer's organization to the proposal as submitted. Each page of the proposal should state the name of the Proposer, the RFP number, and the page number. NYSERDA reserves the right to request additional data or material to support proposals. All material submitted in response to the RFP will become the property of NYSERDA.

Procurement Lobbying Requirements - State Finance Law sections 139-j and 139-k

In compliance with §139-j and §139-k of the State Finance Law (see Section V, General Conditions below for additional information), additional forms must be completed and filed with proposals: (1) a signed copy of the Proposal Checklist including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form. Failure to include a signed copy of the Proposal Checklist referenced in this solicitation may disqualify your proposal.

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

A. The Proposer

1. Company Information –Proposers must provide, to the greatest extent possible, the following information for each member of the proposed team:

- Name of business entity (including any “Doing Business As” names)
- Headquarters/Parent Company Location
- History of firm
- Property management experience in New York
- Internet web site address (if any)
- Details of entity’s business structure (corporation, partnership, LLC)
- Date founded
- New York State and other pertinent locations and total number of employees at each
- Briefly explain your understanding of the project requirements
- Submit proof of insurability for workers compensation and consultant liability
- Submit a current copy of the Proposer’s SDVOB certification. Refer to Attachment G for SDVOB provisions; Attachment H, SDVOB Utilization Plan, Attachment I, SDVOB Compliance Report; and Attachment J, SDVOB Waiver
- List of any outstanding litigation that would threaten the viability of the firm or the performance of this contract

2. Qualifications

The Proposer is to provide:

- a. A detailed list of buildings managed in the last three years, their respective gross and rentable square feet, and the name of the property owner for whom the property is managed;
- b. An explanation of why the Proposer is the best qualified to perform the contract and demonstrate its qualifications including an item-by-item disclosure outlining how the Proposer meets or exceeds the requirements of this RFP;
- c. A business plan, schedule of proposed deliverables, and project management system for this project using methodologies that have been successfully employed in other engagements of similar size and complexity. The plan should include, in the Proposer’s own words, their understanding of the issues and tasks of the project at hand. Proposers are required to present a detailed description of the methodology to be used by it in achieving the objectives of the project and accomplishing the Tasks described in the Scope of Services with separate and specific reference to each subsection;

- d. A description of any specific experience and qualifications in building management and any specific experience it has in each of the particular building operations and management disciplines (i.e.: mechanical systems, electrical systems, fire alarms, energy management systems, plumbing systems, etc.) along with an indication of what building management areas will be performed directly and what will be sub-contracted; and
- e. A sample (or actual if available) building management manual containing actual procedures developed, reports generated, forms utilized and other pertinent data that will assist NYSERDA in determining the technical merit of the proposal.

3. Staffing

The Proposer is to provide or describe:

- a. The size and experience of the corporate staff pool from which staff assigned to the management contract can be drawn;
- b. The level of staff to be assigned to this project. Identified staff must have direct building management related experience;
- c. The composition of the staff team the Proposer shall dedicate to this assignment including:
 - i. The names of the employees in the area responsible for this contract,
 - ii. Their function in the company, title, and number of years of service with the Provider’s firm.
 - iii. Detailed resumes for the specific individuals designated to work on this contract, specifying educational and work experiences deemed relevant to the type of work to be undertaken.
- d. Provide the name of the person designated as the “Project Leader” who will be responsible for the coordination of work efforts of the other individuals. Information to be provided regarding the project leader is to include:
 - i. Length of career in providing Building Management Services
 - ii. Professional designations
 - iii. Number and size of buildings managed in the last three years
- e. Indicate the anticipated work to be performed directly and to be subcontracted. Where any subcontractor shall be used in a particular discipline describe, if known, the subcontractor’s qualifications in detail.

4. MWBE Utilization Plan

See Attachment C, MWBE Provisions. The MWBE Utilization Plan (Attachment D) must be completed and submitted with the proposal.

If the Proposer is not MWBE-certified, describe your experience in subcontracting with such businesses. Explain your methodology for attracting and subcontracting with MWBE-certified businesses, and how you intend to meet NYSERDA’s MWBE goals.

5. References

Each Proposer must submit a list of at least three (3) references documenting its experience, including the following information for all building management services provided over the last three years, or currently in process:

- a. A listing of all buildings where the Proposer is the building manager highlighting those buildings that have leases with the State of New York or other governmental organizations.
- b. Proposer's list of notable accomplishments including name of entity or company serviced, transaction size, level of difficulty, and dates from onset to conclusion.
- c. Team personnel assigned to the project.
- d. Name and Title of Reference.
- e. Telephone number(s).

Individuals identified as references will be assured of anonymity to the fullest degree possible under the Freedom of Information Law.

NYSERDA retains the right to request any additional information pertaining to the Proposer's ability, qualifications, and procedures used to accomplish all work under the contract as it deems necessary to ensure safe and satisfactory work.

6. Cost of Services

Proposers must submit their fee proposal, as found in Attachment K, for required services necessary to provide NYSERDA with the required deliverables. Prevailing Wages for Saratoga County are applicable. Each Proposal must include:

- a. The annual Management Fee, to be paid in equal monthly installments, to be charged for the first three years of the agreement as well as the two renewal periods. This must be a fixed dollar amount and not a percentage based on expenses. For the purposes of the agreement, the Management Fee shall include the cost of off-site corporate building management and administrative personnel, all overhead and profit, and all administrative expenses including payroll processing cost, auditing, accounting, reporting or other requirements, and excluding depreciation, amortization, and interest expenses.
- b. A detailed listing of any other expenses or fees to be paid directly to the Proposer (excluding those additional services provided below). These expenses shall be based on the actual costs incurred with no mark-up allowed. These items should include a list of the Proposer's on-site employee(s) (in Full Time Equivalent) by title, their respective salary(s), all fringe benefits, any other ancillary items provided to employees (such as 401K, leased vehicles, paid parking, etc.) together with a list of any other items and their respective cost to be charged by the Proposer as part of the agreement. If periodic building related services (e.g. electricians, plumbers) are to be provided by employees of the Proposer, the listing should include those titles and their respective hourly rates and fringe benefits. Unless otherwise agreed to by NYSERDA, reimbursement for these items will be limited to the amount set forth in the Agreement. Any expenses not specifically included will not be eligible for reimbursement and must be absorbed by the Management Fee.
- c. A fee proposal and detailed explanation for additional services that may be performed in addition to the foregoing such as to supervise or secure renovation or construction services, including capital repairs and replacements. The proposal must clearly identify what types of services will be separately billed to NYSERDA as opposed to those that are included in the Management Fee, or other expenses or fees included in Item (b) above. This fee should be shown as a percentage of the direct construction costs but may not exceed 15%.

If construction related services are provided by other employees of the Proposer (e.g. engineers, electricians, plumbers), the listing should include those titles and their respective hourly rates. Unless otherwise agreed to by NYSERDA, the rate will be those set forth in the Agreement.

B. Proposal Evaluation

Proposals submitted in response to this RFP will be reviewed, and scores assigned based on the information provided and satisfactory references. NYSERDA retains the right to request any additional information pertaining to the Proposer's ability, qualifications, and procedures used to accomplish all work under the contract as it deems necessary to ensure safe and satisfactory work. Proposals will be reviewed by a technical evaluation panel consisting of NYSERDA staff and external individuals.

1. Selection Criteria

Each proposal will be evaluated using the following criteria:

A. Approach and Scope of Services

1. Completeness. The proposal is complete and follows the outline in Section III of this RFP;
2. Quality of approach and methodology for performing the effort clearly demonstrates an understanding of the applicable issues and requirements for building management;
3. Quality, clarity and completeness of scope of services, including the extent to which alternative approaches and tasks will achieve objectives; and
4. Quality, clarity and completeness of the sample (or actual, if provided) building management manual.

B. Experience

1. Quality, extent and relevance of Proposer's operational experience (including hiring and dealing with sub-contractors) in conducting all facets of building operations;
2. Quality, extent and relevance of Proposer's building management experience, including the experience of subcontractors, in conducting similar efforts, particularly of a magnitude and setting similar to that described by this RFP; and
3. Quality, extent and relevance of experience, education and training of key personnel, including subcontractors.
4. References
 - a. Proposer's service capability, reputation, facilities, equipment and past performance.
 - b. Proposer's previous performance in contracts or business dealings with municipal, state or federal agencies or authorities, such as NYSERDA.

C. Organization, Staffing and Management Plan

Quality of project organization and management plan; extent to which it will provide for successful, timely and fully compliant program implementation as evidenced by the:

- a. Satisfactory response time for responding to emergencies;
- b. Plan for controlling costs and effort;
- c. Coordination of staff and subcontractors;
- d. Detailed resumes for the specific individuals designated to work on this contract, specifying educational and work experiences deemed relevant to the type of work to be undertaken;
- e. Identify the individual designated as the Project Lead who will be responsible for the coordination of work efforts of staff and subcontractors. Information to be provided includes
 - i. Length of career in building management services;

- ii. Relevant experience; and
- iii. Professional designations.
- f. Number and size of buildings manages in the past 3 years; and
- g. Reporting methodologies.

D. MWBE Utilization Plan

If the Proposer is not MWBE-certified, how will you attain NYSERDA’s MWBE goals? What is the quality and thoroughness of the Proposer’s plan to attract and contract with MWBE-certified businesses to provide services at STEP?

E. References

Proposers are to submit a list of three references documenting its experience, including the following information for all building management services provided over the past three years, or currently in-process:

- a. A listing of all buildings where the Proposer is the building manager, highlighting those buildings that have leases with the State of New York or other governmental units;
- b. Proposer’s list of notable accomplishments, including the name of the entity serviced, transaction size, level of difficulty, and dates from onset to conclusion;
- c. Team personnel assigned to the project;
- d. Name and title of reference; and
- e. Telephone number.

Individuals identified as references will be assured of anonymity to the fullest extent possible under the Freedom of Information Law.

NYSERDAS retains the right to request any additional information pertaining to the Proposer’s ability, qualifications, and procedures used to accomplish all work under the contract as it deems necessary to ensure safe and satisfactory work.

F. Cost

The pricing proposal will be evaluated for reasonableness of cost for the total effort. Pricing proposals must be complete, accurate and well documented. Any pricing conditions or contingencies must be clearly stated.

All lump sum prices must be inclusive of all direct and non-direct costs as well as all overhead, fees and profit.

V. 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 accept it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law,

Section 89(5) and the procedures set forth in 21 NYCRR Part 501 www.nyserda.org/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

New York Executive Law Article 15-A - NYSERDA is required under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of NYSERDA contracts. The MWBE participation goals and obligations of the selected Contractor are set forth in Attachment C.

State Finance Law sections 139-j and 139-k - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>

The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

New York Executive Law Article 17-B – NYSERDA is required under law to promote opportunities for maximum feasible participation of certified Service-Disabled Veteran-Owned Businesses (SDVOBs). The SDVOB participation goals and obligations of the selected Contractor are set forth in Attachment I.

