



Solar Electric (Photovoltaic) Awning and Technology Transfer

Request for Proposals No. 849

PROPOSALS DUE: November 2, 2004 5:00 PM EST*

The New York State Energy Research and Development Authority (NYSERDA) is requesting proposals for the design and installation of an innovative, attractive, solar electric or photovoltaic (PV) awning **for the front of the NYSEERDA building at 17 Columbia Circle in Albany, NY.** It is anticipated that either: 1) one contractor or one proposing team may be selected under this Request for Proposals (RFP) to design and install a PV awning system and conduct outreach and education activities, or 2) one contractor or proposing team may be selected to design and install the PV awning system and a second proposer may be selected to implement education and outreach activities. The PV awning will serve to reduce the cooling load in the front lobby during peak hours while generating electricity for the building. The PV awning may be attached to the building, integrated into the building facade, or free standing. This project is designed to result in a very visible demonstration of an innovative application of PV that can be replicated across the State.

The PV system will be designed so that the inverter(s) can be easily replaced, or an inverter added, as a means of demonstrating new inverters being developed through other NYSEERDA research and development projects, as appropriate. The system will also include a data acquisition system and interactive data display system for the building lobby. The project will also include other technology transfer and education elements that complement many ongoing outreach and training projects in the Energy Resources Program (www.PowerNaturally.org).

PROPOSAL SUBMISSION

Ten (10) copies of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature, are due on November 2, 2004. Proposals must be clearly labeled and sent to:

Karen Whalen, PON No. 849
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, New York, 12203-6399

QUESTIONS?

All **PROGRAM** questions: Adele Ferranti at (518)862-1090, ext. 3206, or afl@nyserda.org
All **CONTRACTUAL** questions: Diane Vogel at (518)862-1090, ext. 3299, or drv@nyserda.org

*Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned. Faxed or e-mailed proposals will not be accepted. Proposals will not be accepted at any other NYSEERDA location other than the address specified above. If changes are made to this solicitation, notification will be posted on NYSEERDA's web site.

I. INTRODUCTION

A. BACKGROUND INFORMATION

The New York State Energy Research and Development Authority (NYSERDA) is a public-benefit corporation established by the State Legislature in 1975 to address the State's energy and environmental challenges. NYSERDA's principal mission is to develop innovative solutions to some of the State's most difficult energy and environmental problems.

NYSERDA administers the **New York Energy SmartSM** program, which is designed to support certain public-benefit programs during the transition to a more competitive electricity market. Some 2,700 projects in 40 programs are funded by a charge on the electricity transmitted and distributed by the State's investor-owned utilities. The **New York Energy SmartSM** program provides energy efficiency services, including those directed at the low-income sector, research and development, and environmental protection activities.

The NYSERDA building is an office building with two floors and a basement, totaling approximately 66,000 gross square feet. NYSERDA owns and solely occupies the building. The building is seven years old and is classified as C1. The building is located in the Niagara Mohawk Power Corporation service territory. The utility service category is SC3- General Large Electric Service. Total energy annual costs (electric and gas) are \$108,800 for the building. Average annual electric costs per kWh for the building are \$0.14. The building uses three phase power which ranges from 25 kW to 240 kW. The building has a Uninterruptible Power Supply (UPS) and a backup generator that can serve the entire building load. Photos of the building are available at (site address to be added).

Proposers interested in submitting a proposal to design and install the PV awning system **must** conduct a site tour (available by appointment only) prior to submitting a proposal. To schedule a site tour for RFP 849, send an e-mail to PowerNaturally@nyserda.org. Plan on completing a site tour at least three weeks before the proposal due date. Several dates will be made available for site tours.

Executive Order No. 111

New York State Executive Order No. 111, "Green and Clean" State Buildings and Vehicles was signed by Governor George E. Pataki on June 10, 2001. Executive Order No. 111 makes renewable power procurement a priority for all State agencies, departments and other affected State entities, which includes more than 400,000,000 square feet of space. Executive Order No. 111 requires State entities to procure at least 10% of their electric power needs from renewable resources by State Fiscal Year (FY) 2005/06. This requirement increases to 20% of their electric power needs by FY 2010/11. Additionally, Executive Order No. 111 has requirements for: green buildings, overall energy reductions, peak-load reduction, alternate-fuel vehicle requirements, and purchasing standards. State entities can meet the renewable energy requirement with on-site generation, open market procurement, or a combination of the two strategies. The list of eligible resources includes: wind, solar thermal, photovoltaics (PV), sustainably managed biomass, tidal, geothermal, methane waste and fuel cells.

In FY 2001/02, affected State entities reported renewable energy purchases of 375,000 kWh. By FY 2005/06, renewable energy purchases are expected to reach 250,000,000 kWh.

Renewable Portfolio Standard

The New York State Public Service Commission initiated Case 03-E-0188-Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard (RPS), to develop design features and approaches for implementing a renewable portfolio standard for electric energy sold at retail in New York State. The RPS is being designed to ensure that, within the next 10 years, at least 25% of the energy purchased in the State is derived from renewable energy sources. The RPS is also being designed to minimize the adverse impacts of an RPS on energy costs and to enhance the reliability of the State's electric system.

B. GOALS OF THIS RFP

NYSERDA has taken a leading role in facilitating the State's efforts related to implementing Executive Order No. 111 and the State's Renewable Portfolio Standards. NYSERDA has implemented many measures at its 17 Columbia Circle offices to reduce the building's energy demand. This project will showcase a PV awning that will serve to shade the building's front lobby, reduce the heat gain experienced in the front lobby during peak hours, and generate electricity for use on-site. As a result, NYSERDA's energy consumption and energy purchases will be reduced. The project will also serve to educate building owners across the State about an innovative design option for PV.

Specific program objectives are:

- Provide shade and reduce heat gain in the lobby of the NYSERDA building.
- Generate electricity that meets the Governor's Executive Order No. 111 renewable energy requirements.
- Familiarize building architects, developers, owners, and tenants, PV installers, and inspectors with an innovative PV system.
- Demonstrate a high quality, innovative, effective and replicable PV system.
- Demonstrate reliable long-term performance of PV systems on buildings.
- Gain and document the experience, benefits, and costs of installing and operating PV systems on buildings.
- Demonstrate new inverter technologies developed under NYSERDA's R&D program.
- Showcase the NYSERDA PV awning/system through events such as an open house, a case study, an informational, interactive kiosk in the building that shows real time system performance data, and information on NYSERDA's web site.

