



**OUTSIDE COUNSEL SERVICES  
Request for Proposals (RFP) 3300**

Proposals Due: Wednesday July 27, 2016 by 5:00 PM Eastern Time\*

The New York State Energy Research and Development Authority (“NYSERDA”) invites proposals from law firms interested in providing outside legal services related to a wide array of legal issues, including: commercial real estate matters associated with the Saratoga Technology + Energy Park (STEP); Green Jobs Green New York On-Bill recovery program; energy regulatory matters; human resources matters; program and transactional related financing issues; environmental issues (including New York’s State Environmental Quality Review Act (SEQRA) and the National Environmental Policy Act (NEPA)); legal and regulatory compliance; intellectual property; federal and state taxation; litigation, whether NYSEDA is a party or third party; government procurement and contracting; insurance, and all matters related to NYSEDA’s ownership of the Western New York Nuclear Service Center at West Valley. The firm or firms selected will be expected to act as outside counsel for NYSEDA for an initial three-year contract period with two (2) 1-year options to renew at NYSEDA’s sole discretion. NYSEDA reserves the right to add additional time and funding. It is anticipated that the initial contract period will begin on or about September 1, 2016.

**Proposal Submission:** All proposals must be received by NYSEDA by 5 pm on July 27, 2016. Electronic submission is preferable. NYSEDA will also accept proposals by mail or hand-delivery as set forth below. 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 NYSEDA’s website (<http://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>). Instructions for submitting electronically are located in that section as Attachment D 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:

**Venice Forbes, RFP 3300  
NYS Energy Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399**

If you have technical questions concerning this solicitation, contact Laura Rowe, Esq. at (518) 862-1090, ext. 3610 or [Laura.Rowe@nyserda.ny.gov](mailto:Laura.Rowe@nyserda.ny.gov). If Laura is not available, you may also contact Peter Keane, Esq. at (518) 862-1090 ext. 3366 or [Pete.Keane@nyserda.ny.gov](mailto:Pete.Keane@nyserda.ny.gov). If you have contractual questions concerning this solicitation, contact Elsyda Ahmed at (518) 862-1090, ext. 3232 or [Elsyda.Ahmed@nyserda.ny.gov](mailto:Elsyda.Ahmed@nyserda.ny.gov).

No communication intended to influence this procurement is permitted except by contacting the above identified Designated Contacts. Contacting anyone other than these Designated Contacts (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

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

## **I. Introduction**

NYSERDA is a public benefit corporation of the State of New York created and operating under the provisions of Public Authorities Law, §§1850 *et. seq.* (the "New York State Energy Research and Development Authority Act" or "Act"). NYSERDA offers objective information and analysis; innovative programs, including energy efficiency, renewable energy, and energy research and development; technical expertise; and funding to help New Yorkers increase energy efficiency, save money, use renewable energy, and reduce reliance on fossil fuels. In addition, it is responsible for managing radioactive wastes and facilities at the Western New York Nuclear Service Center in West Valley, New York; managing certain premises and facilities in Malta, New York, known as the Saratoga Technology + Energy Park (STEP); and reducing costs of public utility and other energy facilities through tax-exempt or taxable non-recourse revenue bond financing.

## **II. Issues**

Additional background information on NYSERDA, including by-laws, is available on the NYSERDA website at [www.nyserda.ny.gov](http://www.nyserda.ny.gov).

## **III. Scope of Services**

NYSERDA requests proposals from law firms interested in providing outside legal services related to a wide array of legal issues, including: commercial real estate matters associated with the Saratoga Technology + Energy Park (STEP); Green Jobs Green New York On-Bill recovery program; energy regulatory matters; human resources matters; program and transactional related financing issues; environmental issues (including SEQRA and NEPA); legal and regulatory compliance; intellectual property; federal and state taxation; litigation, whether NYSERDA is a party or third party; government procurement and contracting; insurance, and all matters related to NYSERDA's ownership of the Western New York Nuclear Service Center at West Valley. With regards to commercial real estate matters related to STEP, NYSERDA will require the services of a firm local to the Albany New York region.

The firm or firms selected will be expected to act as outside counsel for NYSERDA for an initial three-year contract period with two (2) 1-year options to renew at NYSERDA's sole discretion. It is anticipated that initial contract periods will begin on or about September 1, 2016. NYSERDA reserves the right to add additional time and funding to the firm or firms selected.

Such services would be expected to include, but need not be limited to:

- (a) Negotiating, preparing, reviewing, and delivering any documents related to bilateral or multilateral agreements between NYSERDA and third parties, including but not limited to commercial lease agreements, participation agreements, memoranda of understanding, or other agreements.