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/fillin/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 prospective contractor prior to contacting and filed with NYSERDA. *See*, ST-220-CA (available at http://www.tax.state.ny.us/pdf/2006/fillin/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.

Contract Award - NYSERDA anticipates making one award under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA expects to notify proposers in approximately 8 weeks from the proposal due date whether your proposal has been selected to receive an award.

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

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

VI. Attachments:

- Attachment A - Proposal Checklist
- Attachment B - Disclosure of Prior Findings of Non- Responsibility
- Attachment C – MWBE Provisions
- Attachment D- MWBE Utilization Plan
- Attachment E – Electronic Proposal Submission Instructions
- Attachment F – Prevailing Wages, Article 9
- Attachment G – SDVOB Provisions
- Attachment H – SDVOB Utilization Plan
- Attachment I – SDVOB Compliance Report
- Attachment J – SDVOB Waiver
- Attachment K – Cost Proposal
- Attachment L – Sample Agreement



**ATTACHMENT A
PROPOSAL CHECKLIST (MANDATORY)**

Proposal Title		Due Date	
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
<input type="checkbox"/> By checking this box I certify that the TIN number submitted is not a social security number. If your tax id number is your social security number please leave information blank and contact NYSERDA.		Federal Tax Identification Number:	
Address	City	State or Province	Zip
Secondary Contact		Title	
Company		Phone	Fax
		e-mail	
Address	City	State or Province	Zip
THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:			
Do you accept all Terms & Conditions in the Sample Agreement? (If no, explain on separate page) (NYSERDA may or may not accept any of the listed exceptions; NYSERDA reserves the right to limit any negotiations to exceptions specifically identified herein.)			
			___Yes ___No
Do you wish to have any information submitted in your proposal package treated as proprietary or confidential trade secret information? If yes, you must identify and label on each applicable page "confidential" or "proprietary" (For additional information regarding this, please refer to the section entitled "Proprietary Information" in the solicitation document).			
			___Yes ___No
Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg)			
			___Yes ___No
Are you a Minority or Women-Owned Business Enterprise?			
			___Yes ___No
Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors?			
			___Yes ___No
Are you submitting the required number of copies? (See proposal instructions.)			
			___Yes ___No
Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? (if yes, explain on separate page)			
			___Yes ___No
ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?			
Provide list of items consistent with Proposal Requirements section of solicitation:		Indictment/Conviction of Felony _____ (if applicable) NYSERDA Contracts Awarded _____ (if applicable) Prior and/or Competing Proposals _____ (if applicable) Exceptions to Terms & Conditions _____ (if applicable) Completed and Signed Contract Pricing Proposal Form(s) _____ Disclosure of Prior Findings of Non-responsibility Form _____	
AUTHORIZED SIGNATURE & CERTIFICATION			
I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, that I have read and reviewed the Standard Terms and Conditions set forth in the attached Sample Agreement and that I accept all terms unless otherwise noted herein, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA's procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I, the undersigned, am authorized to commit my organization to this proposal.			
Signature		Name	
Title		Organization	
Phone			

NOTE: This completed form **MUST** be signed and attached to the front of all copies of your proposal.

Attachment B
Disclosure of Prior Findings of Non-responsibility Form
RFP 3174, Property Management Services- STEP

(Mandatory)

Name of Individual or Entity seeking to enter the procurement contract:		
Address:		
Date:		
Solicitation or Agreement Number: RFP 3174		
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 D
MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND
EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

MWBE AND EEO POLICY STATEMENT

I, _____, the (proposer/awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, ; will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination; and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status, .

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, ; and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this _____ day of _____, 2_____

By _____

Print: _____ Title: _____

ATTACHMENT 2
NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
MWBE UTILIZATION PLAN FORM

Solicitation/Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. () _____ Federal ID # _____

Contract Award Amount \$ _____

Brief Description of Work _____

Prime Contractor M/WBE Status M/WBE Non-M/WBE

II. I, _____ HEREBY AGREE TO THE ____% MINORITY OWNED BUSINESS ENTERPRISE (MBE) GOAL AND THE ____% WOMEN OWNED BUSINESS ENTERPRISE (WBE) GOAL AS SET FOR IN THIS CONTRACT NO. _____. I FURTHER SUBMIT THE FOLLOWING NYS CERTIFIED M/WBES FOR YOUR REVIEW AND APPROVAL IN COMPLIANCE WITH THE GOAL REQUIREMENTS ESTABLISHED IN THIS CONTRACT.

Signature/Title of Authorized Representative

The Contractor shall undertake "good faith" efforts to actively solicit MBE/WBE participation in connection with its potential award of the NYSERDA contract.

III. MBE SUBMISSIONS

For each MBE, provide the company name, address, telephone number, contact person name, Federal ID number, estimated contract award date, contract award amount, estimated contract commencement date, and a BRIEF description of the contract scope of work.

IV. WBE SUBMISSIONS

For each WBE, provide the company name, address, telephone number, contact person name, Federal ID number, estimated contract award date, contract award amount, estimated contract commencement date, and a BRIEF description of the contract scope of work.

V. Provide the name, title, address and telephone of person(s) responsible for implementing this subcontracting plan.

VI. If the Contractor anticipates that it will not be able to meet the contract M/WBE participation levels, a written detailed explanation must be submitted with the bid or proposal.

I hereby declare that the above information is to the best of my ability and intention correct and that every effort will be made in the attainment of the established M/WBE goal.

Name _____ Title _____

ATTACHMENT 3

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) STAFFING PLAN FORM**

Solicitation/Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name

Address

Telephone No. () Federal ID #

Contract Award Amount \$

Brief Description of Work

II. I, _____ HEREBY SUBMIT THE FOLLOWING STAFFING PLAN.

Signature/Title of Authorized Representative

III. WORKFORCE DESCRIPTION

Provide a description of the work force to be utilized on the State contract, including the work force of any subcontractors, broken down by specified ethnic background, gender, and Federal occupational categories.

I hereby declare that the above information is to the best of my ability and intention correct.

Name _____ Title _____

ATTACHMENT 4

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
MWBE COMPLIANCE REPORT FORM**

Solicitation/Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. (____) _____ Federal ID# _____

Brief Description of Work _____

II. AS EVIDENCE OF (_____) PROGRESS TOWARD ACHIEVEMENT OF THE NYSEDA MBE AND WBE GOALS, AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF CONTRACT NO., THE FOLLOWING INFORMATION IS HEREWITH SUBMITTED.

Signature/Title of Authorized Representative

III. SUBMITTAL ITEMS

- i. Provide the names, addresses and telephone numbers of each M/WBE you are actually using in compliance with your M/WBE goal.
- ii. Provide a brief description of work performed by the M/WBE, their scheduled dates for performance and current working status.
- iii. Provide a copy of your written agreement with the M/WBE. (A one-time request.)
- iv. In the event you have let a blanket purchase order or other open-ended contracts, only specify that amount actually awarded.
- v. Provide the actual amounts of payments made to any M/WBES as of the date the work force utilization report is submitted. Documentation must include copies of cancelled checks.
- vi. Provide the name, title and telephone number of person(s) responsible for submitting work force utilization reports.
- vii. Compliance Reports are due on the first day of the first month of each quarter, beginning three months after contract award date.

ATTACHMENT 5

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
WORKFORCE UTILIZATION REPORT FORM**

Solicitation/Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. (____) _____ Federal ID# _____

Brief Description of Work _____

II. AS EVIDENCE OF (_____) PROGRESS TOWARD ACHIEVEMENT OF THE NYSEDA MBE AND WBE GOALS, AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF CONTRACT NO. _____, THE FOLLOWING INFORMATION IS HEREWITH SUBMITTED.

Signature/Title of Authorized Representative

III. SUBMITTAL ITEMS

- i. If the work force of the contractor and/or subcontractors has changed since the last work force utilization report, provide 1) the total number of employees performing work on the State contract; and 2) the contractor's and all subcontractor's work force on the State contract broken down by specified ethnic background, gender, and Federal occupational categories.

If the contractor's and/or subcontractor's work force has not changed since the last work force utilization report, check here:

- ii. Work Force Utilization Reports are due on the first day of the first month of each quarter, beginning three months after contract award date.

IV. ALTERNATIVE SUBMITTAL ITEMS

In the event that the Contractor cannot separate the workforce to be utilized in the performance of the NYSEDA contract from its total workforce, the Contractor shall submit, on a semi-annual basis:

- (i) The total workforce of the Contractor described categorically by: specified ethnic background, gender and the Federal occupational data.
- (ii) The Contractor acknowledges that the overall goal of an equal employment opportunity program involves the implementation of procedures and methods for the identification, recruitment and employment of minority group members and women.

ATTACHMENT 6

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
MINORITY WOMEN BUSINESS ENTERPRISE (MWBE) REQUEST FOR WAIVER FORM**

Solicitation/Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. () _____

Federal ID # _____

Brief Description of Work:

- II. I, (_____) HEREBY REQUEST A PARTIAL OR TOTAL (Circle One) WAIVER OF MY MBE AND/OR WBE GOALS AS ESTABLISHED IN CONTRACT NO. I AGREED TO ATTAIN ___% MBE PARTICIPATION AND ___% WBE PARTICIPATION OF THE TOTAL CONTRACT PRICE. TO SUBSTANTIATE AND DEMONSTRATE MY GOOD FAITH EFFORTS, THE FOLLOWING INFORMATION IS SUBMITTED FOR THE AUTHORITY'S REVIEW AND APPROVAL.

Signature/Title of Authorized Representative

III. SUBMITTAL ITEMS

1. Provide a statement setting forth your basis for requesting a partial or total waiver.
2. Provide all names of general circulation, trade association and M/WBE-oriented publications in which you solicited M/WBEs for the purposes of complying with your participation levels.
3. List all dates solicitations for M/WBE participation were published in any of the above publications.
4. List all M/WBEs appearing in the NYS Directory of certified vendors which were solicited for purposes of complying with your M/WBE participation levels.
5. Provide proof of all dates on which solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitations if an identical solicitation was made to all M/WBEs.
6. Provide copies of responses made by M/WBEs to your solicitations.

7. Provide a description of any contract documents, plans or specifications made available to M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Contractor, and M/WBEs undertaken for purposes of complying with your M/WBE participation levels.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address and telephone number of contractor's representative authorized to discuss and negotiate this waiver request.
11. Have you explored or identified any other area where your company can implement an effective equal employment opportunity program to expand the employment opportunities of minority group members and women? If so, please provide the data supporting such efforts and the results.