II. PROGRAM DESCRIPTION

A. PROJECT SCOPE AND TIMING

- The PV awning should be installed, operational, and grid connected by July 1, 2005.
- While it is anticipated that the PV awning will be in the 2-4 kW range (direct current or DC at standard test conditions), the size and cost of the PV system will be determined based on a proposed system design that optimizes performance (both in terms of providing shade and generating electricity), reliability, replicability, and aesthetic features, while minimizing costs.
- The proposed system must include a comprehensive data acquisition system, combined with an interactive computer-based kiosk in the building lobby. System performance may also be featured on NYSERDA's web site.

- Proposers must submit cost proposals for both a 5-year and a 10-year system maintenance and service agreement.
- The proposal must include provisions for design and installation commissioning by an independent third party. Any applicable Leadership in Energy and Environmental Design (LEED) points available for this project must be identified.
- The project will also include a comprehensive outreach, education, and technology transfer component. Proposers may submit a proposal for just the education, outreach, and technology transfer components of the project.
- The system will be designed to demonstrate compatible, new inverter technologies developed by NYSERDA under its R&D program.
- Proposers are also invited to submit concepts for innovative PV technologies that can be prominently featured on NYSERDA's property to complement the PV awning or increase awareness of PV as part of the projects technology transfer component.

B. PROGRAM REQUIREMENTS AND PREFERENCES

- Successful proposing teams (one proposer may be selected for just the design and installation and another proposer may be selected for education and outreach) will be responsible for all aspects of installing and operating the PV system including, design, permitting, installation, interconnection, monitoring, maintenance, service, education and outreach.
- All systems and system components funded under this program must comply with all applicable laws, regulations, codes, licensing and permit requirements, including but not limited to, the New York State Building Code or the New York State Energy Conservation and Construction Code, the National Electric Code, New York State's Standard Interconnection Requirements (<http://www.dps.ny.us/fileroom/doc7024.pdf>) and all applicable local ordinances and codes. UL Listed (or equivalent) inverters are required. If the PV modules are not UL Listed (or equivalent), proposers must demonstrate that the modules are in the process of gaining UL certification, or pursue UL certification as part of this project. System components shall not be installed until all applicable laws, regulations, codes, licensing and permit requirements have been met and documentation provided to NYSERDA.
- In order to ensure that the PV system installed under this program are high quality and meet all applicable codes and requirements, NYSERDA reserves the right to review and approve final system designs and components prior to authorizing payments for equipment deliveries, and to hold back payments if the completed system does not pass a NYSERDA inspection.
- Proposals should include:
 - an effective means to evaluate system performance through a data acquisition system, and
 - cost proposals for both a 5-year and a 10-year maintenance and service agreement.
- An operations and maintenance manual must be developed for the PV system installed.
- The PV systems must be covered by a 5-year **full** warranty. The warranty must cover all components of the generating system against breakdown or degradation in electrical output of more than ten percent from their original rated ac electrical output. PV modules should be covered by a minimum 20-year warranty. The warranty shall cover the full costs, including labor, or repair or replacement of defective components or systems. The five year warranty shall also cover any water leaks resulting from the installation of the PV system.

- All installation contractors must carry (1) a minimum of \$1,000,000 general liability insurance coverage, and (2) commercial automobile liability insurance in respect of motor vehicles owned, licensed or hired by the Contractor and the Subcontractors with minimum limits of \$500,000 in respect of claims arising out of personal injury, or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$500,000 in respect of claims arising out of property damage in any one accident or disaster. NYSERDA and New York State must be named as additional insureds.
- Preference will be given to proposals that are replicable and incorporate effective strategies to maximize the potential replication of future PV installations on commercial buildings.
- Preference will be given to proposing teams that can complete all aspects of the project (i.e., design, installation, outreach, and education)
- Preference will be given to proposals where the PV system complements the building facade.
- Preference will be given to systems that incorporate components manufactured in New York State.

D. PROPOSER, TEAM, AND INSTALLER GUIDELINES

- Teaming arrangements are encouraged when necessary to meet project goals. Proposing teams being considered for the design and installation of the PV system must include an installer that is eligible to participate under NYSERDA PON 716 (see <http://www.nyserda.org/energyresources/installers.html>). Preference will be given to a proposer or team that has an installer that is certified by the North American Board of Certified Energy Practitioners or equivalent certification program.
- Proposers must demonstrate that they have the financial resources to perform the proposed work, appropriate technical expertise, access to adequate facilities or the ability to access them, a good performance record, and be qualified for an award under applicable laws and regulations.
- The proposer will be required, at its own expense, to comply with all applicable federal, State, and local laws and regulations, and to obtain from all appropriate government authorities all approvals for the completion of the project . The Proposer is responsible for making all filings and obtaining all approvals required for the installation and interconnection of the PV system.

III. PROPOSAL REQUIREMENTS

Ten (10) copies, [one (1) signed original and (9) nine copies] of your proposal along with the Proposal Checklist attached to the front of each copy (included at the end of this document) are required. Proposals should clearly state the service to be provided. All proposals submitted as part of the RFP No. 849 solicitation process become the property of NYSERDA. Proposers are discouraged from submitting proprietary or confidential information.

In compliance with Executive Order 127, for proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of \$15,000, an additional form (or forms) must be completed and filed with proposals: (1) a *Contractor's Designated Contact(s)* form (if applicable) and (2) all proposals **must** include a completed *Disclosure of Prior Findings of Non-Responsibility* form (for disclosing whether any New York State agency or authority has made a formal determination that the

proposer is non-responsible). See additional information under the General Conditions in Section VI and at the New York State Office of General Services web site at www.ogs.state.ny.us/legal/ExeOrder127/guidelines.asp.

Applicants will not be reimbursed by NYSERDA for any costs associated with the preparation of their proposals or the site visit prior to submitting the proposal. Proposals may be either single or double sided, but a page is considered one side of an 8-1/2" x 11" piece of paper. The font size shall not be smaller than 10 point.

