



**“Clean Energy On-the-Job Training”  
Program Opportunity Notice (PON) 2033  
\$200,000 Available  
Revised December 2015**

## **Summary of Revisions**

**The following changes have been made to PON 2033 Clean Energy On the Job Training:**

- Program Opportunity Notice (PON) 2033 has been extended until **February 29, 2016**

**Applications accepted on a continuous basis, as long as funds are available,  
until February 29, 2016, 5:00 PM Eastern Time**

### **Program Summary**

The New York State Energy Research and Development Authority (NYSERDA) is seeking proposals to advance the goals of the System Benefits Charge (SBC) Program by developing a workforce equipped to implement emerging and underutilized technologies including solar thermal, heat pump and biomass system design and installation. Effective January 1, 2015 the program focus is on new hires necessary to foster the use of these emerging and underutilized technologies. NYSEDA’s Workforce Development initiatives are designed to advance the skills of new workers, provide job-related experience, and connect new workers to employers.

NYSERDA is requesting applications from eligible businesses seeking incentives to hire and provide on-the-job training (OJT) for workers to advance the goals of the SBC. Applicants will be required to provide a 50 percent cost share as detailed below.

This Program Opportunity Notice (PON) will provide up to a total of up to \$200,000 to advance skills related to the specified clean energy technologies identified above.

PON 2033 application begins with the submission of a notice of “Intent to Apply” via e-mail to NYSEDA ([PON2033@nyserda.ny.gov](mailto:PON2033@nyserda.ny.gov)). Please see details within.

All program questions should be directed to: Rebecca Sterling Hughes (Designated Contact), (518) 862-1090, ext. 3618, [rebecca.hughes@nyserda.ny.gov](mailto:rebecca.hughes@nyserda.ny.gov). All contractual questions should be directed to: Elsyda Ahmed at (518) 862-1090, ext. 3232 or [elsyda.ahmed@nyserda.ny.gov](mailto:elsyda.ahmed@nyserda.ny.gov).

## **INTRODUCTION**

The New York State Energy Research and Development Authority (NYSERDA) is seeking proposals to advance the goals of the System Benefits Charge (SBC) Program by developing a workforce equipped to implement emerging and underutilized technologies including solar thermal, heat pump and biomass system design and installation. Effective January 1, 2015 the program focus is on new hires necessary to foster the use of these emerging and underutilized technologies. Additional technologies may be added in the future with notice in the New York Contract Reporter and also posted on NYSEDA's web site (<http://www.nyserda.ny.gov>). NYSEDA's Workforce Development program is designed to advance the skills of new workers, provide job-related experience, and help connect new workers to employers.

NYSERDA is requesting applications from eligible businesses seeking incentives to hire and provide on-the-job training (OJT) for workers to advance the goals of the SBC.

The goals of this solicitation include:

- Advancing the occupational skills of workers through OJT without undermining pay structures for skilled workers and the budget constraints of businesses;
- Increasing the numbers of skilled workers qualified to design and install identified clean energy technologies;
- Connecting trained workers to jobs in the labor market; and,
- Facilitating worker recruitment and hiring of entry-level workers by providing OJT incentives to employers.

Applications will be accepted on a continuous first-come, first-served basis until funds are expended. Applicants will be required to provide a 50 percent cost share and funding is capped at \$75,000 per business. The funding cap will begin with funds awarded after January 1, 2015 and will not include awards made under previous iterations of the solicitation.

## **PROGRAM DETAILS**

NYSERDA is working closely with the New York State Department of Labor (NYSDOL) to encourage businesses participating in SBC programs to hire new workers and provide OJT so that these workers can develop skills necessary for clean energy careers.

NYSDOL will assist employers who participate in this program with developing OJT plans, as well as assessing worker skills needed and identifying qualified individuals that match those skills. The goals of this PON are to advance the occupational skills of workers through OJT without undermining pay structures for skilled workers. This OJT program could be combined with additional opportunities for employers to receive assistance from NYSDOL.

For the purposes of this solicitation, OJT is defined as training provided by an eligible business (businesses are "Applicants") to an employee while the employee is engaged in productive work in a job.

**The primary purpose of OJT funding is to train new hires for entry-level work.**

### **New Hires**

Under this initiative, support will be provided to businesses that hire new workers for OJT. The maximum NYSEDA OJT award or wage subsidy for a newly hired employee is 50 percent of the

employee's wage for a maximum of 6 months, capped at \$10,000 per employee and up to \$75,000 total per business. Applicants will be required to provide a 50 percent cost share and OJT awards for multiple employees are allowed. For a new hire, an individual's skills are assessed (with the assistance of NYSDOL's Business Services Representatives, as described below) **prior to employment**, and the gap between their skills and those required to perform the full job duties is identified. Working with the NYSDOL, a training plan is developed to address this skills gap.