Article 15-A (MWBE) Provisions for Solicitation Documents (non-construction)

Attachment C

New York State Law

Pursuant to New York State Executive Law Article 15-A, NYSERDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises (MWBE) and the employment of minority group members and women in the performance of NYSERDA contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in state procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that NYSERDA establishes goals for maximum feasible participation of New York State Certified MWBEs, and the employment of minority groups members and women in the performance of New York State contracts.

Article 15-A EEO Policy

- (1) Contractors and subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed (religion), color, national origin, sex, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to:
 - (i) work, goods, or services unrelated to the Contract; or
 - (ii) employment outside New York State.
- (2) All proposers shall submit an equal employment opportunity ("EEO") policy statement to NYSERDA with their proposal (See Attachment 1). A proposer's failure to timely submit the EEO policy statement could result in NYSERDA's rejection of that proposer's proposal.
- (3) The proposer's EEO policy statement shall contain, but not necessarily be limited to, and the proposer, as a precondition to entering into a valid and binding State contract, shall, during the performance of the State contract, agree to the following:
 - (i) The proposer will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.
 - (ii) The proposer shall state in all solicitations or advertisements for employees that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Article 15-A (MWBE) Provisions for Solicitation Documents (non-construction)

- (iii) At the request of NYSERDA, the proposer shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the proposer's obligations.
- (iv) Pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (4) **Staffing Plan:** The proposal shall contain a completed staffing plan of the anticipated work force to be utilized on the State contract. See Attachment 3. In the case where the workforce to be utilized in the performance of this Agreement cannot be separated out from the Contractor's and/or its subcontractor workforce, the Contractor shall submit, in lieu of a staffing plan, information on the Contractor's and/or subcontractor's total workforce. The staffing plan or workforce information shall be broken down by ethnic background, gender and Federal occupational categories, or other appropriate categories specified by NYSERDA. A proposer's failure to submit the staffing plan or workforce data could result in NYSERDA's rejection of that proposer's proposal. If a proposer changes its staffing plan after submission, it shall notify NYSERDA in writing of such change and obtain approval from NYSERDA in accordance with the Regulations §§ 142.6 & 142.8.
- (5) A proposer's failure to submit an EEO policy statement and staffing plan or total work force data shall result in NYSERDA's rejection of proposer's proposal, unless the proposer provides NYSERDA with a reasonable justification in writing for such failure (e.g., the failure to submit a staffing plan where proposer has a work force of 10 employees or less), or makes a commitment to submit an EEO policy statement and a staffing plan or total work force data by a date to be specified by NYSERDA.
- (6) To demonstrate compliance with the stated participation goals as set forth herein, a contractor shall be required to periodically submit compliance reports to NYSERDA, on the forms attached to the contract, during the entire term of the contract.

Contract Participation Goals by MWBE on NYSERDA procurements

In accordance with Article 15-A of the N.Y. Executive Law ("Article 15-A") and pursuant to the regulations adopted thereto, NYSERDA has established certain contract participation goals for MWBEs. NYSERDA's participation goals for contracts awarded pursuant to this solicitation are % for minority-owned business enterprises and % for women-owned business enterprises. These participation goals are subject to the requirements of Article 15-A, and its implementing regulations as set forth in Title 5, Chapter XIV, Parts 140-144 of the New York Codes, Rules and Regulations (the "Regulations").

MWBE Utilization Plan

NYSERDA requires every winning proposer to undertake "good faith" efforts to actively solicit MWBE participation in connection with its potential award of the NYSERDA contract. A proposer must submit a completed MWBE Utilization Plan Form with its proposal. See Attachment 2. Within twenty (20) days

Article 15-A (MWBE) Provisions for Solicitation Documents (non-construction)

following its receipt of the Utilization Plan, NYSERDA will issue a written notice of acceptance or deficiency. If NYSERDA issues a notice of deficiency then proposer must provide NYSERDA with a written remedy in response to said notice of deficiency within seven (7) business days of its receipt. If the proposer's remedy to the notice of deficiency is not timely provided or if it is found by NYSERDA to be inadequate, NYSERDA shall so notify proposer and request proposer to submit a waiver form within five (5) business days. Failure to file the written remedy or a waiver form in a timely manner as set forth above may be grounds for disqualification of proposer's award for non-responsibility, after NYSERDA gives proposer notice and opportunity to be heard in accordance with Article 15-A § 313(5)(c) and the Regulations § 142.9.

MWBE Waiver Request

A proposer may request a total or partial waiver of the requirements of the participation goals set forth above. See Attachment 6. Prior to granting or denying a waiver, NYSERDA shall evaluate proposer's "good faith efforts" and may consider the factors set forth in the Regulations §143.7. In the event NYSERDA refuses to grant proposer a waiver, proposer may file a complaint with the NYS Empire State Development's Division of Minority and Women Business Development (the "Division") in accordance with Sections 313(8) & (9) of Article 15-A and Section 142.12 of the Regulations.

Relevant sections of the Regulations may be found at the following link, which Regulations and each party's rights and obligations set forth therein, are incorporated herein by this reference (in the event of a conflict between this solicitation and the Regulations, the Regulations shall govern):

http://www.empire.state.ny.us/MWBE/Data/122210_MWBE15-ARegs.pdf.

A Directory of certified MWBEs may be found at the Division's website, here:

<http://www.empire.state.ny.us/MWBE/directorySearch.html>

Disqualification and Dispute Resolution Procedures

NYSERDA, and applicable proposers and contractors, shall be subject to and bound by the disqualification and dispute resolution procedures contained in Article 15-A (including, without limitation, Sections 312(5), 313(5)(c), 313(8), 313(9) and 316), and in relevant sections of the Regulations (including, without limitation, Sections 142.9, 142.12 and 143.6), as and where applicable.

NYSERDA may disqualify a proposer as being non-responsive under the following circumstances:

- a) If a proposer fails to submit a MWBE Utilization Plan;
- b) If a proposer fails to submit a written remedy to a notice of deficiency;
- c) If a proposer fails to submit a request for waiver; or
- d) If NYSERDA determines that the proposer has failed to document good faith efforts.

Penalties

In accordance with the Regulations §142.13, NYSERDA's contract shall require contractor to agree that its willful and intentional failure to comply with the MWBE requirements of Article 15-A shall create liability to NYSERDA for damages in an amount equal to NYSERDA's actual cost related to its expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing certified minority- and women-owned business enterprise programmatic goals and Affirmative Action and Equal Opportunity compliance.

Attachment E

NYSERDA - INSTRUCTIONS FOR SUBMITTING ELECTRONIC PROPOSALS

Please read the following instructions before submitting a proposal.

1. Submit one proposal for each session.
2. Enter your e-mail address and click the “Validate Email” button.
3. You will receive an automatic email containing a link to validate your email address. Click the link to be taken back to the Funding Opportunity to begin the online submission process.
4. Upload as many files as needed, one at a time.
5. The electronic file names should include the proposing entity’s name in the title of the document. The character limit is **100** characters.
6. You may submit Word, Excel, Zip, or PDF files. Individual files should be less than **1GB** file size.
7. PDF files must be searchable and therefore should be converted directly from an electronic document to PDF, rather than scanned.
8. After clicking the “Upload File” button, a list of your files will appear on the web page. You can delete files from this list if needed.
9. After all necessary files have been uploaded; review the list of documents to ensure that your proposal is complete and accurate.
10. Click the “Submit Proposal button.”
11. You will then be brought to a confirmation page listing the files received. Please print and save the confirmation page.
12. An auto-generated confirmation e-mail will be sent to the e-mail address you entered. Please save this e-mail.
13. When choosing to submit files electronically, the award/non-award notification letter will be sent to the e-mail address of the **Primary Contact listed on the Proposal Checklist.**

Important Reminders:

1. **The electronic proposal system closes promptly at 5pm Eastern Time on the due date of the solicitation.** Files in process or attempted for submission after 5pm will be locked out of the system. Please allow at least 15-30 minutes to submit proposals.
2. E-mail or facsimile submittals will not be accepted.

If you make an error:

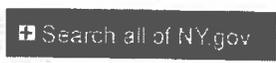
If after you click “Submit Proposals” you discover that the document(s) you submitted are incomplete or inaccurate follow these instructions:

1. Start the process over again and **resubmit the entire proposal.** You will receive another confirmation e-mail.
2. Immediately forward both confirmation e-mails (original and resubmission) to proposals@nyserda.ny.gov with the subject line of “**Resubmittal**” and the PON/RFP/RFQ number.
3. NYSERDA will accept the second submission as your proposal. The first submission will be disregarded.

If you need help:

If you need help with this electronic proposal submission process, please contact Roseanne Viscusi at rdv@nyserda.ny.gov or 518-862-1090 ext. 3418 and the Program contact listed in the solicitation.

Attachment F



New York State Department of Labor
Prevailing Wage

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**Career
Services**

**Business
Services**

**Worker
Protection**

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Publications**

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Prevailing Wage Rate

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JOB DESCRIPTION

Exterminators, Fumigators

DISTRICT

10

ENTIRE COUNTIES

Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren, Washington

WAGES

Per hour: 07/01/2015
\$ 18.13

IMPORTANT INFORMATION:

Article 9 §230.6. "Prevailing wage" means the wage determined by the fiscal officer to be prevailing for the various classes of building service employees in the locality. In no event shall the basic hourly cash rate of pay be less than the statutory minimum wage established by article nineteen of this chapter, or, in a city with a local law requiring a higher minimum wage on city contract work, less than the minimum wage specified in such local law.

SUPPLEMENTAL BENEFITS

Per hour worked: \$ 1.70

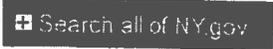
OVERTIME PAY

See (B, B2) on OVERTIME PAGE

HOLIDAY

Paid: See (1) on HOLIDAY PAGE

10-NYS/R&S



New York State Department of Labor
Prevailing Wage

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JOB DESCRIPTION
Landscape Maintenance

DISTRICT
10

ENTIRE COUNTIES
Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren, Washington

WAGES
Per hour: 07/01/2015
\$ 14.14

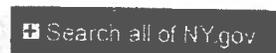
IMPORTANT INFORMATION:
Article 9 §230.6. "Prevailing wage" means the wage determined by the fiscal officer to be prevailing for the various classes of building service employees in the locality. In no event shall the basic hourly cash rate of pay be less than the statutory minimum wage established by article nineteen of this chapter, or, in a city with a local law requiring a higher minimum wage on city contract work, less than the minimum wage specified in such local law.

