



Community Solar NY
Program Opportunity Notice (PON) 3011

Round 3 of Community Solar NY, which is meant for projects launching in spring 2017, will be open for application through 5pm on November 3, 2016*

PROGRAM SUMMARY

NYSERDA invites local governments, school districts, and other community partners to participate in Community Solar NY, an effort to make solar easier and more affordable through community-driven initiatives. In 2017, NYSERDA will be supporting community solar projects known as “Solarize” campaigns. These are short term (approximately 6-9 months, including planning and outreach) local efforts to bring together groups of potential solar customers through widespread outreach and education in order to help customers choose a solar installation company that is offering competitive, transparent pricing. NYSERDA will provide marketing materials and technical assistance for qualifying projects, as well as funding for campaign expenses.

Please visit the Community Solar NY website for additional information and resources: ny-sun.ny.gov/solarize

CONTACT INFORMATION

For questions, please contact program staff at communitysolar@nyserra.ny.gov.

APPLICATION SUBMISSION

Applications are accepted online at ny-sun.ny.gov/solarize.

*Late, incomplete, or inaccurate applications will not be accepted. Faxed or mailed applications will not be accepted. If changes are made to this solicitation, notification will be posted on NYSERDA’s website at www.nyserra.ny.gov.

I. Overview

NYSERDA invites local governments, school districts, and other community partners to participate in Community Solar NY, an effort to make solar easier and more affordable through community-driven initiatives.

In 2017, NYSERDA will be supporting community solar projects known as “Solarize” campaigns. These are short term (approximately 6-9 months, including planning and outreach) local efforts to bring together groups of potential solar customers through widespread outreach and education to help these customers choose a solar installation company that is offering competitive, transparent pricing. Community-driven Solarize campaigns around the state and country have resulted in thousands of new solar installations and significant cost reductions and environmental benefits.

Bringing together multiple solar customers within a community provides opportunities for the solar installer(s) to realize economies of scale, and ultimately cost savings for the customer. By educating the local community, streamlining marketing efforts, and aggregating sales, Solarize campaigns help make solar a more accessible and affordable energy option.

II. Schedule

Round 3 of Community Solar NY, which is meant for projects launching in spring 2017, will be open through November 3, 2016. Applications will be accepted at any time up to then, and will be reviewed as they are received.

III. How we support your community initiative

NYSERDA will provide marketing materials and technical assistance for qualifying projects, as well as funding for campaign expenses. This support is available to all eligible applicants that meet program qualifications and commit to program requirements. Participating campaigns will be recognized on the NY-Sun website and in state and local media releases.

Funding

- NYSERDA will provide up to \$5,000 in funding for campaign expenses. Projects within a region may, with NYSERDA approval, pool some or all of their funding for shared expenses.
- Funding through this program may not be used for the direct costs of solar installations, but participating building owners remain eligible for all NY-Sun solar incentives.

Materials and Technical Assistance

- NYSERDA will provide participating campaigns with templates for print and online marketing materials, templates for media communications, and customer education materials.
- Technical guidance and document templates for the installer selection process.
- Regular calls and webinars with Solarize campaigns statewide.
- Other assistance as deemed necessary by NYSERDA.

IV. Eligibility

New York State local governments, school districts, and nonprofit community organizations are eligible to participate:

- One entity must be designated the lead organization, with an individual designated as Project Manager. The lead organization is responsible for completing this application, contracting with NYSERDA, and completing all deliverables.
- Applicants must clearly state the potential impact the campaign will have on the community and how the proposed initiative will positively affect the market.
- A demonstrated partnership with the local jurisdiction is required.
- In order to be eligible, projects must not be redundant with other NYSERDA-funded projects or activities.

V. Qualifications

In order to qualify for participation in Community Solar NY, communities must demonstrate through the application:

- A clear commitment and ability to conduct community-wide education and outreach around solar energy.
- Local support and interest in a Solarize campaign.
- Engagement, capacity, and preparation by the applicant and partners.
- Commitment of local jurisdiction to streamlining planning and permitting for solar.
- Ability to achieve campaign goals for new solar installations and cost reductions in the community and geography served.
- Commitment to follow all program rules and requirements.

VI. Next steps

- Sign up for program updates at ny-sun.ny.gov/solarize.
- Visit the Community Solar NY website for further information and resources at ny-sun.ny.gov/solarize
- Review the Community Solar NY Community Agreement sample at ny-sun.ny.gov/solarize
- Apply by downloading the Community Solar NY application at ny-sun.ny.gov/solarize and submit it to communitysolar@nyserda.ny.gov .

VII. Contact information

For program questions, please email communitysolar@nyserda.ny.gov .