**The candidates for hire under this OJT program will be drawn from NYSDOL's population of individuals registered with the NYS Career Centers using advanced skills matching technology known as Skills Matching and Referral Technology (SMART).** OJT, for the purposes of this solicitation, must teach the trainee **technical** occupational skills (skills that apply to the specific technical job the trainee is entering, such as design or installation of solar hot water or biomass boiler systems or drilling geothermal wells). "Soft" skills, "worker readiness" skills, and "employability" skills are not allowable for OJT funded under this PON. OJT candidate job descriptions must be directly related to technical training for technologies including solar thermal, heat pump, or biomass.

**Marketing, sales, administrative and outreach positions are not allowable for funding.**

NYSERDA has funded a network of clean energy training providers across the state that offer a range of training in clean energy technology areas with reduced tuition costs. If OJT employees should require offsite training, NYSERDA recommends that employers consult the training map on NYSERDA's website for course offerings: <http://www.nyserda.ny.gov/Contractors/Find-a-Contractor/Training-Partners.aspx>.

## **ELIGIBILITY**

To be eligible to apply for funding, Applicants must be a business (public or private, for-profit or not-for-profit) that has a current Partnership Agreement or contract agreement with NYSERDA, (for example, Home Performance Program Contractors, FlexTech contractors, Multifamily Performance Program Partners, EmPower Contractors, Solar Thermal or Biomass Installers, Clean Energy Training Partners, etc.), or a business (public or private, for-profit or not-for-profit) that has a current contract or an agreement with a New York investor-owned utility that is participating in an Energy Efficiency Portfolio Standard program, and whose partnership/contract status is in good standing.

All Applicants must meet these additional basic requirements:

1. Businesses must be located in SBC territory to participate. The Applicant must have at least one physical business location in New York State (NYS) at the time of application.
2. The Applicant must be conducting OJT at a NYS job location and must be able to demonstrate that the OJT is related to the SBC program goals and objectives.
3. The Applicant must not have failed to meet or complete deliverables under prior NYSERDA contracts or NYSDOL grants.
4. The Applicant must provide all information requested in the Application Process outlined in this PON, have clearly set objectives for the use of funds, and demonstrate how the OJT supports the ratepayer funded program.

5. The Applicant who enters into an OJT agreement must attest to compliance with all applicable labor laws, and also that it has not failed to file any applicable local, state or federal tax returns, and has not failed to pay New York State Unemployment Insurance. The NYSDOL will conduct a due diligence search to confirm this information.
6. The candidate being hired under the incentive must reside in New York State.

For businesses participating in EEPS programs managed by the state's investor owned utilities:

7. A letter from the utility company stating that the contractor participates in their program and is in good standing.
8. A letter of attestation from the accrediting body that the contractor has a current third party accreditation which could include, but is not limited to, Building Performance Institute (BPI) accreditation for energy efficiency, NABCEP for PV Company Accreditation, etc.
9. Copy of the company's W9 form (required to create a vendor ID number)

#### **FUNDING**

Up to \$200,000 is available to advance worker skills through OJT by facilitating worker recruitment and hiring of entry-level workers.

The maximum NYSERDA OJT award amount for a newly hired employee is 50 percent of the OJT worker's wage for a maximum of \$10,000 per employee and up to \$75,000 per business. OJT awards for multiple employees are allowed and there is no minimum award amount per Applicant. The maximum duration of an OJT award is six months for each trainee.

Applicants may apply for funding more than once in order to add OJT positions. An additional award will be made subject to funding availability on a first-come, first-served basis. The term "Applicant" includes any and all entities of which the Applicant has a 10% or more interest in ownership or control. Applicants with multiple branches, locations and/or related companies under separate names with unique Federal Employer Identification Numbers (FEINs) may be considered a single applicant at the sole discretion of NYSERDA. National or chain accounts are considered a single "Applicant" and subject to the maximum incentive per Applicant. The funding cap will begin with funds awarded after January 1, 2015 and will not include awards made under previous iterations of the solicitation.

Businesses must be located in SBC territory to participate. Eligible occupations include solar thermal, heat pump, and biomass system designers and installation and maintenance technicians. Additionally, individuals who manufacture solar thermal, heat pump, or biomass systems or components are eligible as hires under this program.