To facilitate comparison of proposals, applicants must submit proposals in a format that corresponds to the following outline:

PON 843 Proposal Checklist

Executive Order 127 Disclosure Forms

Section 1: Abstract

Section 2: Education, Outreach Plan, and Replicability

Section 3: Site Descriptions and Designs

Section 4: Project Evaluation and Maintenance

Section 5: Proposing Team

Section 6: Statement of Work

Section 7: Schedule

Section 8: Project Budget and Terms

Section 9: Letters of Commitment

Section 10: Executive Order 127 Forms (if applicable); Indictment/Conviction of Felony (if applicable); Exceptions to Terms & Conditions (if applicable)

Proposal Checklist - Complete the Proposal Checklist, attached to this RFP 849, and include it as the front cover of each copy of the proposal. **Proposals lacking the appropriate completed and signed Proposal Checklist will be returned.** Note the following:

- Indicate whether you accept the Standard Terms and Conditions as contained in the attached Sample Agreement. If you do not accept the Standard Terms and Conditions, be prepared to provide alternate terms with justification based on the risk and benefit to NYSERDA and New York State.
- Be sure the individual signing the Checklist is authorized to commit the proposer's organization to the proposal as submitted.
- In compliance with Executive Order 127, for proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of \$15,000, an additional form (or forms) must be completed and filed with proposals: (1) a *Contractor's Designated Contact(s)* form (if applicable) and (2) all proposals **must** include a completed *Disclosure of Prior Findings of Non-Responsibility* form (for disclosing whether any New York State agency or authority has made a formal determination that the proposer is non-responsible). See additional information under the General Conditions in Section VI and at the New York State Office of General Services web site at www.ogs.state.ny.us/legal/ExeOrder127/guidelines.asp.

1.0 Abstract - (*suggested limit - 1 page*) Summarize the project. Include the proposed operational date of the PV system, PV capacity (dc and ac kilowatts), estimated yearly energy production, total PV system cost per DC kilowatt installed, and an overview of the education, outreach, and technology transfer plan.

2.0 Education, Outreach Plan, and Replicability -

2.1 Education and Outreach Plan - Describe your plan for education, public information and targeted marketing, including a discussion of your target audiences. At a minimum, the plan should include an on-site, interactive display or kiosk that is linked to the systems' data acquisition system and information for NYSERDA's web site that describes the systems and includes real-time performance data. Additional innovative initiatives to increase the deployment of similar systems across the State are encouraged.

2.2 Replicability - Discuss the potential for replication on commercial buildings in New York State and the potential impact of replicating the system on similar buildings.

3.0 PV System Design(s) - Provide the following for the proposed PV awning :

- Provide the DC rating (at Standard Test Conditions) and AC kW estimates (and all calculations).
- Provide a forecast of annual energy production for the system and indicate the methodology used to develop the forecast. Indicate whether the system(s) will be shaded (through a detailed shading analysis) and the extent that such shading would affect energy production. Show all calculations and results of the shading analysis. Provide orientation and tilt angle of the system proposed.
- Describe the complete PV system that will be installed and provide a one-line system diagram that includes the make, model, and relevant specifications of all components, whether components are UL listed, and IEEE compliant, a system wiring diagram that also includes all wire sizes, etc. Provide cut sheets for major system components. Include diagrams that clearly describe the physical systems and mounting techniques. Address any necessary structural considerations. **Address safety issues regarding the shedding of snow and ice from the awning.**
- Indicate whether the inverter(s) is type-tested or allowable under New York Department of Public Service Commission requirements (www.dps.state.ny.us/SIRDevices.PDF).
- Identify all permits, land-use approvals and environmental reviews that are required, and indicate your plan and timetable for obtaining all necessary permits.
- Indicate elements of the design that will facilitate the testing of new inverters.
- Provide complete details on system design and include sketches, drawings, or schematics that indicate the design and how it is incorporated into or complements the building. Address all building code and structural issues.
- Provide details on the ability of the PV awning system to withstand wind speeds of 90 miles per hour.
- Include a plan to quantify the reduction in heat gains in the front lobby of the building associated with the PV awning system.

4.0 Project Evaluation and Maintenance -

- Outline a PV system monitoring plan. Identify the variables that will be monitored and how and when the data will be collected.
- Describe a 5- and 10-year maintenance plan for the system. Indicate who is responsible for system maintenance. If someone other than the PV installer is responsible for maintenance, describe their expertise. Indicate maximum response times and down times and discuss your approach to maximizing system reliability and availability. Indicate how far maintenance personnel must travel to the site.
- Describe the system and component warranties. All PV systems must be covered by a 5-year full warranty as described above. PV modules must be covered by a 20-year warranty.

5.0 Proposing Team -

5.1 Organizational Chart - Prepare an organizational chart listing all team members and showing roles and responsibilities. Include the team leader and any project partners, subcontractors, outreach and education partners, and other sponsors involved in the project. There should be a single team leader who is responsible for managing all aspects of the project and ensuring project success. Indicate who the Eligible NYSERDA Installer is (under PON 716). Identify whether the installer is certified as a PV installer by the North American Board of Certified Energy Practitioners (NABCEP) or equivalent process.

5.2 Qualifications - State the proposing team's individual and combined expertise that would enable successful completion of this project. Submit résumés of all key project team members, including those of proposed subcontractors. Include education and experience that are relevant to the proposed work.

5.3 Previous PV Installation and Relevant Design Experience - Describe the proposing team's experience in designing and installing PV systems on commercial buildings or PV awnings or in renewable energy public education and outreach activities. List related projects (a minimum of three) that have been undertaken and successfully completed by the proposer and/or subcontractors. List experience interconnecting PV systems in New York State. For each project, provide a brief project summary and the name and phone number of a client contact. NYSERDA reserves the right to contact anyone so listed. List any past projects funded by NYSERDA and provide a brief description of the status of each project.

6.0 Statement of Work - A sample Statement of Work outline is included in Attachment B. The Statement of Work will be the primary contractual document that outlines work activities and required performance for payment by NYSERDA. It specifically delineates each step or procedure required to accomplish the project objectives. Proposers should prepare a Statement of Work based on the Statement of Work outline in Attachment B. Proposers should answer questions or provide information requested in italics in the Statement of Work outline. Proposers may also make modifications to the Statement of Work outline if desired. The Statement of Work must include tasks that address all of the relevant items in Sections 2.0-5.0 of this RFP.

7.0 Schedule - Present a realistic schedule, with a starting point and duration for each task and subtask in the Statement of Work, preferably in a bar chart. Identify critical path items. Assume the start date of the contract is four months after the due date of this PON. Specify the operational date for the system(s). Proposals with an installation date before July 1, 2005 will be preferred.