SUPPLEMENTAL BENEFITS
Per hour worked: \$ 1.70

OVERTIME PAY
See (B, B2) on OVERTIME PAGE

HOLIDAY
Paid: See (1) on HOLIDAY PAGE

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JOB DESCRIPTION

Janitor, Porter, Cleaners, Elevator Operator

DISTRICT

10

ENTIRE COUNTIES

Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Schoharie

WAGES

	07/01/2015	06/01/2016
Janitorial Start	\$ 9.70	\$ 9.85
After 90 Days	10.20	10.35

An additional \$.50 per hour worked on floor maintenance

NOTE:

DUCT CLEANING IS BROKEN DOWN INTO TWO SEPARATE FUNCTIONS

1. The disassembly, re-assembly and modification of duct, which is covered under Article 8
2. The actual cleaning of the duct which is covered by Article 9

IMPORTANT INFORMATION:

Article 9 §230.6. "Prevailing wage" means the wage determined by the fiscal officer to be prevailing for the various classes of building service employees in the locality. In no event shall the basic hourly cash rate of pay be less than the statutory minimum wage established by article nineteen of this chapter, or, in a city with a local law requiring a higher minimum wage on city contract work, less than the minimum wage specified in such local law.

SUPPLEMENTAL BENEFITS

Supplements:

Note: Full time 31 or more regularly scheduled hrs per week
Part Time 30 or less regularly scheduled hrs per week

Health Care FULL TIME ONLY: Only on first 40 hrs a week.

	07/01/2015	06/01/2016
	\$ 3.26	\$ 3.26*

*Amount may change

Vacation with pay based upon employees anniversary date or hire as follows:

1 year of work	5 working days
3 years of work	10 working days
4 years of work	11 working days
6 years of work	12 working days
10 years of work	15 working days

Sick days are earned after 90 day probationary period at the following rate:

Full time employees accrue 1 sick day for every 4 months worked up to a maximum of 6 sick days.
Part time employees accrue 1 sick day for every 6 months worked up to a maximum of 4 sick days.

Paid time off for part-time employees shall be prorated. (See "Introduction to the Prevailing Rate Schedule" page 10, 'Wage and Supplements' heading, for a detailed explanation.)

OVERTIME PAY

See (B, B2, R) on OVERTIME PAGE

HOLIDAY

Paid: See (5, 6) on HOLIDAY PAGE
Overtime: See (5, 6) on HOLIDAY PAGE

Plus Employees Birthday

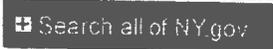
Note: Above Holidays paid after 3 months with employer

Plus after one year of service Full Time employees receive 3 Floating Holidays and Part Time receive one Floating Holiday.

Additional supplements are not required.

Holidays that fall on weekends are observed on Friday or Monday.

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JOB DESCRIPTION

Moving Furniture and Equipment

DISTRICT
10

ENTIRE COUNTIES

Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren, Washington

WAGES

Per hour:	07/01/2015
Driver-Heavy & Tractor Trailer (capacity of at least 28,000 pounds Gross Vehicle Weight)	\$ 20.22
Driver-Light Truck	16.65
Helper	15.07
Packer*	14.09

*Packs, wraps, labels office furniture and equipment; Loads on to dollies.

IMPORTANT INFORMATION:

Article 9 §230.6. "Prevailing wage" means the wage determined by the fiscal officer to be prevailing for the various classes of building service employees in the locality. In no event shall the basic hourly cash rate of pay be less than the statutory minimum wage established by article nineteen of this chapter, or, in a city with a local law requiring a higher minimum wage on city contract work, less than the minimum wage specified in such local law.

SUPPLEMENTAL BENEFITS

Per hour worked: \$ 1.70

OVERTIME PAY

See (B, B2) on OVERTIME PAGE

HOLIDAY

Paid: See (1) on HOLIDAY PAGE

10-NYS/R&S



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JOB DESCRIPTION

Stationary Engineer

DISTRICT

10

ENTIRE COUNTIES

Albany, Allegany, Bronx, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, Yates

WAGES

***** IMPORTANT NOTICE *****

FOR INFORMATION REGARDING STATIONARY ENGINEER RATES, CONTACT THE NYS DOL BUREAU OF PUBLIC WORK AT (518) 457-5589

OVERTIME PAY

HOLIDAY

10-Information



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JOB DESCRIPTION
 Trash and Refuse Removal

DISTRICT
 10

ENTIRE COUNTIES
 Albany, Columbia, Fulton, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren, Washington

WAGES	07/01/2015	09/15/2015
Per hour:		
Commercial	\$ 17.00	\$ 17.26
Residential	17.00	17.26

IMPORTANT INFORMATION:
 Article 9 §230.6. "Prevailing wage" means the wage determined by the fiscal officer to be prevailing for the various classes of building service employees in the locality. In no event shall the basic hourly cash rate of pay be less than the statutory minimum wage established by article nineteen of this chapter, or, in a city with a local law requiring a higher minimum wage on city contract work, less than the minimum wage specified in such local law.

SUPPLEMENTAL BENEFITS
 Benefits paid to non-probationary employees:

	07/01/2015	01/01/2016
Single	\$ 2.67	\$ 2.80
Two person	5.98	6.27
Family	8.49	8.87

Vacation is earned by employees working at least 150 days in the last 12 consecutive months:

After completing 12 Months of service (1 yr)	1 Week
After completing 36 Months of service (3 yrs)	2 Weeks
After completing 120 Months of service (10 yrs)	3 Weeks
After completing 180 Months of service (15 yrs)	3 Weeks 1 Day
After completing 192 Months of service (16 yrs)	3 Weeks 2 Day's
After completing 204 Months of service (17 yrs)	3 Weeks 3 Day's
After completing 216 Months of service (18 yrs)	3 Weeks 4 Day's
After completing 228 Months of service (19 yrs)	4 Weeks

*Vacation weekly pay shall be determined by taking the employees previous years W-2 Gross reported earnings and multiplying by 2.0%

Paid time off for part-time employees shall be prorated. (See "Introduction to the Prevailing Rate Schedule" page 10, 'Wage and Supplements' heading, for a detailed explanation.)

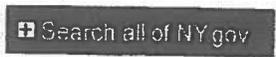
OVERTIME PAY
 See (B, B2, K) on OVERTIME PAGE

HOLIDAY
 Paid: See (5, 6) on HOLIDAY PAGE
 Must work the last regularly scheduled day before and after holiday.

Holidays on a Saturday are observed on Friday, Holidays on a Sunday are observed on Monday.

Employee's working at least 12 consecutive months and having worked 200 days will receive 5 floating holidays.

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New York State Department of Labor
Prevailing Wage

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JOB DESCRIPTION
Trash and Refuse Removal

DISTRICT
10

ENTIRE COUNTIES
Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren, Washington

WAGES
For use with Transfer Station Operation.

Per hour:	07/01/2015
Indus. Truck Driver/Tractor Operator	\$ 18.40
Laborer/ non-construction	\$ 15.07
Conveyor operators and tenders	\$ 17.97
Weighers/Measurers	\$ 14.59

IMPORTANT INFORMATION:
Article 9 §230.6. "Prevailing wage" means the wage determined by the fiscal officer to be prevailing for the various classes of building service employees in the locality. In no event shall the basic hourly cash rate of pay be less than the statutory minimum wage established by article nineteen of this chapter, or, in a city with a local law requiring a higher minimum wage on city contract work, less than the minimum wage specified in such local law.

SUPPLEMENTAL BENEFITS
Per hour worked: \$ 1.70

OVERTIME PAY
See (B, B2) on OVERTIME PAGE

HOLIDAY
Paid: See (1) on HOLIDAY PAGE

10-NYS/R&S - Trans.Station.Ops

Following is an explanation of the code(s) listed in the OVERTIME section of each classification contained in the attached schedule. Additional requirements may also be listed in the HOLIDAY section.

NOTE: Supplemental Benefits are 'Per hour worked' (for each hour worked) unless otherwise noted

- (AA) Time and one half of the hourly rate after 7 and one half hours per day
- (A) Time and one half of the hourly rate after 7 hours per day
- (B) Time and one half of the hourly rate after 8 hours per day
- (B1) Time and one half of the hourly rate for the 9th & 10th hours week days and the 1st 8 hours on Saturday. Double the hourly rate for all additional hours
- (B2) Time and one half of the hourly rate after 40 hours per week
- (C) Double the hourly rate after 7 hours per day
- (C1) Double the hourly rate after 7 and one half hours per day
- (D) Double the hourly rate after 8 hours per day
- (D1) Double the hourly rate after 9 hours per day
- (E) Time and one half of the hourly rate on Saturday
- (E1) Time and one half 1st 4 hours on Saturday; Double the hourly rate all additional Saturday hours
- (E2) Saturday may be used as a make-up day at straight time when a day is lost during that week due to inclement weather
- (E3) Between November 1st and March 3rd Saturday may be used as a make-up day at straight time when a day is lost during that week due to inclement weather, provided a given employee has worked between 16 and 32 hours that week
- (E4) Saturday and Sunday may be used as a make-up day at straight time when a day is lost during that week due to inclement weather
- (E5) Double time after 8 hours on Saturdays
- (F) Time and one half of the hourly rate on Saturday and Sunday
- (G) Time and one half of the hourly rate on Saturday and Holidays
- (H) Time and one half of the hourly rate on Saturday, Sunday, and Holidays
- (I) Time and one half of the hourly rate on Sunday
- (J) Time and one half of the hourly rate on Sunday and Holidays
- (K) Time and one half of the hourly rate on Holidays
- (L) Double the hourly rate on Saturday
- (M) Double the hourly rate on Saturday and Sunday
- (N) Double the hourly rate on Saturday and Holidays
- (O) Double the hourly rate on Saturday, Sunday, and Holidays
- (P) Double the hourly rate on Sunday
- (Q) Double the hourly rate on Sunday and Holidays
- (R) Double the hourly rate on Holidays
- (S) Two and one half times the hourly rate for Holidays, if worked

- (S1) Two and one half times the hourly rate the first 8 hours on Sunday or Holidays One and one half times the hourly rate all additional hours.
- (T) Triple the hourly rate for Holidays, if worked
- (U) Four times the hourly rate for Holidays, if worked
- (V) Including benefits at SAME PREMIUM as shown for overtime
- (W) Time and one half for benefits on all overtime hours.

PAID Holidays:

Paid Holidays are days for which an eligible employee receives a regular day's pay, but is not required to perform work. If an employee works on a day listed as a paid holiday, this remuneration is in addition to payment of the required prevailing rate for the work actually performed.

OVERTIME Holiday Pay:

Overtime holiday pay is the premium pay that is required for work performed on specified holidays. It is only required where the employee actually performs work on such holidays. The applicable holidays are listed under **HOLIDAYS: OVERTIME**. The required rate of pay for these covered holidays can be found in the **OVERTIME PAY** section listings for each classification.

Following is an explanation of the code(s) listed in the **HOLIDAY** section of each classification contained in the attached schedule. The Holidays as listed below are to be paid at the wage rates at which the employee is normally classified.