- (b) Rendering an objective opinion with respect to matters of law that arise in the administration of NYSERDA's programs.
- (c) Preparing, reviewing, or advising NYSERDA with regard to resolutions, notices, and other documents or procedures required in connection with State and local laws and procedures.
- (d) Drafting, analyzing, advising, or commenting on federal and state legislation, regulations and rules, NYSERDA guidelines, and other matters.
- (e) Participating in meetings with NYSERDA counsel and staff, NYSERDA's Members (board of directors) and other parties, as necessary or appropriate.
- (f) Analysis of relevant federal and State environmental and other laws as they pertain to the decommissioning activities at the Western New York Nuclear Service Center at West Valley.
- (g) Providing any other legal services, advice, or opinions relating to NYSERDA's programs and administration, as requested.

#### **IV. Proposal Requirements**

1. Completed proposals must be either electronically submitted (see Attachment D), or proposers must mail or hand-deliver (2) paper copies of their proposal along with a CD or DVD containing both a PDF or MS Word digital copy of the proposal to the attention of Venice Forbes at the address on the front of this RFP. A completed and signed Proposal Checklist (Attachment A) must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals will be returned, and proposals lacking the appropriate completed and signed Proposal Checklist and Disclosure of Prior Findings of Nonresponsibility Form (Attachment B) may be returned.** Faxed or e-mailed copies will not be accepted.
2. **Procurement Lobbying Requirements - State Finance Law sections 139-j and 139-k**  
Procurement lobbying requirements contained in State Finance Law sections 139-j and 139-k became effective on January 1, 2006. (The text of the laws is available at: <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>) In compliance with §139-j and §139-k of the State Finance Law, for proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of \$15,000, additional forms must be completed and filed with proposals: (1) a signed copy of the Proposal Checklist including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form. Failure to include a signed copy of the Proposal Checklist referenced in this solicitation will disqualify your proposal.
3. **Format.** 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.

Proposals must be submitted in two parts. Part I must consist of responses to the qualifications items (Section 4. Description of Qualifications, below). Part II must consist of complete contract cost and pricing information (Section 5. Cost, below) and the proposed retainer agreement (Section 6. Agreement, below). Each part must be complete, so that it can be evaluated independently.

#### 4. **Description of Qualifications.**

Proposers should:

- a) Describe the law firms experience in general representation of public entities, including New York State public benefit corporations or public authorities.
- b) Describe any subjects related to the legal services requested in which you feel your law firm has special expertise and the nature of that special expertise.
- c) Provide a brief description of services you expect to provide to NYSERDA. Indicate whether your firm is prepared to render the services enumerated in this RFP using its own resources or whether some services will be subcontracted. The description should emphasize particular services
- d) Be available to accommodate the legal needs of NYSERDA. Proposers must demonstrate that primary and reasonably qualified backup and support attorneys are available as needed, and that the proposer has staff capabilities to perform the work on a timely basis. Proposers must be supported by a firm with sufficient professional/support staff to adequately provide the required services.
- e) Provide the names of the partners, associates, and paralegals who would be assigned to NYSERDA's account and their experience in performing services similar to the services requested in this RFP. Include resumes for all employees proposed to be involved on this account. Include a description of each employee's function in the firm, title, office address, and number of years of service with the firm and other relevant past experience. Describe the percentage of the firm's time commitment to this account that each person would be anticipated to provide. Describe the availability of the lead person(s) for consultation with NYSERDA, including but not limited to his or her ability to meet with NYSERDA staff in Albany, New York. (Resumes may be included as an appendix.)
- f) Discuss fully any conflicts of interest, actual or perceived, that might arise in connection with your firm's involvement with NYSERDA. If conflicts do or might exist, describe how your firm would resolve them. State whether your firm represents any New York State energy public utility, public authority, or any independent power producer. If so,

state the name of each such client and the nature of your representation.

- g) Identify any litigation or administrative proceedings to which you are a party and which would either materially impair your ability to perform the services enumerated herein and for which this RFP was issued or, if decided in an adverse manner, materially adversely affect the financial condition of your firm.
- h) Identify the employees discussed in (e) that have been the subject of any investigation or disciplinary action by the New York State Ethics Commission, the Commission on Public Integrity, the Temporary State Commission on Lobbying, or the State. Describe briefly how any matter was resolved or whether it remains unresolved. Proposers must certify that attorneys working on this account have never been reprimanded, censured, or suspended by the Supreme Court for ethics violations.
- i) Indicate the address of the office through which NYSERDA's account will be primarily serviced, and any anticipated travel or other such costs.
- j) Provide any other information you believe would make your law firm's representation of NYSERDA superior to other firms' representation.
- k) Provide an explanation of any changes the Proposers would request to the Attachment C - Sample Letter Agreement
- l) Provide three client references, including name, address, e-mail and telephone number.
- m) 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.
- n) If the Proposer is not a certified Service-Disabled Veteran-Owned Business (SDVOB), describe your experience in subcontracting with such businesses. Explain your methodology for attracting and subcontracting with certified SDVOB businesses, and how you intend to meet NYSERDA's SDVOB goals.
- o) Furnish information on the number and percentages of minorities and women among the partners and other attorneys of the firm, as well as para-professional and support staff; a copy of the firm's affirmative action or equal opportunity plan or other commitment to affirmative action and equal employment opportunity or its status as a minority or women-owned business; and an explanation of how your firm, if selected, would help NYSERDA further its policy of promoting participation of minorities and women in the provision of services to it.