8.0 Project Budget and Terms

Cofunding is not required but will be considered as an evaluation criteria. **Proposers must break out all of the costs associated with the PV awning system, including design, all parts and equipment, and complete installation and commissioning to allow for comparisons between proposals on a cost per kW basis for the installed system.**

8.1 Contract Pricing Proposal Forms (CPPF) - Submit a completed form for each of the following:

- The total project, including in-kind contributions;
- Each subcontractor with a proposed subcontract in excess of \$15,000; and
- Attach detailed budget breakdowns for equipment, material, and travel. Provide rates for each skill type or labor category identified.

- Travel costs must be clearly identified for all trips necessary to design, install, and service the system.

If the proposer is proposing a supplemental PV system on the property, the proposer should prepare a separate CPPFs

NYSERDA anticipates making payments for the PV system design and installation based on project milestones such as receiving all necessary permits and approvals, delivering all equipment to the site, and full utility inspection, approval, and interconnection. Before any NYSERDA payments for equipment are made, the final system design must be completed and approved by NYSERDA, and all necessary permits, and an interconnection agreement must be in place. NYSERDA reserves the right to hold back system acceptance milestone payments if the completed system has not been approved for interconnection by the utility, has not passed required inspections, or does not pass a NYSERDA inspection. All necessary permits must be obtained by the proposer.

9.0 Letters of Commitment - Include letters of commitment, signed by a person authorized to contractually obligate the organization, for all participating organizations and cofunders.

IV. PROPOSAL EVALUATION

Proposals that meet requirements will be reviewed and ranked for technical merit, project merit, and cost-value relationship, including cost-sharing or cofunding, based on the criteria below, by a Technical Evaluation Panel (TEP) consisting of NYSERDA staff and selected outside reviewers. Significant deficiencies in any of the categories is cause for elimination. In addition, final rankings may be based on programmatic and management considerations, such as those identified below. All references to the “proposer” below apply to the proposer and any additional Team members.

EVALUATION CRITERIA

Overall -

- What is the likelihood of the proposal achieving its stated goals - both the design/ installation and outreach/education components?
- What is the potential for replicability across the State?
- Is the PV system likely to be installed before July 1, 2005?

New York and Site Benefits –

- To what extent will the PV awning system reduce peak summertime load and provide shade for the lobby of NYSERDA’s headquarters? System impacts must be quantified wherever possible.
- What is the potential for replication in New York State?
- Is the system aesthetically pleasing?
- Is the education and outreach plan appropriate for the site and is it likely to be effective?
- Does the proposal include a data acquisition system and interactive kiosk or display that will provide easy access to real time system performance data?
- Are any components of the system manufactured or assembled in New York?
- What are the benefits of the PV system to NYSERDA? Is the system likely to provide long-term benefits?

Site Descriptions and Designs -

- Are the site, design, and performance specifications clearly presented?

- What is PV capacity and forecasted energy production?
- Is the energy output forecast reasonable and were losses and shading adequately considered?
- Is the proposed system likely to be reliable?
- To what extent does the PV offset traditional building materials or perform a dual function on the building?
- Are structural considerations addressed adequately?
- Is safety addressed adequately (i.e., snow and ice shedding, etc.)
- Is the PV system design attractive and appropriate for the site?
- Is the system(s) designed effectively for reliable long-term operation and ease of maintenance?
- Is the interconnection plan appropriate and likely to succeed?
- Are relevant permits identified and is there a reasonable plan to obtain them?

Project Evaluation and Maintenance -

- Will the monitoring plan produce a verifiable indication of performance and correctly identify problems?
- Are the proposed five and ten years service and maintenance plans reasonable and likely to result in reliable system operation during and beyond completion of the project?
- Is the maintenance plan likely to result in prompt attention and repair if there is a problem?

Proposer or Proposing Team -

- How qualified is the proposer (or proposing team) to perform the proposed work?
- Does the proposer or team have experience designing and installing PV systems on commercial buildings or experience installing PV awning systems?
- Does the proposer or team have experience in renewable energy education and outreach?
- What level of training and certification relevant to designing and installing PV does the Team exhibit?
- Does the team include an eligible installer (under PON 716)? Is the installer NABCEP certified?
- If the proposer is submitting a proposal to complete all project components, does the Team show a balance of technical, implementation, outreach, and education expertise?
- Is there evidence of a good performance record on other relevant projects?
- If applicable, has the proposer's performance on past NYSERDA projects been acceptable?
- Is the project's organizational structure appropriate and does it include a single team leader responsible for managing all aspects of the project and ensuring project success?
- Are roles of responsibility for individual project personnel defined and is their experience appropriate for their responsibilities?

Statement of Work (SOW) and Schedule -

- Did the proposer follow the Sample Statement of Work Outline and modify it appropriately to reflect the proposed project?
- What is the proposed operational date and how likely is the project to meet the operational date?
- Is the schedule provided in adequate detail?
- Are significant milestones and delivery of reports identified?

Cost Evaluation -

- Is the cost of the installed PV system(s) reasonable/competitive (on a \$/KW basis), given the value that it provides as well as the design and location of the system?
- Are the costs for the education and outreach component reasonable?
- Is the proposer providing any cost sharing (optional)?
- Are the costs associated with the five and ten year service plans reasonable?

VI. GENERAL CONDITIONS

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSEERDA 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 NYSEERDA 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 NYSEERDA 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. However, NYSEERDA cannot guarantee the confidentiality of any information submitted.

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

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

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

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

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

Executive Order 127 - NYSEERDA is required to comply with the provisions of Executive Order 127. The Executive Order is available at www.gorr.state.ny.us/EO127_fulltext.htm. Pursuant to the Executive Order, proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of \$15,000, should include:

(1) the name, address, telephone number, place of principal employment and occupation of every person or organization retained, employed or designated by or on behalf of the proposer to attempt to influence the procurement process and whether such person or organization has a financial interest in the procurement. If a proposer has identified one or more such persons or organizations, a Contractor's Designated Contacts form (which is available upon request or at <http://www.nyserda.org/stdforms.html>) must be completed and filed with the proposal for each person or organization identified.

(2) a disclosure statement regarding proposer's history of findings of non-responsibility made by any agency or authority within the previous five years where such prior finding of non-responsibility was due to intentional provision of false or incomplete information to a covered agency or authority with respect to Executive Order 127. All proposals submitted in response to this solicitation should include a completed Disclosure of Prior Findings of Non-responsibility form (which is also available upon request or at <http://www.nyserda.org/stdforms.html>).