- (1) None
- (2) Labor Day
- (3) Memorial Day and Labor Day
- (4) Memorial Day and July 4th
- (5) Memorial Day, July 4th, and Labor Day
- (6) New Year's, Thanksgiving, and Christmas
- (7) Lincoln's Birthday, Washington's Birthday, and Veterans Day
- (8) Good Friday
- (9) Lincoln's Birthday
- (10) Washington's Birthday
- (11) Columbus Day
- (12) Election Day
- (13) Presidential Election Day
- (14) 1/2 Day on Presidential Election Day
- (15) Veterans Day
- (16) Day after Thanksgiving
- (17) July 4th
- (18) 1/2 Day before Christmas
- (19) 1/2 Day before New Years
- (20) Thanksgiving
- (21) New Year's Day
- (22) Christmas
- (23) Day before Christmas
- (24) Day before New Year's
- (25) Presidents' Day

(26) Martin Luther King, Jr. Day

(27) Memorial Day

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)

Attachment H

SDVOB Utilization Plan Form

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

Proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality

and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

Solicitation/Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. () _____ Federal ID # _____

Proposal/Contract Amount \$ _____

Brief Description of Work _____

Prime Contractor SDVOB Status SDVOB Non-SDVOB

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)

Attachment H

SDVOB Utilization Plan Form

II. I, _____ HEREBY AGREE TO THE 6 % CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE (SDVOB) GOAL AS SET FOR IN THIS SOLICITATION/CONTRACT. I FURTHER SUBMIT THE BELOW NYS CERTIFIED SDVOBs FOR YOUR REVIEW AND APPROVAL IN COMPLIANCE WITH THE GOAL REQUIREMENTS ESTABLISHED IN THIS SOLICITATION/CONTRACT.

NYS Certified SDVOBs

Name: _____

Name: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Contact Person: _____

Contact Person: _____

Estimated Contract Award Date: _____

Estimated Contract Award Date: _____

Estimated Contract Commencement Date: _____

Estimated Contract Commencement Date: _____

Brief Description of the Scope of Work:

Brief Description of the Scope of Work:

Name: _____

Name: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Contact Person: _____

Contact Person: _____

Estimated Contract Award Date: _____

Estimated Contract Award Date: _____

Estimated Contract Commencement Date: _____

Estimated Contract Commencement Date: _____

Brief Description of the Scope of Work:

Brief Description of the Scope of Work:

The Contractor shall undertake "good faith" efforts to actively solicit SDVOB participation in connection with its potential award of the NYSERDA contract.

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)

Attachment H

SDVOB Utilization Plan Form

- III.** Provide the name, title, address and telephone of person(s) responsible for implementing this subcontracting plan.
- IV.** If the Contractor anticipates that it will not be able to meet the contract SDVOB participation levels, a waiver request must be submitted with the proposal (see Attachment 10).

I hereby declare that the above information is to the best of my ability and intention correct and that every effort will be made in the attainment of the established SDVOB goal. I further declare that the utilization of SDVOBs for non-commercially useful functions may not be counted towards utilization of SDVOBs in the utilization plan.

Signature: _____

Name: _____

Title: _____

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)

Attachment G

New York State Law

Pursuant to New York State Executive Law Article 17-B, NYSERDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified service-disabled veteran-owned business enterprises (SDVOB) in the performance of NYSERDA contracts. Executive Law Article 17-B and its associated regulations require, among other things, that NYSERDA establish goals for maximum feasible participation of New York State Certified SDVOBs in the performance of New York State contracts.

Contract Participation Goals by SDVOBs on NYSERDA procurements

In accordance with Article 17-B of the N.Y. Executive Law (“Article 17-B”) and its associated regulations, NYSERDA has established certain contract participation goals for certified SDVOBs. NYSERDA's participation goals for contracts awarded pursuant to this solicitation are 6% for SDVOBs. This is in addition to required MWBE participation goals which are discussed in Attachments 1-6. The SDVOB participation goal is subject to the requirements of Article 17-B, and its implementing regulations as set forth in Title 9, Subtitle G Part 252 of the New York Codes, Rules and Regulations (the “Regulations”).

By submitting a proposal, the Proposer represents that it has reviewed and familiarized itself with the Regulations (see <http://ogs.ny.gov/About/Regs/docs/part252.pdf>) which are incorporated herein by this reference. Any conflicts between the solicitation and the Regulations shall be resolved in favor of the Regulations. Each proposer shall, in accordance with the Regulations, make good faith efforts and, in a manner that can be established in documentary form, solicit active participation by certified SDVOBs, as identified in the applicable state directory maintained by OGS.

(see http://ogs.ny.gov/core/docs/CertifiedNYS_SDVOB.pdf)

Additionally, proposers are encouraged to contact the Division of Service-Disabled Veterans' Business Development at 844-579-7570 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing SDVOBs on the contract.

Utilization Plan

NYSERDA requires every proposer to undertake good faith efforts to actively solicit SDVOB participation in connection with the potential award of a NYSERDA contract. An SDVOB Utilization Plan (see Attachment 2) must be submitted with every proposal.

Compliance Reporting

Contract compliance reports are required to be submitted for all contracts that require a Utilization Plan. See Attachment 3.

Waiver Requests

A proposer may request a total or partial waiver of the requirements of the SDVOB participation goal (see Attachment 4). Prior to granting or denying a waiver, NYSERDA will evaluate the proposer's good faith efforts and may consider the factors set forth in the Regulations. In the event NYSERDA refuses to grant a waiver, the proposer may file a complaint with NYSERDA in accordance with the Regulations.

Contractor Disqualification

If NYSERDA determines, after having given notice of deficiency, that a contractor has failed to submit an acceptable Utilization Plan or satisfactorily document its good faith efforts, NYSERDA may proceed with the next ranked bidder if NYSERDA has not received a request for a review of such finding from the contractor. NYSERDA shall conduct such review providing the contractor with an opportunity to be heard

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)

Attachment G

and make a determination that confirms the contractor is disqualified or reaffirms that the contractor is qualified. Such determination shall constitute a final agency determination.

Contractor and NYSERDA Complaints

Subsequent to the award of a contract to a contractor that becomes deficient with regard to its Utilization Plan, the contractor may file a complaint with NYSERDA. The complaint should state the reasons for the complaint, together with a demand for relief and include the following information: (1) the contractor's receipt of a written determination by NYSERDA that the contractor is not entitled to a partial or full waiver of the SDVOB goals; or (2) the contractor's receipt of a written determination by NYSERDA that the contractor has not acted in good faith, has failed, is failing, or is refusing to comply with goals. NYSERDA shall provide the contractor with an opportunity to be heard and shall conduct a review and shall render a determination regarding the merits of the complaint. Within 20 days of NYSERDA's determination that the contractor has not acted in good faith, has failed, is failing, or is refusing to comply with the SDVOB goals, NYSERDA may after giving the contractor an opportunity to be heard, make a determination that the contractor has failed to meet the contract goals and assess such other damages as were identified in the contract.

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)

Attachment H

SDVOB Utilization Plan Form

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

Proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality

and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

Solicitation/Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. () _____ Federal ID # _____

Proposal/Contract Amount \$ _____

Brief Description of Work _____

Prime Contractor SDVOB Status SDVOB Non-SDVOB

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)

Attachment H

SDVOB Utilization Plan Form

II. I, _____ HEREBY AGREE TO THE 6 % CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISE (SDVOB) GOAL AS SET FOR IN THIS SOLICITATION/CONTRACT. I FURTHER SUBMIT THE BELOW NYS CERTIFIED SDVOBs FOR YOUR REVIEW AND APPROVAL IN COMPLIANCE WITH THE GOAL REQUIREMENTS ESTABLISHED IN THIS SOLICITATION/CONTRACT.

NYS Certified SDVOBs

Name: _____

Name: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Contact Person: _____

Contact Person: _____

Estimated Contract Award Date: _____

Estimated Contract Award Date: _____

Estimated Contract Commencement Date: _____

Estimated Contract Commencement Date: _____

Brief Description of the Scope of Work:

Brief Description of the Scope of Work:

Name: _____

Name: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Contact Person: _____

Contact Person: _____

Estimated Contract Award Date: _____

Estimated Contract Award Date: _____

Estimated Contract Commencement Date: _____

Estimated Contract Commencement Date: _____

Brief Description of the Scope of Work:

Brief Description of the Scope of Work:

The Contractor shall undertake "good faith" efforts to actively solicit SDVOB participation in connection with its potential award of the NYSERDA contract.

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)

Attachment H

SDVOB Utilization Plan Form

- III.** Provide the name, title, address and telephone of person(s) responsible for implementing this subcontracting plan.
- IV.** If the Contractor anticipates that it will not be able to meet the contract SDVOB participation levels, a waiver request must be submitted with the proposal (see Attachment 10).

I hereby declare that the above information is to the best of my ability and intention correct and that every effort will be made in the attainment of the established SDVOB goal. I further declare that the utilization of SDVOBs for non-commercially useful functions may not be counted towards utilization of SDVOBs in the utilization plan.

Signature: _____

Name: _____

Title: _____

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)

Attachment I

SDVOB Compliance Report Form

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address _____

Telephone No. () _____ Federal ID # _____

Contract Award Amount \$ _____

Brief Description of Work _____

Prime Contractor SDVOB Status SDVOB Non-SDVOB

II. AS EVIDENCE OF CONTRACTOR'S PROGRESS TOWARD THE ACHIEVEMENT OF THE NYSERDA SDVOB GOALS, AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF CONTRACT # _____, THE FOLLOWING INFORMATION IS SUBMITTED.

III. SUBMITTAL ITEMS

1. Provide the name, addresses and telephone number of each SDVOB you are actually using in compliance with your SDVOB goal.
2. Provide a brief description of the work being performed by the SDVOB, their scheduled dates for performance and current working status.
3. Provide a copy of your written agreement with the SDVOB (A one-time request)
4. In the event you have let a blanket purchase order or other open-ended contracts, only specify that amount actually awarded.
5. Provide the actual amounts of payments made to any SDVOB as of the date of the completion of the utilization report
6. Provide the name, title and telephone number of the person responsible for submitting the work force utilization reports.
7. Compliance Reports are due on the first day of the first month of each quarter, beginning three months after contract award date.

IV. WAIVER REQUESTS

1. If you are unable to meet the SDVOB goal established in your contract, contact NYSERDA for information on how to apply for a partial or total waiver request of the SDVOB goal in your contract.