Contract payment to Applicants will be on a reimbursable basis (i.e., the employee must be paid full wages before the Applicant requests an allowable reimbursement payment from NYSERDA). The Applicant must submit requests for reimbursement of wages that have been paid in accordance with the approved contract budget.

**Please note:** If funding becomes limited, if interest is limited as evidenced by lack of response to this PON, or if there is no longer a valid need for the services, the program will be suspended with notice in the New York Contract Reporter and also posted on NYSERDA's web site (<http://www.nyserda.ny.gov>). Those applications that are received after the suspension date will not be given funding consideration.

### **Application and Evaluation Process**

PON 2033 application begins with the submission of an "Intent to Apply" via e-mail to NYSERDA and then requires the submission of a detailed application which will be prepared with assistance from a NYSDOL Business Services Representative. **The resulting OJT contract will be between NYSERDA and the Applicant.**

To submit an "Intent to Apply" under this solicitation, the Applicant must send an e-mail to [PON2033@nyserda.ny.gov](mailto:PON2033@nyserda.ny.gov). Please write "**PON 2033 Intent to Apply**" in the subject line and include the following information in the body of the e-mail:

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- Applicant name
  - Address
  - Federal Employer Identification Numbers (FEIN)
  - Existing NYSERDA partnership agreement or contract; **OR**
  - **For businesses participating in EEPS programs managed by the state's investor owned utilities:**
    - **A letter from the utility company stating that the contractor participates in their program and is in good standing.**
    - **A letter of attestation from an accrediting body that the contractor has a current third party accreditation which could include, but is not limited to, Building Performance Institute (BPI) accreditation for energy efficiency, NABCEP for PV Company Accreditation, etc.**
  - Contact Person:
    - Name;
    - Title;
    - Phone Number;
    - E-mail Address.
  - Title and salary range for each anticipated new position.
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1. **Preliminary Evaluation by NYSERDA** – Upon receipt of the "Intent to Apply" email, the Applicant will be screened by NYSERDA to ensure that the Applicant has a current Partnership Agreement or contract agreement with NYSERDA or an investor owned utility participating in EEPS and is in good standing.

“Intent to Apply” e-mails will be accepted on a continuous basis until all funds for this initiative have been obligated or until February 29, 2016. Application reviews and award decisions will be made on an ongoing basis until all funds available for this initiative have been fully obligated, or the deadline date of February 29, 2016 has been reached, whichever comes first. Unsuccessful applicants will be notified of their application’s status along with reasons for the decision.

2. **Contact and Evaluation by NYSDOL** – For Applicants who meet eligibility criteria or resolve unmet eligibility criteria, NYSERDA will forward the “Intent to Apply” information to NYSDOL for further processing. The Applicant will then be contacted by a NYSDOL Business Services Representative. **The NYSDOL Business Services Representative will work with the Applicant on recruitment, skills assessment and the application process, described below.**
3. **The Responsibility Questionnaire** (Attachment A) and Application for Certification form will be provided to the Applicant for completion.
4. **Identify List of Candidates** – The Business Services Representative will identify a list of candidates to meet each Applicant’s hiring needs. **The candidates will be drawn from NYSDOL’s population of jobseekers registered with NYS Career Center System using advanced skills matching technology (SMART).** The Business Services Representative will share the list of candidates with the Applicant, schedule an in-person meeting with the Applicant to discuss desired candidates to be interviewed, and review the interview schedule. The meeting will also include an assessment of the potential OJT needs of the candidates, and applicable benefits available to the business through Work Opportunity Tax Credits and other available hiring benefits. Funds cannot be used to hire employees working under an H1-B visa. **Family members of Applicants are not eligible for this program.**
5. **Interviewing and Identification of Desired Candidates** – Applicants will conduct interviews and determine the candidate(s) they are interested in hiring.
6. **Application Development** – The Business Services Representative will work closely with the Applicant to develop OJT applications for desired candidate(s). **The application is not completed until a candidate is chosen for hire.**
  - a. Applicants will work with NYSDOL to design and describe an OJT program to teach workers the technical skills needed to perform solar thermal, heat pump, or biomass work effectively.
  - b. The final application will require original signatures on all documents (copies will be made by the Business Services Representative). Electronic signatures are not accepted.
7. **Application Review and Contract Development** – Once the application is complete, the application is reviewed and approved by NYSDOL and then submitted to NYSERDA for final review.
  - If approved, an award letter will be issued and a contract between the Applicant and NYSERDA will be sent for review and signature. The approved application will be used as the basis for the contract.