If a proposer fails to disclose accurate and complete information outlined in 1 or 2 above in a timely manner or otherwise fails to cooperate with NYSERDA in the implementation of Executive Order 127, NYSERDA shall consider this in its determination of the responsibility of such proposer. After submitting a proposal in response to this solicitation, proposers should recognize that disclosure of such information contained in paragraph number 1 above is an ongoing responsibility and that failure to comply with Executive Order 127 may lead to the termination of a contract.

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. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA expects to notify proposers in approximately eight weeks from the proposal due date whether your proposal has been selected to receive an award.

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

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

Attachments:

- Attachment A - Proposal Checklist
- Attachment B - Contractor's Designated Contact(s)
- Attachment C - Disclosure of Prior Findings of Non-responsibility
- Attachment D - Sample Statement of Work
- Attachment E - Intent To Propose Form
- Attachment F - Contract Pricing Proposal Form and Instructions
- Attachment G - Sample Agreement

Attachment A: RFP 849 PROPOSAL CHECKLIST

Proposal Title		Due Date	
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
Address	City	State or Province	Zip
Secondary Contact		Title	
Company		Phone	Fax
Address	City	State or Province	Zip

The prime contractor must sign this form below.

THE PRIME CONTRACTOR MUST ANSWER THE FOLLOWING QUESTIONS:

Do you accept all Terms & Conditions in the Sample Agreement? (if no, explain on separate pg) __ Yes __ No

Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) __ Yes __ No

Are you a Minority or Women-Owned Business Enterprise? __ Yes __ No

Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? __ Yes __ No

Are you submitting the required number of copies of Part I and Part II? (See proposal instructions.) __ Yes __ No

Is other public funding pending/awarded on this and/or very-similar topic (prior and/or competing proposals)? __ Yes __ No
(if yes, explain on separate page)

Have you retained, employed, or designated any person or organization to attempt to influence the procurement process with respect to this solicitation? __ Yes __ No

If so, have you filed Contractor's Designated Contact(s) form for each such person or organization so retained, employed or designated? __ Not Applicable __ Yes __ No

ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?

<p>PART I</p> <p>Executive Summary _____</p> <p>Background _____</p> <p>Statement of Work (with Schedule) _____</p> <p>Proposer Qualifications _____</p> <p>Management Plan (Organizational Chart) _____</p> <p>Commercialization Plan _____</p> <p>Cost Summary _____</p> <p>Physical Resources List _____</p> <p>Cost-Sharing Chart _____</p>	<p>PART I, Continued</p> <p>Letters of commitment from all participating organizations _____</p> <p>Indictment/Conviction of Felony (if applicable) _____</p> <p>NYSERDA Contracts Awarded (if applicable) _____</p> <p>Prior and/or Competing Proposals (if applicable) _____</p> <p>PART II</p> <p>Exceptions to Terms & Conditions (if applicable) _____</p> <p>Completed and Signed Contract Pricing Proposal Form(s) _____</p> <p>Executive Order 127 Forms:</p> <p>Contractor's Designated Contact(s) _____</p> <p>Disclosure of Prior Findings (mandatory) _____</p>
--	---

AUTHORIZED SIGNATURE

I certify that the above information is accurate, and that the proposal requirements noted have been completed and are enclosed. 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 Part I and Part II of this proposal.

Signature	Name
Title	Organization
Phone	Date

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

Attachment B - Contractor's Designated Contact(s)
Executive Order 127

This form is provided to allow Proposer/Contractor to identify any person or persons that it has retained, employed or designated to attempt to influence the procurement process.

Solicitation or Contract Number:		
Name of Proposer or Contractor:		
Address:		
Name and Title of Person Submitting this Form:		
Is this an initial filing in accordance with Section II, paragraph 1 of EO 127 or an updated filing in accordance with Section II, paragraph 2 of EO 127? (Please indicate with an "X")		Initial Filing
		Updated Filing
Date submitting this form:		
The following person or organization was retained, employed or designated by or on behalf of the Proposer or Contractor to attempt to influence the procurement process:		
Name:		
Address:		
Telephone Number:		
Place of Principal Employment:		
Occupation:		
Does the above named person or organization have a financial interest in the procurement? (Please indicate with an "X")		Yes
		No

-Attach additional forms as necessary-

**Attachment C - Disclosure of Prior Findings of Non-responsibility
Executive Order 127 Form (Mandatory)**

Name of Proposer or Contractor:	
Address:	
Name and Title of Person Submitting this Form:	
Date Submitting this Form:	
Has any covered agency or authority made a finding of non-responsibility regarding the Proposer or Contractor in the last five years? (Please indicate with an "X")	Yes
	No
If yes, was the basis for the finding of the Proposer or Contractor's non-responsibility due to the intentional provision of false or incomplete information required by Executive Order Number 127? (Please indicate with an "X")	Yes
	No
If yes, please provide details regarding the finding of non-responsibility.	
Covered Agency or Authority:	
Year of Finding of Non-responsibility:	
Basis of Finding of Non-responsibility:	

Attachment D
Program Opportunity Notice PON 849
Sample Statement of Work Outline

Introduction: *[Briefly and clearly state the overall goals of the project.]*

System: *[Indicate the system(s) size, dc (at standard test conditions) and ac PV system rating(s).]*

Work Tasks: In order to carry out the objectives of the project, the following tasks shall be performed by *[insert the name of your organization]* (the “Contractor”).

Task 1: Project Management.

Subtask 1.1: Subcontractor and Project Coordination. *[Identify project partners.] State how activities will be coordinated between the proposer and any partners, any subcontractors, the site(s) and NYSERDA’s Project Manager. A discussion of subcontracting arrangements should also be included.*

Subtask 1.2 Meetings. Project meetings shall be held at the beginning and end of the project. The Contractor shall schedule and administer the meetings. The Contractor shall prepare and distribute agendas prior to each meeting and shall record and distribute meeting notes to attendees. The kickoff meeting shall be held within one month of contract execution and shall cover objectives and the evolution of the program. A wrap-up meeting shall be convened at the end of the project to review the achievements and to discuss future actions. Representatives from NYSERDA *[add other participants as necessary]* shall be invited to the meetings.

Task 1 Deliverables: Subcontractor Agreements, Meeting Agendas and notes.

Task 2: Reporting.