VIII. General Conditions

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

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

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

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

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

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

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

Contract Award - NYSERDA anticipates making multiple awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA expects to notify applicants in approximately 4 weeks from the receipt of an application whether your application has been selected to receive an award.

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

Disclosure Requirement - The proposer shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When a proposer is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSERDA after the award of a contract, NYSERDA may exercise its stop-work right pending further investigation, or

terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the particular circumstances. Proposers must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

IX. Attachments:

Attachment A: Sample Application

Attachment B: Sample Agreement

Attachment: A

SOLARIZE APPLICATION

Community Solar NY



For Community Solar NY: Solarize campaigns launching in spring 2017

This completed application must be submitted to communitysolar@nyserda.ny.gov prior to 5pm on November 3, 2016 to be considered for funding.

Prior to submitting an application, applicants must the, [Implementing Your Solarize Campaign](#) webinar located on the [NY-Sun page](#).

Applicants should also review all Solarize materials at ny-sun.ny.gov/solarize.

Part 1: Project Overview, Primary Contact, and Lead Organization

What is the name of proposed project ("Solarize XYZ" or other name)?

What community/communities will be served, and who are the intended participants?

Specify the geographic area that your campaign will cover, and if you are focusing your efforts on a certain group of potential solar customers. Depending on the location, the geographic area could be a single town or village, or an entire county. The intended participants could be area residents, small businesses, and/or other group of customers. Campaigns that include low-and-moderate income community members are strongly encouraged. Also note if your community is interested in incorporating a shared solar option.

Who is the project manager for your campaign?

This person will serve as the primary contact for the application process and be the liaison between NYSERDA and the core team for the duration of the Solarize campaign. All communication between NYSERDA and the campaign will go through this individual. This person can be a volunteer, official, or staff member of the local government or lead organization. The project manager may not have financial relationships with solar companies that may apply to participate in the campaign. The project manager should expect to make a significant time commitment to the campaign.

First Name:

Last Name:

Email:

Phone Number:

Title/Position:

Who is the lead organization for the campaign?

The lead organization must be a local government, school district, or nonprofit organization (Partnerships are strongly encouraged—see Part 2). The lead organization is the direct recipient of the \$5,000 grant, is expected to comply with NYSERDA’s terms and conditions within the [Community Agreement](#) and is responsible for contracting with NYSERDA and coordinating among the other partners.

Name of Lead Organization:

Mailing Address:

The Lead Organization is a:

Part 2: Partners and Core Team

Are you working with a regional organization and/or group of other communities?

If so, please describe.

Email communitysolar@nyserda.ny.gov to check if a regional group is currently supporting campaigns in your area. Projects that are already being supported with NYSERDA funding may be ineligible for the \$5,000 award.

Provide the names of all members of your Core Team.

The Core Team may consist of volunteers from the community, officials, and/or staff members of the local government, or other partners. Include each Core Team member’s role along with any specialty i.e., marketing, social media, specific software such as MS Excel, community outreach, etc. Common roles within the Core Team are described in the [Community Solar NY Guidebook](#). Core Team members may not have financial relationships with solar companies that may apply to participate in the campaign. Core Team members should expect to make a significant time commitment to the campaign.

List all local partner organizations, and describe the role each organization will play in the Solarize campaign.

*Local partners may be community groups, local businesses, local governments, school districts, or other organization. These partners should contribute to the overall success of the Solarize campaign by engaging their constituents, supplying expertise, or providing other support. **It is required that the local government(s) be either the lead entity or a partner.** Include detail letters of commitment from each partner in the submission email describing their level of assistance (PDF or Word). A template letter of commitment can be found at ny-sun.ny.gov/solarize under Outreach Materials.*

Part 3: Community Profile and Preparation

Describe the community served by the proposed Solarize campaign.

Include population, number of owner-occupied residences, and current number of solar electric and solar thermal installations (see [Open Data NY](#) and [PowerClerk](#) for information). Include any information that would be relevant to the scheduling of a seasonal Solarize campaign. For example, is your community a seasonal destination, college town, mainly renters, or have other characteristics that will impact the Solarize campaign? The proposed area served should not exceed a population of 100,000 people.

Detail the local policies for solar installations in all the jurisdictions that will be served by the campaign.

Outline the permitting process for solar electric projects in all communities participating in Solarize. Identify submittals required for an application, to which departments (or individuals) the application must be sent, the approval process, and any associated fees. Identify whether the jurisdictions served by the campaign have adopted the [NYS Unified Solar Permit](#) or have another expedited process in place? Identify whether the jurisdictions served by the campaign have maintained the [solar property tax exemption](#). Potential sources of information include The local building inspector (or equivalent official) and <http://www.cuny.edu/about/resources/sustainability/nyssolar/NYSolarSmartPermitWorkshops.html>

Describe any existing sustainability initiatives in your community.