- If not approved, the Applicant will receive a letter of explanation. OJT applicants will be referred to the Business Services Representative for additional assistance.
8. **Hiring of Desired Candidate** – The desired candidate may begin his or her employment at any time after the date of the award letter from NYSERDA is issued to the business. The Applicant must submit reimbursement requests to NYSERDA for any wage reimbursements per the terms of the contract.
  9. **Documentation of OJT Activity**- Applicants must provide documentation of OJT activities within the first four (4) weeks of executing a contract. NYSERDA reserves the right, in its sole discretion, to terminate any agreement with an entity that does not meet this obligation, in accordance with Section 12.02 of the attached Sample Agreement.
  10. **Follow-up and Monitoring** – The Contractor will be required to sign a document that acknowledges that on-site fiscal and programmatic monitoring of contract activities will take place at regular intervals during the course of the contract. Requested records must be made available to Department of Labor or NYSERDA representatives during these monitoring visits.

#### Requirements and Assurances

1. The Applicant must have the legal authority to hire employees and conduct business in New York State.
2. The OJT must occur at a physical business location in New York State. The maximum duration of OJT is six months.
3. The OJT must be for a full-time job opportunity (defined as 35 hours or more per week).
4. **Wage calculations to determine OJT reimbursement may not include payment for holiday or overtime hours worked.**
5. The hires must be employees of the Applicant, and not independent contractors or contract employees.
6. The hires must be residents of New York State.
7. The Applicant may not apply for positions based on the addition of commission or tips to a sub-minimum wage base salary.
8. The Applicant receiving OJT funds must be in good standing regarding: the Responsibility Questionnaire (Attachment A); Unemployment Insurance records; WARN notices<sup>1</sup>; ongoing investigations with NYSDOL's Public Works, Labor Standards and/or Safety and Health Divisions; registration with the NYS Department of State's Division of Corporations; Workers Compensation Insurance and Disability Insurance coverage; federal OSHA records; and contracts/agreements from NYSDOL and NYSERDA received during the past three years.

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<sup>1</sup> Information on WARN notices can be found here:  
<http://www.labor.ny.gov/workforcenypartners/warn/warnportal.shtm>.

The Applicant must be willing to assure the following:

1. The intention in participating is for the newly hired employee to remain employed with the business upon completion of the OJT.
2. OJT will take place during the employee's work hours (i.e., during the shift/hours for which the worker was hired), and the employee will be compensated at no less than their normal rate of pay.
3. No currently employed worker shall be displaced by the OJT employee, including a partial displacement such as a reduction in the hours, wages, or employment benefits.
4. If the Applicant agrees to abide by a set of community benefit standards under an Aggregation Participation Agreement associated with GJGNY, employees must be paid at least the amount outlined under the standard.
5. The business will comply with New York State labor law and federal law for the protection of workers.

### **REPORTING**

If an Applicant is awarded a contract, it becomes the "Contractor." The Contractor must agree to the following terms and conditions regarding OJT expenses:

- a) The Contractor must maintain a copy of all applications/OJT Outlines applicable to this contract for a minimum duration of the period of employment, and must make the agreements/training plans available to NYSERDA upon request.
- b) The Contractor must keep records of the trainee's progress according to the application/OJT Outline, and must make these records available upon request.
- c) The Contractor must acknowledge that failure to maintain the required OJT records will result in disallowance of those costs.

The Contractor also must acknowledge that on site fiscal and programmatic monitoring of contract activities will take place at regular intervals during the course of the contract by either NYSERDA or NYSDOL staff. Requested records must be made available to representatives during these monitoring visits.

### **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 Applicant 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 except 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 <http://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx..> However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

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

Empire State Development  
Division For Small Business  
625 Broadway  
Albany, NY 12207

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

Empire State Development  
Minority and Women's Business Development Division  
625 Broadway  
Albany, NY 12207

**State Finance Law sections 139-j and 139-k** - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain new procurement lobbying requirements which can be found at <http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html> The attached Proposal Checklist calls for a signature certifying that the Applicant 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 Applicant has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

**Tax Law Section 5-a** - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a perspective contractor prior to contacting and filed with NYSERDA. See, ST-220-CA (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)). The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

**Contract Award** - NYSERDA anticipates making multiple awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals.

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

**Disclosure Requirement** - The Applicant 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 an Applicant 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. Applicant s must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

## **ATTACHMENTS**

Attachment A: Responsibility Questionnaire

Attachment B: Sample Agreement

Attachment C: Clean Energy Skills, Training, and Career Steps

## Responsibility Questionnaire

**Instructions** – Please answer all questions. A "Yes" answer to any part of questions 1-5 requires a written explanation to be prepared on company letterhead and signed by an officer of the company, and to be attached to the completed questionnaire.