The Contractor shall prepare and submit to NYSERDA’s Project Manager and parties specified by NYSERDA the following reports:

Subtask 2.1: Monthly reports. Monthly reports shall be produced and submitted to NYSERDA’s Project Manager and other parties designated by NYSERDA’s Project Manager within 15 days after the first day of each month. Monthly reports shall be in a letter format and shall include the following subjects in the order indicated, with appropriate explanation and discussion:

- a. Title of project.
- b. Agreement number.
- c. Period of this report.
- d. Progress of this report.
- e. Planned progress in the future.
- f. Identification of problems.
- g. Planned Solutions.
- h. Ability to meet schedule, reasons for slippage in schedule.
- i. Schedule - percentage completed and projected percentage of completion of performance by months - could be a bar chart or milestone chart.
- j. Analysis of actual cost incurred in relation to budget.

Subtask 2.2 Final Report. A draft Final Report of 7-10 pages (excluding appendices) shall be prepared and submitted within twelve months of the completion of the project. Following NYSERDA's Project Manager's review of the draft Final Report, the Contractor shall submit a revised draft Final Report in accordance with Exhibit C, after which another round of review comments may be provided by NYSERDA's Project Manager. Following this second review (if necessary), the Final Report shall be prepared and submitted.

The content of the Final Report shall include the following:

- Description of the system and the data acquisition system. Description of the measurement parameters. Description of the data analysis procedures.
- Summary of system performance after a six month monitoring period.
- General observations, conclusions, and recommendations.

Final Report appendices shall include the following:

- Monthly and annual performance statistics (graphs and tables) commensurate with the monthly data summaries for a six-month period. System maintenance activity (scheduled and unscheduled). System upgrades and component warranty action.

Task 2 Deliverables: Periodic Reports.
 Draft Final and Final Reports.

PHASE 1: DESIGN AND INSTALLATION

Task 3: Outreach Plan.

Subtask 3.1: Media Plan and Outreach Material Coordination with NYSERDA. The Contractor shall collaborate with NYSERDA's Director of Communications to prepare any press release and to plan for any news conference concerning the Work. All outreach and marketing materials or displays produced under this project shall acknowledge NYSERDA's funding of the PV system and include relevant NYSERDA logos. The Contractor shall submit the design of outreach and marketing materials or displays to NYSERDA's Director of Communications for approval.

Subtask 3.2: Education and Outreach Plan. Describe your education and outreach plan. Indicate whether the PV system will be easily visible to the public and, if so, describe the PV installation in terms of its visibility to the public. The education and outreach plan may include, but is not limited to: an education program, an on-site display or kiosk, a web page describing the systems and posting performance data, newsletters, involving relevant people in data collection, holding workshops, etc. The plan should be designed to effectively and economically transfer relevant information to appropriate audiences with the goal of maximizing the potential of future PV awning installations on buildings.

Task 3 Deliverables: *[Identify deliverables for this task.]*

Task 4: Design PV Systems.

Subtask 4.1: Conceptual design. The Contractor shall prepare a conceptual design of the PV awning system and any other (optional) system being proposed. The system design(s), components, and installations must comply with all applicable laws, regulations, codes, licensing and permit requirements, including but not limited to, the New York State Building Code, the National Electric Code, New York State's Standard Interconnection Requirements (<http://www.dps.ny.us/fileroom/doc7024.pdf>) and all applicable local ordinances and codes. UL Listed (or equivalent) inverters shall be specified. If the UL Listed (or equivalent) PV modules are not specified, the Contractor shall obtain on-site UL listing for the modules.

Subtask 4.2: Final PV system designs and approval. The Contractor shall finalize the design for the awning for the NYSERDA building and coordinate with the NYSERDA Building Manager and staff to incorporate the PV design into the building design as appropriate. The Contractor shall develop a list of required materials. The final design for all buildings shall be for at least *[insert dc PV capacity]* kWdc total of PV and shall be based on the conceptual design. The Contractor shall submit to NYSERDA's Project Manager for approval a summary of the final system design including: 1) a one-line system diagram; 2) capacity and projected energy production of the system; 3) a shading or obstruction analysis using a Solar Pathfinder, the Clean Power Estimator (see <http://www.clean-power.com/nysERDA/>) or other method approved by NYSERDA's Project Manager; 4) schematics, drawings, or simulations depicting the proposed system, 5) type and number of inverters and PV modules 6) cost breakdown per kW; and 7) estimate of long-term yearly O&M expenses. Prior to installation, the Contractor shall coordinate with all involved parties to obtain necessary approvals.

The Contractor shall prepare and supply to the NYSERDA Project Manger: final design documents of PV system drawing; electrical single lines with protective functions; and architectural/structural drawings of as-built conditions.

Subtask 4.3: Data monitoring system. The Contractor shall design and specify a data acquisition system (DAS) for the PV awning (and any other optional system proposed). The DAS shall be capable of collecting and recording the measured parameters indicated in *Task 8: Performance Monitoring*.

Task 4 Deliverables: Conceptual PV system design.
Final PV system design.
All Necessary Permits for resulting structure(s).
DAS specifications for the system.

Task 5: Interconnection and Permits.

Subtask 5.1: Utility interconnect. The Contractor shall work with the appropriate utility staff to establish and execute an interconnection agreement for the PV awning system. The Contractor shall have the interconnection designed and constructed in accordance with the requirements of the Interconnection Agreement and shall invite the utility to inspect the interconnection prior to final system start up.

Subtask 5.2: Permitting. The Contractor shall identify all permits required for installing PV on the NYSERDA building. The Contractor shall coordinate with the project partners to prepare and submit the necessary permit applications. The Contractor shall coordinate with project partners to obtain all required

permits prior to commencement of construction. The Contractor shall coordinate with local building officials for final inspection of relevant permits.

Task 5 Deliverables: Evidence of permit approvals.
Evidence of utility approval to operate the PV system.
Evidence of successful permit inspections.

Task 6: Procure and Install PV System.

THE CONTRACTOR IS NOT AUTHORIZED TO RECEIVE PAYMENT FOR THE FOLLOWING TASKS UNTIL THE FINAL DESIGN IS COMPLETED AND APPROVED IN WRITING BY NYSERDA'S PROJECT MANAGER, AN INTERCONNECTION AGREEMENT IS EXECUTED, AND ALL NECESSARY PERMITS ARE OBTAINED.

Subtask 6.1: Procure PV system components. The Contractor shall procure materials and components identified and approved in the final design. All required materials shall then be delivered to the installation site. The Contractor shall develop a construction schedule which shall be approved prior to the commencement of the PV installation.

Subtask 6.2: Install PV system: The Contractor shall install the approved PV system(s) and DAS. NYSERDA shall retain ownership of any green power attributes or renewable energy credits generated by the PV system.