Signature: _____

Name: _____

Title: _____



Attachment K - Cost Proposal

PART A – Property Management Fee (See Section IV. 5a of RFP)

		Annual Cost
Initial Contract Period	4/1/16 - 3/31/17	\$
	4/1/17- -3/31/18	\$
	4/1/18 – 3/31/19	\$
Renewal Option Periods	4/1/19 – 3/31/20	\$
	4/1/20 – 3/31/21	\$

PART B - Other Fees and Expenses Paid Directly to Proposer (See Section IV. 5b of RFP)

Please list any other costs to be paid directly to the Property Manager (to be based on actual costs incurred with no mark-up allowed). Pass through expenses paid to independent entities should not be included:

Expense item: (List)	Cost
_____	_____
_____	_____
_____	_____

Regular On-Site Employees:

Title	Salary	FTE (full time equivalent %)	Fringe Benefits %	Total Annual Cost

New York State Energy Research and Development Authority

Albany
17 Columbia Circle, Albany, NY 12203-6399
(P) 1-866-NYSERDA | (F) 518-862-1091
nyserda.ny.gov | info@nyserda.ny.gov

Buffalo
726 Exchange Street
Suite 821
Buffalo, NY
14210-1484
(P) 716-842-1522
(F) 716-842-0156

New York City
1359 Broadway
19th Floor
New York, NY
10018-7842
(P) 212-971-5342
(F) 518-862-1091

**West Valley Site
Management Program**
9030-B Route 219
West Valley, NY
14171-9500
(P) 716-942-9960
(F) 716-942-9961

Other Employees (periodically sent to building such as electricians, plumbers)

Title	Hourly Rate	Fringe Benefits %	Hourly Rate with Fringe

Part C - Construction Management Services (See Section IV. 5c of RFP)

The Property Manager shall, with the prior approval of NYSERDA, be eligible to receive an additional fee not to exceed 15% of the cost of labor and materials when the Property Manager is acting as a Construction Manager to oversee the design, bidding and buildout capital repairs or improvements.

Fee including all overhead and profit (based on a percentage of direct labor and materials)	%
---	---

Please provide a narrative of what types of services this fee will be assessed on vs. which items are covered by the Management Fee contained in Part A (attach additional pages if necessary)

Indicate below the hourly rates of any other Property Manager employees who may be involved in providing the above supplemental services

Title	Hourly Rate	Fringe Benefits %	Hourly Rate with Fringe

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)

Attachment J

SDVOB WAIVER FORM

Solicitation or Contract No.: _____ Date: _____

1. PRIME CONTRACTOR INFORMATION

Company Name: _____

Address: _____

Telephone No.: _____

Federal ID #: _____

Brief Description of Work:

2. I hereby request a **Partial** or **Total** (circle one) waiver of the certified SDVOB goals as established in the solicitation or contract identified above. To substantiate and demonstrate my good faith efforts the following information is submitted for the Authority's review and approval.

Signature of Authorized Representative

Print name and title Authorized Representative

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)

Attachment J

SDVOB WAIVER FORM

1. Provide a statement setting forth the basis for requesting a partial or total waiver of the certified SDVOB goal established in the solicitation:

2. List the certified SDVOBs that were solicited in writing to provide bids for purposes of complying with the SDVOB goal requirements of the solicitation.

3. Provide proof of dates on which such solicitations were made in writing and copies of said solicitations as well as copies of responses you received.

4. Provide a description of any contract documents, plans or specifications that were made available to certified SDVOBs for purposes of soliciting their bids.

5. Provide the dates and manner in which the above documents were made available.

6. Provide information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs

7. Attach any documentation you have of negotiations between the contractor and the certified SDVOB undertaken for purposes of complying with the goal requirements in the solicitation.

8. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.

9. Provide the name, title, address and telephone number contractor's representative authorized to discuss and negotiate this waiver request.

Waiver request is: Granted Denied

By: _____ Date: _____

Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)

Attachment J

SDVOB WAIVER FORM

NYSERDA may grant a partial or total waiver of the goal requirements established in the solicitation/contract upon the submission of a waiver form by a contractor documenting good faith efforts by the contractor to meet the goal requirements, and in consideration of the following factors:

1. The number and types of certified SDVOBS available to perform the work
2. The total dollar value of the contract and the scope of work to be performed
3. The project size and project term
4. The availability of other business enterprises located in the region qualified to do the work
5. The ability of certified SDVOBs located outside the region to perform the work
6. The extent to which the contractor's own actions contributed to its inability to meet the goal

In addition to the information provided by the contractor on this form, NYSERDA may also consider the following to determine whether the contractor has demonstrated good faith efforts:

1. Where applicable, whether the contractor submitted an amended utilization plan consistent with the subcontractor or supplier opportunities in the contract
2. The number of certified SDVOBs in the region that could, in the judgment of NYSERDA, perform work required by the contract
3. The actions taken by the contractor to contact and assess the ability of certified SDVOBs located outside of the region in which the contract is to be performed to participate on the contract
4. Whether the contractor provided relevant plans, specifications or terms and conditions to certified SDVOBs sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier
5. The terms and conditions of any subcontractor or provision of suppliers offered to certified SDVOBs and a comparison of such terms and conditions of those offered in the ordinary course of the contractor's business
6. Whether the contractor offered to make up any inability to comply with the certified SDVOB goals in the subject contract in other state contracts being performed or awarded to the contractor
7. The extent to which the contractor's actions contributed to its inability to meet the goals
8. Whether the contractor knowingly utilized one or more certified SDVOBs, in the performance of the contract, that contractor knew or reasonably should have known could not perform a commercially useful function
9. Whether the contractor submitted compliance reports which identified certified SDVOBs that the contractor knew or reasonably should have known did not perform a commercially useful function on a State contract on which goals were assigned
10. Any other information that is relevant or appropriate to determining whether the contractor has demonstrated a good faith effort.

Attachment L

**New York State Energy Research and Development Authority
("NYSERDA")**

AGREEMENT

1. Agreement Number:
2. Contractor:
3. Project Director:
4. Effective Date:
5. Total Amount of Award:
6. Project Period:
7. Commitment Terms and Conditions

This Agreement consists of this form and the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions;
- Exhibit D, Prompt Payment Policy Statement; and
- Exhibit E, Article 15-A (MWBE) Provisions

8. ACCEPTANCE. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNLESS EXECUTED BELOW BY NYSERDA.

[CONTRACTOR]

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

By _____

By _____

Name _____

Jeffrey J. Pitkin
Treasurer

Title _____

STATE OF)
) SS.:
COUNTY OF)

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

SAMPLE

Notary Public

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

(a) General Definitions:

Agreement: This Agreement shall consist of Page One and the Exhibits noted thereon, all of which are made a part hereof as if set forth here in full.

Budget: The Budget set forth at Exhibit A, Budget.

Cash-based Expenses: Those obligations of Contractor that shall be settled in cash.

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

Contract Information: Recorded information regardless of form or characteristic first produced in the performance of this Agreement, that is specified to be compiled under this Agreement, specified to be delivered under this Agreement, or that is actually delivered in connection with this Agreement, and including the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable.

Proprietary Information: Recorded information regardless of form or characteristic and developed outside the scope of this Agreement and without NYSERDA financial support, provided that such information is not generally known or available from other sources without obligation concerning their confidentiality; has not been made available by the owner to others without obligation concerning its confidentiality; and is not already available to NYSERDA without obligation concerning its confidentiality. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable, be considered Proprietary Information.

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

Responsible: Responsible or Responsibility means 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).

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

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

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

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

Article II

Performance of Work

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

Section 2.02. Project Personnel. It is understood and agreed that the Project Director identified in Attachment Page One of this Agreement shall be responsible for the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, the requested change in Project Director shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days.

Section 2.03. Title to Equipment. Title shall vest in the Contractor to all equipment purchased hereunder.

Article III

Deliverables

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

Article IV

Payment

Section 4.01. Payment Terms. It is understood and agreed that [NYSERDA and the Contractor are sharing the costs for the Work to be performed.] In consideration for this Agreement and as NYSERDA's full payment for the costs of the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor amounts not to exceed the maximum amount set forth in Item 5, Page One of the Agreement for the cost elements identified in the Budget to be funded with NYSERDA funds, subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D. NYSERDA's payments shall be on a reimbursement basis, and shall be paid only to the extent that Cash-based Expenses are incurred by the Contractor in the performance of the Work in accordance with the provisions of this Agreement, and the following:

(a) Staff Charges: To the extent Cash-based Expenses are incurred by the Contractor, Contractor shall be reimbursed for amounts paid to its employees for the services performed by its employees under the terms of this Agreement at the lesser of the employee's wage rates as shown in the Budget or the actual wages paid to the employee and applicable at the time the Work is performed.

(b) Direct Charges: To the extent Cash-based Expenses are incurred by the Contractor, the Contractor shall be reimbursed for reasonable and necessary actual direct costs incurred (equipment, supplies, travel and other costs directly associated with the performance of the Agreement) to the extent required in the performance of the Work and to the extent such costs are anticipated in the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs shall not exceed the daily per diem rates published in the Federal Travel Regulations. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate in effect at the time the expense was incurred.

(c) Indirect Costs: The Contractor shall be reimbursed for fringe benefits, overhead, general and administrative (G&A), and other indirect costs, all at the fixed rate as shown in the Budget. Contractor hereby warrants and guarantees, in accordance with Section 9.01(k) hereto, that its rates for the foregoing indirect costs charged herein have been determined based on the Contractor's reasonably anticipated indirect costs during the term of the Agreement and calculated consistent with generally accepted accounting principles.

Section 4.02. Progress Payments.

(a) Invoicing: The Contractor may submit invoices for progress payments no more than once each month and no less than once each calendar quarter for work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable," or submitted electronically to invoices@nyserda.ny.gov. Such invoices shall make reference to the Agreement number shown at Item 1 on page 1 of the Agreement. Invoices shall be inclusive of the total project costs incurred, delineated into NYSERDA's Funding share and the Cost-Share and other Co-funding share, if applicable, and they shall be in a format consistent with the cost categories set forth in the Budget. Invoices shall be itemized and provide reasonable documentation for the above to provide evidence of costs incurred. If a wage rate or billing rate is used, Contractor must certify on its invoice that such rate represents the lesser of: (a) the actual rate at the time the Work was performed, and (b) the rate listed for each such employee listed in the Budget. NYSERDA may adjust amounts payable to correlate the proportion of NYSERDA's funding share paid to the proportion of the Work completed.

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

Section 4.03. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six (6) months following Acceptance of Work pursuant to Section 6.02 hereof. In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments/milestone payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Section 4.06 hereof.

Section 4.04. Release by the Contractor. The acceptance by the Contractor of final payment shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to this Agreement.

Section 4.05. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to this Agreement, including without limitation, all data, bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other documentation evidencing, or in any material way related to, Contractor's performance under this Agreement.

Section 4.06. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor shall be the amount appearing as Item 1 of page one of this Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.07. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.05 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.05 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and Performance

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

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling less than \$50,000, the Contractor shall select all subcontractors or suppliers through a

process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit C to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. Each Subcontract shall make express reference to this Agreement, and shall state that in the event of any conflict or inconsistency between any Subcontract and this Agreement, the terms and conditions of this Agreement shall control as between Subcontractor and Contractor. If this Agreement includes a provision requiring Contractor to make Payments to NYSERDA for the Sale or Licensing of a Product, each Subcontract shall include the provisions of Section 8.02, suitably modified to identify the parties. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any subcontract(s) specified in the Statement of Work as requiring NYSERDA approval, including any replacement thereof.