5. **Cost.**

- a) State the rates at which the services of assigned personnel would be provided to NYSERDA beginning in fiscal year 2016-2017 *i.e.* Date of Award to March 31 2017 and

for NYSERDA fiscal years 2017-18; 2018-19; 2019-20; 2020-21 (April 1 through March 30), and how services would be billed. Increases, if any, for those years may be stated in terms of percentages above the rates for the fiscal year ending March 31, 2017. Include:

- i) For each person whose resume is provided in response to 4(e) above, your normal hourly rate and the hourly rate you propose to charge NYSERDA.
  - ii) For each applicable category of support staff or other assigned staff, the normal hourly rate and the hourly rate you propose to charge NYSERDA, if billed separately.
  - iii) Any reduced rates or fees charged other State or local governments in New York for these types of services (including blended rates).
  - iv) A statement of the basis on which any other firm expenses related to services provided to NYSERDA would be billed, if other than cost.
  - v) A statement of any special considerations with respect to billing or payment of fees and expenses that your firm offers and that you believe would differentiate you from other proposers and make your firm's services more cost effective for NYSERDA.
  - vi) A statement whether you would be willing to agree to caps on fees on an issue by issue basis.
6. **Agreement.** Proposers should provide the retainer agreement their firm proposed to use if selected by NYSERDA under this RFP. The awarded proposer's retainer agreement will serve as the basis for negotiations between the parties and, when finalized, will be included as Exhibit A to the final agreement (see Sample Letter Agreement, attached hereto as Attachment C).

## **V. Proposal Evaluation and Selection Process**

1. **Proposal Evaluation.** Proposals meeting the RFP requirements will be evaluated using the following Evaluation Criteria.
  - a) Experience in general representation of public entities, including New York State public benefit corporations or public authorities (15 points)
  - b) Quality and depth of the firm's expertise and its prior capability in providing service in the areas identified in the Scope of Services Section. For those firms who have worked in any capacity with NYSERDA, the quality of work on those transactions will be considered. (30 points)
  - c) Anticipated cost of services and willingness to work with NYSERDA to minimize cost. (25 points)
  - d) Commitment of time and resources to this account, and amenability to, and facility for,

working with NYSERDA attorneys and staff in various capacities. (15 points)

- e) Information provided by client references (5 points)
- f) Overall organization and quality of proposal, including cohesiveness, conciseness, and clarity of response. (5 points)
- g) The proposer is a NYS-certified minority-owned or women-owned business. (5 points)

2. **Selection Process.** A Scoring Committee, comprised of internal NYSERDA staff will review and evaluate proposals. Top-ranked firms may also be invited to make oral presentations to the Scoring Committee or other NYSERDA staff as part of the final selection process

## VI. GENERAL CONDITIONS

**Proprietary Information** - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause 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 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:

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

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

A directory of certified service-disabled veteran-owned business enterprises is available from:

<http://www.ogs.ny.gov/Core/SDVOBA.asp>

New York State Office of General Services  
Division of Service-Disabled Veterans' Business Development

**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 E.

**New York Executive Law Article 17-B** – NYSERDA is required under the 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 F.

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

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

**Tax Law Section 5-a** - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. *See*, ST-220-TD (available at

[http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSERDA. *See*, ST-220-CA (available at [http://www.tax.ny.gov/pdf/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 one or more awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Letter Agreement (Attachment C) to contract successful proposals. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Letter Agreement to those specifically identified in the submitted proposal (see Attachment A - Proposal Checklist). Proposers should keep in mind that acceptance of all standard terms and conditions will generally result in a more expedited contracting process. NYSERDA expects to notify proposers in approximately 8 weeks from the proposal due date whether your proposal has been selected to receive an award. NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

NYSERDA also reserves the right to correct any arithmetic errors, to accept or reject any of the firm's employees assigned to provide services on this project and to require their replacement at any time, and to reject any proposal containing false or misleading statements or that provides references that do not support an attribute or a condition claimed by the proposer.