The PV installation shall be performed by an eligible installer under NYSERDA PON 716 (see <http://www.nyserda.org/energyresources/installers.html>) or certified as a PV installer under the North American Board of Certified Energy Practitioners (NABCEP) or equivalent process.

The Contractor shall be responsible for the following minimum installation codes and requirements:

- Ensuring compliance with all local, State, Federal safety regulations (including OSHA), building codes, electrical codes, ordinances, regulations and permits;
- Developing a final project acceptance test plan, and performance prediction;
- Certifying that 100% of materials are delivered to the site;
- Installing complete system in accordance with the final design;
- Managing construction activities and ensuring that the site is cleaned up;
- Producing as-built drawings and;
- Developing an operations and maintenance manual for the PV system.

Task 6 Deliverables: Construction schedules.
Certification that all materials are delivered to the site.
Complete description of the PV system as-built.
Electronic photos for the PV system.
As-built drawings.
Test Plan.
Operations and Maintenance manual.

Task 7: Accept PV System(s).

Once the installation is complete and the monitoring system engaged, the system, with review of the installation and an organized verification that all of the components are properly wired and with approval

of the utility, shall be turned on.

To be accepted, the system(s) should run at or above rated capacity under test conditions of: 1000 watts/square meter solar irradiance, 20 degrees Celsius ambient temperature, wind speed no greater than 1 meter/second, and maximum power. Should the test conditions not be available, generally accepted practices for converting the value of output power at actual conditions to reference conditions shall be used. In addition, the system(s) shall run at least one month at 95% availability with a maximum of two incidents requiring attention (remotely or on-site) before the system(s) are accepted.

NYSERDA reserves the right to have one of its representatives inspect and approve the PV system installation to validate proper installation.

Task 7 Deliverable: Certified acceptance test results (including results of system code inspection).

Task 8: Evaluate Performance.

[This task describes the recommended minimum data monitoring activities. Proposers may modify this task in their proposal. A rationale should accompany any recommended reductions in data monitoring activities or capability.] The Contractor shall monitor the PV system for a period of at least two years. The Contractor shall use the data acquisition system specified in *Subtask 4.3: Data monitoring system*. The DAS shall perform the following tasks:

- Collect at least 15 minute records from the dataloggers.
- Import and check for data for errors and incomplete records.
- Verify proper system performance and identify any performance problems.
- Generate daily and monthly performance summaries.
- Evaluate system performance daily and notify the Contractor via e-mail if an abnormal system event is detected.

At a minimum, the Contractor shall monitor and report the following parameters for two years after system acceptance. This data shall be displayed in the form indicated below:

Daily one-hour plots: measured ac power (kW),
global plane-of-array irradiance (W/m^2)

Tabular monthly plots: peak ac power (kW)
daily and monthly energy summary, calculated based on measured data (kWh)
simulated daily and monthly energy summary, calculated based on
meteorological data (kWh)
monthly performance index (monthly energy output/simulated monthly energy)
PV system availability
daily irradiance summary (Wh/m^2)

Data shall be downloaded and reviewed a minimum of every two weeks during the project term to make sure that the system is not experiencing problems. If a system experiences problems, the NYSERDA Project Manager shall be notified immediately and the data shall be downloaded at more frequent intervals following solution of the problem to ensure proper system operation. This data shall then be uploaded into a project system performance database and analyzed for reporting purposes every month.

This analysis shall be used for reporting purposes as well as for public information and marketing efforts.

Task 8 Deliverables: Tabular and graphical summaries of monitored parameters in quarterly and final reports during the first two years of system operation.
Description of abnormal system events in the system event reports during the first two years of system operation.

Task 9: Maintenance and Warranty.

[This task describes the recommended minimum maintenance activities. Proposers may modify this task in their proposal. A justification should accompany any recommended reductions in maintenance activities.] The Contractor shall enter into a service agreement for the system to maintain the PV system for a minimum of 5 years after system acceptance. A 10-year service and maintenance plan should also be presented (with a separate budget) as an option.

Subtask 9.1: Routine inspections. The Contractor shall perform a general inspection of hardware every six months during the contract term. The hardware inspection shall include checking of all major connections and verifying proper inverter operation (including appropriate power output) as well as a visual inspection of the PV arrays. Technicians shall bring all required equipment for data recovery, inspections, and routine maintenance.

Subtask 9.2: Quarterly maintenance data reports. At the completion of the installation, the Contractor shall submit quarterly maintenance reports that shall include monthly operation and maintenance summaries and monthly maintenance parts and labor costs. This information shall also be included in the Final Report.

Subtask 9.3: Maintenance training. The Contractor shall train building maintenance staff to: 1) identify problems, 2) do basic visual inspections and maintenance such as clearing debris from the PV modules, and 3) understand inverter readings in case there is a malfunction. The Contractor shall educate building maintenance staff, and management on system operations, equipment monitoring, and protection. The Contractor shall ask building personnel to make visual inspections of system components and built-in monitoring devices routinely.

Subtask 9.4: Required maintenance. The Contractor shall pursue every necessary measure to supply, construct, and maintain reliable PV systems. Should a problem arise, the Contractor shall address the problem within five business days.

Subtask 9.5: Warranty. The PV system shall be covered by a 5-year full warranty to the owner of the PV system. The warranty shall cover all components of the generating system against breakdown or degradation in electrical output of more than ten percent from their original rated ac electrical output. PV modules shall be covered by a minimum 10-year warranty. The warranty shall cover the full costs, including labor, of repair or replacement of defective components or systems. The five year warranty shall also cover water leaks related to any penetrations resulting from to the installation of the PV system.

Task 9 deliverables: Log of all system problems and response to the problems in the system event and quarterly reports during the first two years of system operation.
Description of completed maintenance training activities.
Monthly maintenance costs during the first two years of system operation.
Evidence of system warranty.

Attachment E - INTENT TO PROPOSE (optional)

Please submit the following information to NYSERDA two weeks before the proposal due date to:

Karen Whalen - PON No. 849
New York State Energy Research and Development Authority
17 Columbia Circle, Albany, NY 12203
fax (518) 862-1091 e-mail kew@nyserda.org

Name:		Title:	
Organization:			
Address:			
Address:			
City:	County:	State:	Zip +4:
E-mail Address:		Phone No.: ()	
Web Site:		Fax No.: ()	
Authorized signature:			Date:

Please check all that apply:

- We **do** intend to submit a proposal.
- We **do not** intend to submit a proposal because:

- I did not receive a notice in the mail. Please **add** me to NYSERDA's database.
- Please **delete** me from NYSERDA's database.