Section 5.02 Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action that would impair its rights thereunder. The Contractor shall take no action, and shall take all reasonable steps to prevent its Subcontractor from taking any action, that would impair NYSERDA's rights under this Agreement. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of NYSERDA's Contract Administrator as long as this Agreement remains in effect. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, the requested assignment, cancellation, or termination of the Subcontract shall be considered approved by NYSERDA. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to sixty (60) days.

Article VI

Schedule; Acceptance of Work

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in the Statement of Work. The draft and final versions of all deliverables shall be submitted by the dates specified in the Exhibit A Schedule. It is understood and agreed that the delivery of the draft and final versions of such deliverables by the Contractor shall occur in a timely manner and in accordance with the requirements of the Exhibit A Schedule.

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

Article VII

Force Majeure

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

Article VIII

Rights in Information; Confidentiality

Section 8.01. Rights in Contract and Proprietary Information.

(a) All Contract Information shall be the property of NYSERDA. The Contractor shall not use Contract Information for any purpose other than to implement its obligations under this Agreement.

(b) All Proprietary Information shall be the property of Contractor.

(c) The use, public performance, reproduction, distribution, or modification of any materials used by Contractor in the performance of this Agreement does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trademarks, service marks, publicity, or privacy. The Contractor shall be responsible for obtaining and paying for any necessary licenses to use any third-party content.

(d) The Contractor agrees that to the extent it receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon or instructions given by NYSERDA, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager. Contractor acknowledges that in the performance of the Work under this Agreement, Contractor may come into possession of personal information as that term is defined in Section 92 of the New York State Public Officers Law. Contractor agrees not to disclose any such information without the consent of NYSERDA.

Article IX

Warranties and Guarantees

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

(a) all information provided and all representations made by Contractor as a part of the Proposal Checklist or application, if any, submitted to NYSERDA in order to obtain this Agreement were, to the best of Contractor's knowledge, complete, true and accurate when provided or made;

(b) as of the Effective Date, Contractor is financially and technically qualified to perform the Work, and is qualified to do business and is in good standing in all jurisdictions necessary for Contractor to perform its obligations under this Agreement;

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

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

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

(f) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the

Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

(g) to the best of Contractor's knowledge, there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or NYSERDA's rights hereunder;

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

(i) all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate;

(j) Contractor is familiar with and will comply with NYSERDA's Code of Conduct for Contractors, Consultants, and Vendors with respect to the performance of this Agreement;¹ and

(k) its rates for the indirect costs charged herein have been determined based on the Contractor's reasonably anticipated indirect costs during the term of the Agreement and calculated consistent with generally accepted accounting principles.

(l) Contractor shall at all times during the Agreement term remain Responsible, and 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.

Article X

Indemnification

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

¹<http://www.nyserda.ny.gov/About/Board-Governance.aspx>

Article XI

Insurance

Section 11.01. Maintenance of Insurance; Policy Provisions. The Contractor, at no additional direct 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) except policies in evidence of insurance required under Section 11.02(b), name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;

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

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

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

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

(b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective carriers, indicating the Agreement number thereon, evidencing the insurance required by Article XI hereof.

Article XII

Stop Work Order; Termination; Non-Responsibility

Section 12.01. Stop Work Order.

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

- (i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or not specified therein, upon receipt by the Contractor;
- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

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

- (i) the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Agreement; and
- (ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

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

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

Section 12.02. Termination.

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon ten (10) days prior written notice to

the Contractor. In such event, payment shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Payment and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor). Articles VIII, IX, and X shall survive any termination of this Agreement, and Article XVI shall survive until the payment obligations pursuant to Article VIII have been met.

(b) NYSERDA specifically reserves the right to terminate this agreement in the event that the certification filed by the Contractor in accordance with State Finance Law Sections 139-j and 139-k is found to have been intentionally false or intentionally incomplete, or that the certification filed by the Contractor in accordance with New York State Tax Law Section 5-a is found to have been intentionally false when made. Terminations under this subsection (b) will be effective upon Notice.

(c) Nothing in this Article shall preclude the Contractor from continuing to carry out the Work called for by the Agreement after receipt of a Stop Work Order or termination notice at its own election, provided that if the Contractor so elects: (i) any such continuing Work after receipt of a Stop Work Order or termination notice shall be deemed not to be Work pursuant to the Agreement, and (ii) NYSERDA shall have no liability to the Contractor for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

12.03 Suspension or Termination - Non-Responsibility.

(a) Suspension. NYSERDA, in its sole discretion, reserves the right to suspend any or all activities under the Agreement, at any time, when it discovers information that calls in 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.

Article XIII

Independent Contractor

Section 13.01. Independent Contractor. (a) The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, the Subcontractors, and their respective officers, agents, employees, representatives and servants, including the Project Director, shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, vicarious liability, professional liability coverage or indemnification, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. It is understood and agreed that the personnel furnished by Contractor to perform the Work shall be Contractor's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Contractor, except to the extent required by section 414(n) of the Internal Revenue Code.

(b) Contractor expressly acknowledges NYSERDA need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, Contractor and/or Contractor's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Contractor expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon Contractor's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

Article XIV

Compliance with Certain Laws

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

Section 14.02. All Legal Provisions Deemed Included. It is the intent and understanding of the Contractor and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Contractor, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

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

Article XV

Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:

- (i) via certified or registered United States mail, return receipt requested;
- (ii) by facsimile transmission;
- (iii) by personal delivery;
- (iv) by expedited delivery service; or
- (v) by e-mail, return receipt requested.

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

NYSERDA

Name: Cheryl M. Glanton
Title: Director of Contract Management
Address: 17 Columbia Circle, Albany, New York 12203
Facsimile Number: (518) 473-1091
E-Mail Address: Cheryl.Glanton@nyserda.ny.gov
Personal Delivery: Reception desk at the above address

Contractor Name

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

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

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

Section 15.02. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

Section 15.03. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Article XVI

Publicity

Section 16.01. Publicity.

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

(b) It is recognized that during the course of the Work under this Agreement, the Contractor and its employees may from time to time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, the Contractor shall credit NYSERDA's funding participation in the Project, and shall state that "NYSERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York." Notwithstanding anything to the contrary contained herein, the Contractor shall have the right to use and freely disseminate project results for educational purposes, if applicable, consistent with the Contractor's policies.

(c) Commercial promotional materials or advertisements produced by the Contractor shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The

wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Contractor do not agree on the wording of such credit in connection with such materials, the Contractor may use such materials, but agrees not to include such credit.

SAMPLE

EXHIBIT C

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, 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 each 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 the 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 U.S.C. 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 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 135-a 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 moneys 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 in which, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

6. PRELIMINARY 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 FOIA 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 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIA 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/About/New-York-State-Regulations.aspx>

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 obtain 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, 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. If Contractor or its principals may also be subject to penalties for a 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
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
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
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Law 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. 92-314), 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 (Form ST-220-CA).
- 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).

SAMPLE

EXHIBIT D

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.²

(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 B of this Agreement.

(d) "Proper 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

² This is only a summary; the full text of Part 504 can be accessed at: <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>

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.

(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 more 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 amount 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 deduction 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. Time Payment Schedule. Except as otherwise provided by law or regulation 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 the notification was submitted 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 accrued at the applicable 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 receipt 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.

SAMPLE

Exhibit E

Article 15-A (MWBE) Provisions for Solicitation Documents (non-construction)

New York State Law

Pursuant to New York State Executive Law Article 15-A, NYSERDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises and the employment of minority group members and women in the performance of NYSERDA contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in state procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing, and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that NYSERDA establish goals for maximum feasible participation of New York State Certified minority- and women-owned business enterprises ("MWBE") and the employment of minority group members and women in the performance of New York State contracts.

Article 15-A EEO

- (1) Contractors and subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed (religion), color, national origin, sex, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgradings, demotions, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.
 - (2) Following the award of a State contract and as a precondition to entering into that contract, a winning proposer shall submit an equal employment opportunity ("EEO") policy statement to NYSERDA within seventy-two (72) hours following such proposer's receipt of NYSERDA's award letter. A proposer's failure to timely submit the EEO policy statement could result in NYSERDA's rejection of that proposer's proposal.
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- (3) The proposer's EEO policy statement shall contain, but not necessarily be limited to, and the proposer, as a precondition to entering into a valid and binding State contract, shall, during the performance of the State contract, agree to the following:
- (i) The proposer will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.
 - (ii) The proposer shall state in all solicitations or advertisements for employees that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - (iii) At the request of NYSERDA the proposer shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the proposer's obligations.
 - (iv) Pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (4) Within ten (10) business days following a winning proposer's receipt of NYSERDA's award letter, such proposer shall submit to NYSERDA a staffing plan of the anticipated work force to be utilized on the State contract. The form of the staffing plan shall be supplied by NYSERDA. In the case where the workforce to be utilized in the performance of this Agreement cannot be separated out from the Contractor's and/or its subcontractor workforce, the Contractor shall submit, in lieu of a staffing plan, information on the Contractor's and/or subcontractor's total workforce. The staffing plan or workforce information shall be broken down by ethnic background, gender and Federal occupational categories, or other appropriate categories specified by NYSERDA. A proposer's failure to submit the staffing plan or workforce data could result in NYSERDA's rejection of that proposer's proposal. If a proposer changes its utilization plan
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after submission, it shall notify NYSERDA in writing of such change and obtain approval from NYSERDA in accordance with the Regulations §§ 142.6 & 142.8.

- (5) A proposer's failure to submit an EEO policy statement and staffing plan or total work force data shall result in NYSERDA's rejection of proposer's proposal, unless the proposer provides NYSERDA with a reasonable justification in writing for such failure (e.g., the failure to submit a staffing plan where proposer has a work force of 10 employees or less), or makes a commitment to submit an EEO policy statement and a staffing plan or total work force data by a date to be specified by NYSERDA.
- (6) To demonstrate compliance with the stated participation goals as set forth herein, a contractor shall be required to periodically submit compliance reports to NYSERDA, on the forms attached to the contract, during the entire term of the contract.

Contract Participation Goals by MWBE on NYSERDA procurements

In accordance with Article 15-A of the N.Y. Executive Law ("Article 15-A") and pursuant to the regulations adopted thereto, NYSERDA has established certain contract participation goals for minority and women-owned business enterprises (MWBE). NYSERDA's participation goals for contracts awarded pursuant to this solicitation are **15%** for minority-owned business enterprises and **15%** for women-owned business enterprises. These participation goals are subject to the requirements of Article 15-A, and its implementing regulations as set forth in Title 5, Chapter XIV, Parts 140-144 of the New York Codes, Rules and Regulations (the "Regulations").