Is your community a [NY Climate Smart Communities](#)? Have local representatives attended [NY-Sun PV Trainers Network](#) workshops? Are local schools participating in [K-Solar](#)? Are there any ongoing [NY-Prize](#) projects in your area?

Have you been in contact with a former Solarize campaign, and/or do you have plans to coordinate with another proposed campaign?

Organizers of Solarize campaigns are encouraged to reach out to others in their region to share ideas and lessons learned.

Describe the level of community interest in a Solarize campaign, and community goals for the campaign.

Have conducted a survey, held planning meetings, or done other preliminary outreach to gauge community interest? Describe the level of response, and the priorities and/or goals identified.

Part 4: Campaign Goals, Installer RFP, and Preliminary Marketing and Outreach Plan.

Applicants must also attach in the submission email a draft of your campaign’s request for proposals (RFP). Visit ny-sun.ny.gov/solarize to find the RFP template.

State your preliminary Campaign Goals by filling in the following table:

Preliminary Campaign Goals

Number of Installations	
Total of kWh Installed	

Provide a detailed marketing and outreach plan for your Solarize campaign by filling in the following tables. Describe potential outreach activities, venues, and partnerships, as well as the campaign’s timeline. Examples are provided in the tables; they are not requirements. Fill in the preliminary budget table to estimate project expenses.

Solarize [Name of Community] Outreach Plan

Fill out the Outreach Plan to the best of your ability. This plan will help Community Solar NY understand your campaign’s preparedness for a Solarize campaign. Dates may be projections that are subject to change.

RFP for Solarize Installers Released	02/_/17
RFP Questions Due	03/_/17
RFP Question Responses Released	04/_/17
RFP for Solarize Installers: Proposals Due	04/_/17
Interviews with Installers	04/_/17

Installer(s) selected	4_/_/17
Solarize Launch Event	Week of 5_/_/17
Solarize Public Outreach & Education Events	_/_/17 - _/_/17
Participant Sign-Up Deadline	_/_/17
Participant Contracting Deadline	_/_/17
Solar Installations	_/_/17

Solarize [Name of Community] Community Outreach Planning Form

Dates of Campaign: month/day/2017 – month/day/2017

Solarize Events – Residential (Look at community calendars; workshops at libraries, lunch & learns, upcoming community events, etc. and list campaign events)

Completed? (X)	Event and Venue (List events)	Date/Time	Result (number of attendees)	Notes	Assign roles
0	Launch Event; community library	8/16/15; 7:00pm	75	50 requests for quotes	Nancy – reserve venue; Richard – send out press release; Bill – send email invitation; Betty- print event posters and hand out; Doug – get refreshments
	Apple festival; Smith Orchard	9/15/15; 2:00pm			Betty – bring handouts and sign up sheets; Doug – organize volunteers; Nancy – bring chairs and table

Solarize Events – Commercial (Lunch & Learns at employers, Green Building Associations or business energy events, Technology councils or Chamber of Commerce)

Completed? (X)	Event and Venue (List events)	Date/Time	Result (# of attendees)	Notes	Assign roles
<i>X</i>	<i>Lunch & Learn; FedEx office</i>	<i>8/31/15; 2:00pm</i>	<i>15</i>		<i>Nancy – print brochures; Bill – confirm with installer</i>
	<i>Chamber of Commerce</i>	<i>10/15/15</i>			

Partner Organization Outreach (Who are partner organizations that will spread your message? Environmental clubs and organizations, faith communities, Boys/Girls Scouts, Rotary Clubs, schools, etc.)

Name	Date	Item	Who/Contact Info	Social Media Addresses
<i>Sierra Club</i>	<i>Throughout campaign</i>	<i>Email database and social media</i>	<i>Ben Smith; bsmith@google.com</i>	<i>www.facebook.com/sierraclubny</i>

E-Newsletters (Does your municipality have a newsletter or a partner organization, homeowners associations, etc.?)

Name	Date	Item	Who	Completed?

Local Media (Consider print, radio, online publications and social media; identify local reporters (business section, neighborhood/community interest, and, home and garden, and environmental writers to talk to.)

Outlet	Date	Story	Who	Completed?

Websites (Whose websites will host information about your campaign or events?)

Name	Date	Item	Who	Completed?
<i>Solar Installer ABC</i>		<i>Webpage</i>	<i>Stan Johnson</i>	<i>X</i>

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Social Media Tracking (When and where were social media posted?)