1. Within the past five years, has your firm, any affiliate<sup>1</sup>, any principal, owner or officer or major stockholder (10% or more shares) or any person involved in the bidding or contracting process been the subject of any of the following:
  - a. a judgment or conviction for any business-related conduct constituting a crime under local, state or federal law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, or bid collusion or any crime related to truthfulness and/or business conduct?  
 Yes    No
  - b. A criminal investigation or indictment for any business-related conduct constituting a crime under local, state or federal law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, or bid collusion or any crime related to truthfulness and/or business conduct?  
 Yes    No
  - c. An unsatisfied judgment, injunction or lien obtained by a government agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any local, state or federal government agency?  
 Yes    No
  - d. An investigation for a civil violation for any business related conduct by any local, state or federal agency?  
 Yes    No
  - e. A grant of immunity for any business-related conduct constituting a crime under local, state or federal law including, but not limited to fraud, extortion, bribery, racketeering, price-fixing, or bid collusion or any crime related to truthfulness and/or business conduct?  
 Yes    No
  - f. A local, state or federal suspension, debarment or termination from the contracting process?  
 Yes    No

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<sup>1</sup> "Affiliate" meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

- g. A local, state or federal contract suspension or termination for cause prior to the completion of the term of a contract?  
 Yes  No
- h. A local, state or federal denial of a lease or contract award for non-responsibility?  
 Yes  No
- i. An agreement to voluntary exclusion from bidding/contracting?  
 Yes  No
- j. An administrative proceeding or civil action seeking specific performance or restitution in connection with any local, state or federal contract or lease?  
 Yes  No
- k. A local, state or federal determination of a willful violation of any prevailing wage law or a violation of any other labor law or regulation?  
 Yes  No
- l. A sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license?  
 Yes  No
- m. A denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status?  
 Yes  No
- n. A rejection of a low bid on a local, state or federal contract for failure to meet statutory affirmative action or MWBE requirements on a previously held contract?  
 Yes  No
- o. A consent order with the New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local government laws?  
 Yes  No
- p. An Occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful?  
 Yes  No
- q. A rejection of a bid on a New York contract or lease for failure to comply with the MacBride Fair Employment Principles?  
 Yes  No

r. A citation, notice, violation order, pending administrative hearing or proceeding or determination for violations of:

- federal, state or local health laws, rules or regulations
- unemployment insurance or workers' compensation coverage or claim requirements
- ERISA (Employee Requirement Income Security Act)
- federal, state or local human rights laws
- federal or state security laws
- federal INS and Alienage laws
- Sherman Act or other federal anti-trust laws?

Yes  No

s. A finding of non-responsibility by an agency or authority due to the failure to comply with the requirements of Tax Law Section 5-a?

Yes  No

2. Has the vendor been the subject of agency complaints or reports of contract deviation received within the past two years for contract performance issues arising out of a contract with any federal, state or local agency? If yes, provide details regarding the agency complaints or reports of contract deviation received for contract performance issues.

Yes  No

3. Does the vendor use, or has it used in the past five (5) years, an Employee Identification No., Social Security No., Name, DBA, trade name or abbreviation different from that listed on your mailing list application form? If yes, provide the name(s), FEIN(s) and d/b/a(s) and the address for each such company and d/b/a on a separate piece of paper and attach to this response.

Yes  No

4. During the past three years, has the vendor failed to file returns or pay any applicable local, state or federal government taxes?

Yes  No

If yes, identify the taxing jurisdiction, type of tax, liability year(s) and tax liability amount the company failed to file/pay and the current status of the liability:

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5. During the past three years, has the vendor failed to file returns or pay New York State Unemployment Insurance?

Yes  No

If yes, indicate the years the company failed to file/pay the insurance and the current status of the liability:

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6. Have any bankruptcy proceedings been initiated by or against the vendor or its affiliates within the past seven years (whether or not closed) or is any bankruptcy proceeding pending by or against the vendor or its affiliates, regardless of the date of filing?