**Limitation** - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest. NYSERDA reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Letter Agreement.

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

## **VII. Attachments**

Attachment A: Proposal Checklist

Attachment B: Disclosure of Prior Findings of Non- Responsibility

Attachment C: Sample Letter Agreement

Attachment D: Electronic Proposal Submission Instructions

Attachment E: Article 15-A (MWBE) Provisions

Attachment F: Article 17-B (SDVOB) Provisions





**ATTACHMENT A  
PROPOSAL CHECKLIST (MANDATORY)**

PON/RFP No. \_\_\_\_\_

Proposal Title		Due Date	
<b>Primary Contact</b> (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
<input type="checkbox"/> By checking this box I certify that the TIN number submitted is <b>not</b> a social security number. If your tax id number is your social security number please leave information blank and contact NYSERDA.			<b>Federal Tax Identification Number:</b>
Address	City	State or Province	Zip
<b>Secondary Contact</b>		Title	
Company		Phone	Fax
		e-mail	
Address	City	State or Province	Zip
<b>THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:</b>			
Do you accept all Terms & Conditions in the Sample Agreement? (If no, explain on separate page) <b>(NYSERDA may or may not accept any of the listed exceptions; NYSERDA reserves the right to limit any negotiations to exceptions specifically identified herein.)</b>			
			___ 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 subcontractor?			
			___ Yes ___ No
Are you a certified Service-Disabled Veteran-Owned Business Enterprise?			
			___ Yes ___ No
Does your proposal contain certified Service-Disabled Veteran-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
<b>ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?</b>			
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 _____	
<b>AUTHORIZED SIGNATURE &amp; CERTIFICATION</b>			
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  
(Mandatory)**

Name of Individual or Entity seeking to enter the procurement contract:		
Address:		
Date:		
Solicitation or Agreement Number:		
Name and Title of Person Submitting this Form:		
Has any Governmental Entity made a finding of non-responsibility regarding the Individual or Entity seeking to enter the Procurement Contract in the last four years?		Yes
		No
Was the basis for the finding of non-responsibility due to a violation of §139-j of the State Finance Law?		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?		Yes
		No
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility:		
Government Agency or Authority:		
Date of Finding of Non-responsibility:		



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?		Yes
		No

If you answered yes, please provide details:

Government Agency or Authority:

Date of Termination or Withholding of Contract:

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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

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

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

**AGREEMENT**

1. Agreement Number:
2. Contractor:
3. Project Director:
4. Effective Date:
5. Project Period:

This Agreement consists of this form plus the following documents:

- Exhibit A, Retainer Agreement
- Exhibit B, Standard Terms and Conditions; and
- Exhibit C, Prompt Payment Policy Statement.

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 \_\_\_\_\_

|

EXHIBIT A

RETAINER AGREEMENT

## EXHIBIT B

REVISED 5/12

### STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

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

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

to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

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

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

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

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information "confidential" or "proprietary" at the time of disclosure. By so marking such information,

Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA's policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.state.ny.us/coog/foil2.html>) and NYSERDA's Regulations, Part 501 (<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.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, NYSERDA may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

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

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

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

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

## EXHIBIT C

### NYSERDA PROMPT PAYMENT POLICY STATEMENT

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

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

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

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

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

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

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

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

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

---

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

(g)(1) “Receipt of an Invoice” means:

(i) if the Payment is one for which an invoice is required, the later of:

(a) the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or

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

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

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

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

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

**504.4. Payment Procedures.**

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

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

(1) any defects in the delivered goods, property or services;

(2) any defects in the invoice; or

(3) suspected improprieties of any kind.

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

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

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

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

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

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

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date

when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

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

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

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

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

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

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

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

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

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

## **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](mailto: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](mailto:rdv@nyserda.ny.gov) or 518-862-1090 ext. 3418 and the Program contact listed in the solicitation.

**ATTACHMENT E (1-6)**  
**ATTACHMENT 1**  
**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 NYSERDA 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.

## **Attachment F (7-10)**

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

#### **Attachment 7**

##### **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](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](mailto: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 9. Contract is required to report on **actual** participation by each SDVOB during the term of the contract to NYSERDA on a quarterly basis according to NYSERDA’s policies and procedures.

##### **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 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 8**

**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](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 (SDVOB Control # \_\_\_\_\_)  Non-SDVOB

If Prime Contractor is not a Certified SDVOB, proceed to Section II.

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.

**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 9  
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**

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: \_\_\_\_\_

**Article 17-B (SDVOB) Provisions for Solicitation Documents (non-construction)**  
**Attachment 10**  
**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

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: \_\_\_\_\_

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.