Site	Dates	Who/What Posted	Completed?
<i>Campaign Facebook page</i>	<i>8/12/15</i>	<i>Betty/launch event</i>	<i>X</i>

Flyers/Banners / Mailings (Where were flyers posted or mailings sent?)

What	Where Placed	When	Who is Responsible?

Estimated Budget for Campaign Marketing and Outreach

Expense	Estimated Cost \$

Attachment B

Contract ID: xxxx

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

Community Solar NY Community Agreement *2017 Solarize Campaign*

The undersigned, an authorized representative of the community project team (the "Project Team"), agrees to all terms and conditions outlined in this agreement and the Community Solar NY Program requirements. This Agreement includes Exhibits A (Final Application) B (Standard Terms and Conditions for All NYSERDA Agreements) and C (Prompt Payment Policy Statement).

This Project has been determined to be eligible for an award of \$ 5,000. That amount will be paid in full upon the selection of a solar installer(s), along with a scheduled public launch of the project.

1. *Community Solar NY Program- Solarize Campaign*

The Project Team agrees to undertake a local "Solarize" community purchasing campaign (the "Solarize campaign") in order to drive community adoption of PV projects. Solar customers engaged by the Solarize campaign will be served by a solar installer or installers (the "Installer(s)") selected through a competitive process in accordance with the program requirements.

2. *Marketing and Media*

- a) NYSERDA will provide the Project Team with marketing materials (the "Materials") and related in-kind services. The Materials will be specific to Community Solar NY and will assist the Project Team with its education, outreach and marketing efforts in order to increase attendance at local education events and participation in the Solarize campaign.
- b) NYSERDA will cooperate with the Project Team in "naming" the campaign, and in the use by the Project Team of the term "Solarize."
- c) The Project Team will request approval from NYSERDA for all marketing materials developed by the Project Team that reference NYSERDA, NY-Sun, or Community Solar NY in advance of distribution. The Project Team agrees to include any NYSERDA or Installer(s) logos deemed necessary by NYSERDA on any materials used in the Solarize campaign.
- d) The Project Team will notify NYSERDA in advance and collaborate with NYSERDA on any press releases, events, or news conference concerning the Solarize campaign. All media produced by the Project Team is subject to NYSERDA approval. In any media produced by the Project Team, the Project Team will not represent that positions taken or advanced by it represent the opinion or position of NYSERDA.

3. *Project Team Commitment and Deliverables*

The Project Team agrees that it shall:

- b) Cooperate and collaborate with NYSERDA, communicating with NYSERDA through the designated Project Lead.
- c) Cooperate and collaborate with the selected Installer(s) and all public entities, civic groups, and volunteers that are participating in community outreach, engagement, and education.
- d) Cooperate with NYSERDA in finalizing the “name” of the Solarize campaign and the use of the term “Solarize.”
- e) Provide a detailed outreach plan and budget for the duration of campaign.

Installer Selection

Select the Installer(s) through a competitive process using program templates and guidelines, or that is otherwise reviewed and approved by NYSERDA.

Community Marketing

- a) Undertake an intensive multi-week community marketing campaign utilizing the provided materials and working with a wide range of partners and outreach methods.
- b) Organize community education events dedicated to the Solarize campaign with participation by the Installer.

Participant Sign-up and Tracking

- a) Register interested solar customers through the campaign website or other approved method, and transmit customer contact information and site characteristics to Installer. Record method of participant engagement.
- b) Coordinate with Installer(s) to track customer progress through the solar assessment and contracting process.

Reporting and Sharing

- a) Provide NYSERDA with summary reports of program activities and customer sign-ups and progress through the solar process.
- b) Provide feedback at the end of the campaign to assist NYSERDA in the analysis of different outreach strategies.
- c) Participate in NYSERDA program marketing, such as videos, case studies, and regional events.

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

SUPPLIER NAME

By _____

Name _____

Title _____

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By _____

Cheryl M. Glanton

Director of Contract Management

EXHIBIT A

REVISED 5/12

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

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

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

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

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

5. SET-OFF RIGHTS. NYSERDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSERDA's option to withhold for the purposes of set-off any moneys due to the Contractor under this Agreement up to any amounts

due and owing to NYSERDA with regard to this Agreement, any other Agreement, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to NYSERDA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

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

7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY

NUMBER. As a condition to NYSERDA's obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by Contractor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

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

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

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

11. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify

NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5884
<http://www.esd.ny.gov>

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
625 Broadway
Albany, New York 12207
Telephone: 518-292-5200
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

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

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

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

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

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

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

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

EXHIBIT B

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.¹

(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

¹ This is only a summary; the full text of Part 504 can be accessed at:

<http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>

IV, Exhibit B of this Agreement.

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

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

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

(g)(1) “Receipt of an Invoice” means:

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

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

(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.