Yes  No

If yes, indicate if this is applicable to the submitting vendor or one of its affiliates:

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If it is an affiliate, include the affiliate's name and FEIN:

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Provide the court name, address and docket number:

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Indicate if the proceedings have been initiated, remain pending or have been closed:

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If closed, provide the date closed: \_\_\_\_\_

7. Is anyone in your company or your firm, any affiliate, any principal, owner or officer or major stockholder (10% or more shares) or any person involved in the bidding or contracting process, presently collecting Unemployment Insurance, or have they recently been recipients of Unemployment Insurance? If yes, please provide details below, including the name(s) of the individual(s), the period for which they have received UI, etc..

**CERTIFICATION:**

The undersigned: recognizes that this questionnaire is submitted for the express purpose of assisting the State of New York or its agencies or political subdivisions to make a determination regarding the award of a contract or approval of a subcontract; acknowledges that the State or its agencies and political subdivisions may in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a

misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 USC Section 1001 and may result in contract termination; and states that the information submitted in this questionnaire and any attached pages is true, accurate and complete.

The undersigned certifies that he/she:

- Has not altered the content of the questions in the questionnaire in any manner;
- Has read and understands all of the items contained in the questionnaire and any pages attached by the submitting vendor;
- Has supplied full and complete responses to each item therein to the best of his/her knowledge, information and belief;
- Is knowledgeable about the submitting vendor's business and operations;
- Understands that New York State will rely on the information supplied in this questionnaire when entering into a contract with the vendor; and
- Is under a duty to notify the procuring State Agency of any material changes to the vendor's responses herein prior to the State Comptroller's approval of the contract.

_____ Name of Business	_____ Signature of Officer
_____ Address	_____ Typed Copy of Signature
_____ City, State, Zip	_____ Title

Principal place of business if different from address listed above (include complete address):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attachment B:  
Sample Agreement

Date

Contractor  
Address  
City, State, Zip

Subject: Agreement No. XXXXX

The New York State Energy Research and Development Authority (NYSERDA) is pleased to offer assistance to you as a participant in the Clean Energy On-the-Job Training Program. Based upon our review and approval of your application, we have reserved funds to provide an incentive award in the amount of \$XXXX to \_\_\_\_\_, ("Contractor") for employment and training in accordance with Exhibit A.

The wage subsidy incentive shall be paid for reimbursement of wages as described herein at a rate of 50% and is subject to demonstrated cost-share by the Contractor of 50%. NYSERDA will not reimburse employment beyond six months.

The incentive shall be paid upon receipt and approval of invoices for deliverables as defined in Exhibit A, Statement of Work of this Agreement and is subject to the limitations contained in the attachments to this Agreement. Such invoices shall provide documentation of evidence that costs have been incurred and are consistent with the costs described herein. Payment shall be made to the Contractor in accordance with the terms of Exhibit C, Prompt Payment Policy Statement, attached hereto.

No later than 30 days after this contract is executed, Contractor must provide documentation of deliverables achieved. In the event Contractor does not meet this obligation, NYSERDA reserves the right, in its sole discretion, to terminate this Agreement pursuant to the terms set forth in Exhibit B of this Agreement.

The Contract established by this Agreement is governed by Exhibits A, B, and C, all of which are incorporated herein and made a part hereof.

If you have any questions or concerns regarding this project, please contact Rebecca Sterling at 518-862-1090, ext. 3618. Please send Invoices to: NYS Energy Research and Development Authority, 17 Columbia Circle, Albany, NY 12203-6399, Attention: Accounts Payable or e-mail invoices to: [invoices@nysesda.ny.gov](mailto:invoices@nysesda.ny.gov).

TOTAL COST NOT TO EXCEED: \$XXXXX

By: \_\_\_\_\_  
Jeffrey J. Pitkin, Treasurer

Exhibit A, Statement of Work  
[to be completed in collaboration with NYS DOL]

EXHIBIT B

REVISED 5/12

STANDARD TERMS AND CONDITIONS  
FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts and Tax Law Section 5-a)

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

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

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

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

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

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

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information "confidential" or "proprietary" at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA's policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.state.ny.us/coog/foil2.html>) and NYSERDA's Regulations, Part 501 (<http://www.nyserda.ny.gov/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 maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by Contractor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

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

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

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

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

12. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

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

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

15. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development  
Division for Small Business  
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 Act of 1992 requires that by signing this Agreement, Contractors certify that whenever the total amount is greater than \$1 million:

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

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

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

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

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

Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

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

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

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

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

NYSEDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of [section 165-a of the State Finance Law](#) (See [www.ogs.ny.gov/about/regs/ida.asp](http://www.ogs.ny.gov/about/regs/ida.asp)).