NYSERDA requires every winning proposer to undertake "good faith" efforts to actively solicit MWBE participation in conjunction with its potential award of the NYSERDA contract. Within ten (10) business days following the receipt of NYSERDA's award letter, a winning proposer must submit to NYSERDA an MWBE Utilization Plan Form, in a form provided by NYSERDA. Within twenty (20) days following its receipt of the Utilization Plan, NYSERDA will issue a written notice of acceptance or deficiency. If NYSERDA issues a notice of deficiency then proposer must provide NYSERDA with a written remedy in response to said notice of deficiency within seven (7) business days of its receipt. If the proposer's remedy to the notice of deficiency is not timely provided or if it is found by NYSERDA to be inadequate, NYSERDA shall so notify proposer and request proposer to submit a waiver form within five (5) business days. Failure to file the written remedy or a waiver form in a timely manner as set forth above may be grounds for disqualification of proposer's award for non-responsibility, after NYSERDA gives proposer notice and opportunity to be heard in accordance with Article 15-A § 313(5)(c) and the Regulations § 142.9.

A winning proposer may request a total or partial waiver of the requirements of the participation goals set forth above. In such event, NYSERDA shall provide proposer with a waiver form to be provided by proposer prior to the award of the NYSERDA contract. Prior to granting or denying a waiver, NYSERDA shall evaluate proposer's "good faith efforts" and may consider the factors set forth in the Regulations §143.7. In the event NYSERDA refuses to grant proposer a waiver, proposer may file a complaint with the NYS Empire State Development's Division of Minority and Women Business

Development (the "Division") in accordance with Sections 313(8) & (9) of Article 15-A and Section 142.12 of the Regulations.

Relevant sections of the Regulations may be found at the following link, which Regulations and each party's rights and obligations set forth therein, are incorporated herein by this reference (in the event of a conflict between this solicitation and the Regulations, the Regulations shall govern):

http://www.empire.state.ny.us/MWBE/Data/122210_MWBE15-ARegs.pdf.

A Directory of certified MWBEs may be found at the Division's website, here:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

Article 15-A Disqualification and Dispute Resolution Procedures

NYSERDA, and applicable proposers and contractors shall be subject to and bound by the disqualification and dispute resolution procedure contained in Article 15-A (including, without limitation, Sections 312(5), 313(5)(c), 313(8), 313(9) and 316), and in relevant sections of the Regulations (including, without limitation, Sections 142.9, 142.12 and 143.6), as and where applicable.

NYSERDA may disqualify a proposer as being non-responsive under the following circumstances:

- a) If a proposer fails to submit a MWBE Utilization Plan;
- b) If a proposer fails to submit a written remedy to a notice of deficiency;
- c) If a proposer fails to submit a request for waiver; or
- d) If NYSERDA determines that the proposer has failed to document good faith efforts.

Penalties

In accordance with the Regulations at §142.13, NYSERDA's contract shall require contractor to agree that its willful and intentional failure to comply with the MWBE requirements of Article 15-A shall create liability to NYSERDA for damages in an amount equal to NYSERDA's actual cost related to its expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing certified minority- and women-owned business enterprise programmatic goals and Affirmative Action and Equal Opportunity compliance.

ATTACHMENT 1

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND
EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

MWBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____
agree to adopt the following policies with respect to the project being developed or
services rendered at

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from the CONTRACTING AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, requests for proposals and other documents used to solicit bids will be made available in sufficient time for review by prospective M/WBE contractors.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint ventures and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs, and the results thereof. Contractor shall maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardships are avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, ; will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination; and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on State contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status, .
- (c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, ; and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this _____ day of _____, 2_____

By _____

Print: _____ Title: _____

ATTACHMENT 2
NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
MWBE UTILIZATION PLAN FORM

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____

Address

Telephone No. () _____

Federal ID # _____

Contract Award Amount \$ _____

Brief Description of Work

Prime Contractor M/WBE Status M/WBE Non-M/WBE

II. I, _____ HEREBY AFFIRM TO BE _____% MINORITY OWNED BUSINESS ENTERPRISE (MBE) GOAL AND _____% WOMEN OWNED BUSINESS ENTERPRISE (WBE) GOAL AS SET FORTH IN THIS CONTRACT NO. . I FURTHER SUBMIT THE FOLLOWING NY'S CERTIFIED M/WBES FOR YOUR REVIEW AND APPROVAL IN COMPLIANCE WITH THE GOAL REQUIREMENTS ESTABLISHED IN THIS CONTRACT.

Signature/Title of Authorized Representative

The Contractor shall undertake "good faith" efforts to actively solicit MBE/WBE participation in connection with its potential award of the NYSERDA contract.

III. MORE SUBMISSIONS

For each MBE, provide the company name, address, telephone number, contact person name, Federal ID number, estimated contract award date, contract award amount, estimated contract commencement date, and a BRIEF description of the contract scope of work.

IV. WBE SUBMISSIONS

For each WBE, provide the company name, address, telephone number, contact person name, Federal ID number, estimated contract award date, contract award amount, estimated contract commencement date, and a BRIEF description of the contract scope of work.

- V. Provide the name, title, address and telephone of person(s) responsible for implementing this subcontracting plan.
- VI. If the Contractor anticipates that it will not be able to meet the contract M/WBE participation levels, a written detailed explanation must be submitted with the bid or proposal.

I hereby declare that the above information is to the best of my ability and intention correct and that every effort will be made in the attainment of the established M/WBE goal.

Name _____ Title _____

SAMPLE

ATTACHMENT 3

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) STAFFING PLAN FORM**

Contract No. _____

Date

I. PRIME CONTRACTOR INFORMATION

Company Name

Address

Telephone No. () _____ Federal ID #

Contract Award Amount \$

Brief Description of Work

II. I, _____ HEREBY SUBMIT THE FOLLOWING STAFFING PLAN.

Signature/Title of Authorized Representative

III. WORKFORCE DESCRIPTION

Provide a description of the work force to be utilized on the State contract, including the work force of any subcontractors, broken down by specified ethnic background, gender, and Federal occupational categories.

I hereby declare that the above information is to the best of my ability and intention correct.

Name _____ Title

ATTACHMENT 4

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
MWBE COMPLIANCE REPORT FORM**

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____
Address _____

Telephone No. (____) _____ FIRM ID# _____

Brief Description of Work _____

II. AS EVIDENCE OF (_____) PROGRESS TOWARD ACHIEVEMENT OF THE NYSE MWBE AND WBE GOALS, AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF CONTRACT NO., THE FOLLOWING INFORMATION IS HEREBY SUBMITTED.

Signature/Title of Authorized Representative

III. SUBMITTAL ITEMS

- i. Provide the names, addresses and telephone numbers of each M/WBE you are actually using in compliance with your M/WBE goal.
 - ii. Provide a brief description of work performed by the M/WBE, their scheduled dates for performance and current working status.
 - iii. Provide a copy of your written agreement with the M/WBE. (A one-time request.)
 - iv. In the event you have let a blanket purchase order or other open-ended contracts, only specify that amount actually awarded.
 - v. Provide the actual amounts of payments made to any M/WBES as of the date the work force utilization report is submitted. Documentation must include copies of cancelled checks.
 - vi. Provide the name, title and telephone number of person(s) responsible for submitting work force utilization reports.
-

- vii. Compliance Reports are due on the first day of the first month of each quarter, beginning three months after contract award date.

SAMPLE



ATTACHMENT 5

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
WORKFORCE UTILIZATION REPORT FORM**

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name _____
Address _____
Telephone No. (____) _____ Federal ID# _____
Brief Description of Work _____

II. AS EVIDENCE OF (_____) PROGRESS TOWARD ACHIEVEMENT OF THE NYSERDA WBE AND WBE GOALS, AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF CONTRACT NO. _____, THE FOLLOWING INFORMATION IS HEREBY SUBMITTED.

Signature/Title of Authorized Representative

III. SUBMITTAL ITEMS

- i. If the work force of the contractor and/or subcontractors has changed since the last work force utilization report, provide 1) the total number of employees performing work on the State contract; and 2) the contractor's and all subcontractor's work force on the State contract broken down by specified ethnic background, gender, and Federal occupational categories.

If the contractor's and/or subcontractor's work force has not changed since the last work force utilization report, check here:

- ii. Work Force Utilization Reports are due on the first day of the first month of each quarter, beginning three months after contract award date.

IV. ALTERNATIVE SUBMITTAL ITEMS

In the event that the Contractor cannot separate the workforce to be utilized in the performance of the NYSERDA contract from its total workforce, the Contractor shall submit, on a semi-annual basis:

- (i) The total workforce of the Contractor described categorically by: specified ethnic background, gender and the Federal occupational data.
- (ii) The Contractor acknowledges that the overall goal of an equal employment opportunity program involves the implementation of procedures and methods for the identification, recruitment and employment of minority group members and women.

SAMPLE

ATTACHMENT 6

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
MINORITY WOMEN BUSINESS ENTERPRISE (MWBE) REQUEST FOR WAIVER
FORM**

Contract No. _____

Date _____

I. PRIME CONTRACTOR INFORMATION

Company Name

Address

Telephone No. (____) _____

Federal ID #

Brief Description of Work:

II. I, (_____) HEREBY REQUEST A PARTIAL OR TOTAL (Circle One) WAIVER OF MY MBE AND/OR WBE GOALS AS ESTABLISHED IN CONTRACT NO. _____. I AGREED TO ATTAIN ___% MBE PARTICIPATION AND ___% WBE PARTICIPATION OF THE TOTAL CONTRACT PRICE. TO SUBSTANTIATE AND DEMONSTRATE MY GOOD FAITH EFFORTS, THE FOLLOWING INFORMATION IS SUBMITTED FOR THE AUTHORITY'S REVIEW AND APPROVAL.

Signature/Title of Authorized Representative

III. SUBMITTAL ITEMS

1. Provide a statement setting forth your basis for requesting a partial or total waiver.
2. Provide all names of general circulation, trade association and M/WBE-oriented publications in which you solicited M/WBEs for the purposes of complying with your participation levels.

3. List all dates solicitations for M/WBE participation were published in any of the above publications.
4. List all M/WBEs appearing in the NYS Directory of certified vendors which were solicited for purposes of complying with your M/WBE participation levels.
5. Provide proof of all dates on which solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitations if an identical solicitation was made to all M/WBEs.
6. Provide copies of responses made by M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans or specifications made available to M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Contractor and M/WBEs undertaken for purposes of complying with your M/WBE participation levels.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address and telephone number of contractor's representative authorized to discuss and negotiate this waiver request.
11. Have you explored or identified any other area where your company can implement an effective equal employment opportunity program to expand the employment opportunities of minority groups, men and women? If so, please provide the data supporting such efforts and the results.

SAMPLE