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

(a) **Compensation.** In no event shall the total cost to NYSEDA for the deliverables under this Agreement exceed the amount indicated on page one of the Agreement. The Contractor may submit invoices not more frequently than monthly for reimbursement of costs as further described in Exhibit A, Statement of Work, and NYSEDA will pay the amount of such invoices in accordance with and subject to its Prompt Payment Policy Statement, a copy of which is attached hereto as Exhibit C. The Contractor shall be notified by NYSEDA in accordance with Section 504.4 (b)(2) of such Exhibit C, of any information or documentation not included with such invoice. Furthermore, NYSEDA shall have no liability under this Agreement to the Contractor or to anyone else beyond funds available to NYSEDA for the purposes of this Agreement.

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

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

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

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

(f) Insurance

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

- (a) name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;
- (b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (c) be reasonably satisfactory to NYSERDA in all other respects.

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

- (a) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster.
- (b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

(iii) Delivery of Policies; Insurance Certificates. Prior to commencing work on the project, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by this Article and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA.

In the event any policy furnished or carried pursuant to this Article will expire on a date prior to payment by NYSERDA pursuant to Section 3.1 of Exhibit A, Statement of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

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

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

(i) Suspension or Termination for Non-Responsibility.

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

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

(j) Assignment. 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

(k) 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 NYSEERDA's 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 NYSEERDA, Contractor and/or Contractor's personnel by virtue of any act or omission on the part of NYSEERDA or its employees. Accordingly, Contractor expressly covenants and agrees to notify NYSEERDA 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 NYSEERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSEERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

(l) Compliance with Applicable Laws. The Contractor shall comply with all applicable Federal, State and local laws and regulations, including, without limitation, the provisions set forth in this Exhibit B. Further, it is the intent and understanding of the parties hereto 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. Accordingly, every such provision is deemed to 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 NYSEERDA 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. The references to particular laws of the State of New York in this paragraph, in this Exhibit B and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such paragraph, Exhibit and Agreement shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

(m) Publicity.

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

(ii) The Contractor shall not use NYSEERDA's corporate name, logo, identity, any affiliation, or the service mark **New York Energy \$mart**®, and any related logo, without NYSEERDA's prior written consent.

(n) Notices.

(i) 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:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

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 (iii) below:

**NYSERDA**

Name: Cheryl M. Glanton

Title: Director of Contract Management

Address: 17 Columbia Circle, Albany, New York 12203

Facsimile Number: 518-862-1091

E-Mail Address: Cheryl.Glanton@nyserda.ny.gov

**Contractor**

Name:

Title:

Address:

Facsimile Number:

E-Mail Address:

(ii) 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.

(iii) 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.

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

## EXHIBIT 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.<sup>1</sup>

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

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

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

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

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

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

(e) "Payment Due Date" means the date by which the Date of Payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

(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

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

(b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.

(ii) if the Agreement provides that a Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

(2) For purposes of this subdivision, if the Agreement requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Contractor has invoiced NYSERDA for the portion working, completed or delivered, NYSERDA will not be in Receipt of an Invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

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

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

**504.4. Payment Procedures.**

(a) Unless otherwise specified in this Agreement, a Proper Invoice submitted by the Contractor to the Designated Payment Office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the Designated Payment Office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.

(b) NYSERDA shall notify the Contractor within fifteen (15) calendar days after Receipt of an Invoice of:

- (1) any defects in the delivered goods, property or services;
- (2) any defects in the invoice; or
- (3) suspected improprieties of any kind.

(c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.

(d) If NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Contractor. If NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the Payment Due Date shall be calculated using the original date of Receipt of an Invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSERDA shall make Payment, consistent with any such correction or

resolution and the provisions of this Exhibit.

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

(a) If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSERDA on a timely basis, then the Payment Due Date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to NYSERDA and the date when NYSERDA has actually received such matter.

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

(d) If appropriated funds from which Payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to NYSERDA, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when such funds are made available to NYSERDA.

**504.6. Interest Eligibility and Computation.** If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Contractor on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). Interest shall be computed and accrue at the daily rate in effect on the Date of Payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a Payment shall be computed for the period beginning on the day after the Payment Due Date and ending on the Date of Payment.

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

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

**504.9. Notice of Objection.** Contractor may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Exhibit B to this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed thirty (30) working days.

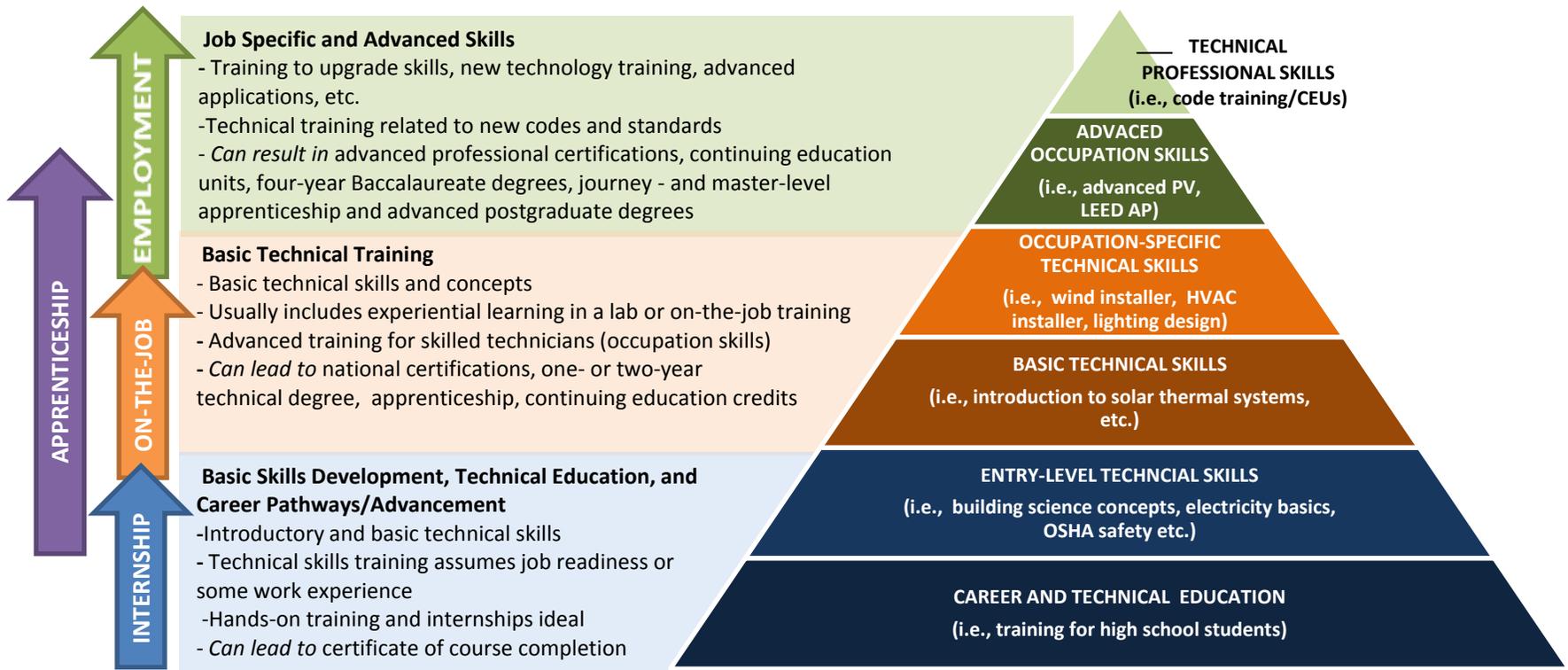
**504.10. Judicial Review.** Any determination made by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

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

(a) Notwithstanding any other law to the contrary, the liability of NYSERDA to make an interest payment to a Contractor pursuant to this Exhibit shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by NYSERDA after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

# Attachment C: CLEAN ENERGY SKILLS, TRAINING, & CAREER STEPS



- INTERNSHIP** → Internships are defined as paid, supervised, work experience or job shadowing. The purpose of the internship is to provide the participant with hands-on experience, determine their interest in a clean energy career, and create a network of contacts.
- ON-THE-JOB** → On-the-job training (OJT) is defined as full time, permanent, employment where the individual acquires knowledge, skills, and competencies related to defined job tasks through mentorship from a senior staff member
- APPRENTICESHIP** → Apprenticeship programs are conducted by employers, jointly by employers and unions, or by groups of employers. The New York State Department of Labor registers apprenticeship programs, working with forward-looking businesses across the state to develop the skilled workforce of the future.
- EMPLOYMENT** → Clean energy jobs (energy efficiency, renewable energy and advanced technologies) can be found in the public, private, and nonprofit sectors and can range from entry-level to professional positions in a wide range of fields.