How did you receive information about this solicitation? (Please check all that apply.)

- announcement notice in mail
- notice in NYS Contract Reporter
- notice in other media (please list):
- NYSERDA's website
- word-of-mouth
- NYSERDA staff/booth at meeting (please specify):

If you plan to submit a proposal, please provide the title and a brief abstract:

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Attachment F - Contract Pricing Proposal Form - RFP 849

New York State Energy Research and Development Authority			Solicitation/Contract No.	Page	
Contractor:			Name of Proposed Project:		
Address:					
Location (where work is to be performed):			NYSERDA funding:		
			Total Project Cost:		
Cost Element			Total Project Cost	Funding & Co-funding via NYSERDA	Cost-sharing & Other Co-funding
1. Direct Materials					
a. Purchased Parts					
b. Other					
Total Direct Materials					
2. Materials Overhead	Rate:				
3. Direct Labor (specify names/titles)	Hours	Rate/hr			
Total Direct Labor					
4. Labor Overhead	Rate %	\$ Base			
Total Labor Overhead					
5. Outside Special Testing					
6. Equipment					
7. Travel					
8. Other Direct Costs					
9. Subcontractors/Consultants					
Total Subcontractors/Consultants					
10. General & Administrative Expense	Rate %	Element(s)			
11. Fee or Profit (0 for cost-sharing agreements)	Rate:				
12. Total Estimated Project Cost					
This proposal reflects our best estimates as of this date, in accordance with the instructions to proposers.					
Typed Name and Title:			Signature:		Date:
Has any executive agency of the U.S. government performed any review of your records in connection with any prime contract or subcontract within the past twelve months? ___ Yes ___ No If yes, identify:					

INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE

Your cost proposal may be the basis of contract negotiation; it should be specific and complete in every detail. Supporting schedules (as described in Section B) providing the basis for your estimates must be provided.

A. GENERAL

The schedule must be submitted on NYSERDA's Contract Pricing Proposal Form.

B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL

(Title each supporting schedule and crossreference it to the item number on the Contract Pricing Proposal Form)

1a. DIRECT MATERIALS - PURCHASED PARTS

Provide the following information for each proposed item with an estimated unit cost in excess of \$5,000.

- o Description of item
- o Proposed vendor
- o Quantity needed
- o Unit cost
- o Basis for cost (i.e., catalog, prior purchase, quote, etc.)
- o Total cost
- o Evidence of a competitive selection process in accordance with the requirements of Section 5.02 of the attached Sample Agreement.

1b. OTHER DIRECT MATERIALS

In accordance with the requirements of Section 5.02 of the attached Sample Agreement, for all items in excess of \$5,000, provide whatever information would be necessary to understand what is being obtained, how it is being obtained, what it will cost and how the estimated cost was determined with justification for all items.

2. MATERIALS OVERHEAD (also applicable to other Indirect Rate categories: 4. LABOR OVERHEAD and 10. G&A EXPENSE)

- o If Government-approved indirect rates are proposed, then supply a copy of an appropriate Government document verifying those rates.
- o If Government-approved rates are not proposed, supply the following, unless previously provided, for the years comprising the proposed period of contract performance.
 - o A description (chart or other) of the organization of the indirect cost center.
 - o The budget of indirect costs, by account, for each proposed indirect expense rate.
 - o The budget for the base, for each proposed rate, (direct labor dollars, hours, costs, etc.) itemized as to contract hours or costs, research and development hours of costs, and any other direct base effort.
 - o Actual incurred rates for the prior three years, including actual base and pool amounts.

3. DIRECT LABOR

a. Commercial Enterprises

- (1) Attach supporting schedules showing:
 - o Each category or type of labor being estimated
 - o Applicable labor rates per hour (straight-time)
- (2) Explain the method used for computing the rates (i.e., actual of an individual, actual average of a category or other grouping, etc.) Also identify any proposed labor escalation and the bases for it.

b. Educational Institutions

Provide the following for each calendar year of the contract:

- (1) For individuals not on an "actual hours worked" basis:
 - o individual's name
 - o annual salary and the period for which the salary is applicable (preferably in weeks)
 - o the proportionate time to be charged to this effort.
- (2) For individuals who maintain time records as the basis for charging costs, supply the detail as requested in Instructions 3(a)(1)

4. LABOR OVERHEAD (Same as Instructions for 2. MATERIALS OVERHEAD)

5. OUTSIDE SPECIAL TESTING

- a. Describe the effort.
- b. Provide the units of time (hours, days, weeks), cost rates, and the vendor.
- c. In accordance with the requirements of Section 5.02 of the attached Sample Agreement, provide the basis for selection of the vendor. Identify M/WBE vendors contacted for quotes and if none, explain why. Explain and justify the basis for any non-competitive selection.

6. EQUIPMENT

Capability to perform the work with existing facilities and equipment is assumed. It is NYSERDA's policy not to compensate for general purpose facilities or equipment. If some special purpose items are needed solely for this contract and are not available by other means (contractor assets, lease, etc.), then provide the following information for each item of required equipment.

- o vendor
- o model number
- o quantity
- o competitive selection process
- o unit cost and source of cost/price (i.e., quote, catalog, purchase history)
- o description of the use or application (NYSERDA dedicated, contract dedicated, other)

7. TRAVEL

- a. NYSERDA will accept as a direct charge only that travel required to perform the statement of work.
- b. Attach a schedule indicating the need for the proposed travel, the estimated number of person-trips required, destinations, mode and cost of transportation, and number of days subsistence per trip for each destination.
- c. Identify and support any other special transportation costs required in the performance of this project.

8. OTHER DIRECT COSTS

- a. Identify the type of cost (i.e. postage, telephone, publications, graphics, etc.)
- b. Provide cost details for the amounts estimated (hours or units, rates, etc.)
- c. If any internal service center rates are applied, provide details similar to that required in Instruction #B.
- d. For computer costs identify the make, model and type of computer, hours of service and appropriate rates, and whether the machine is company owned or leased.

9. SUBCONTRACTORS/CONSULTANTS

- a. Explain the specific technical area in which such service is to be used and identify the contemplated consultants.
- b. State the number of days and the hours per day of such service estimated to be required and the consultant's quoted rate per day. Document when/where the consultant has received the proposed rate in performing similar services for others.

10. GENERAL & ADMINISTRATIVE (G&A) EXPENSE (Same as instructions for 2. MATERIALS OVERHEAD)

11. FEE OR PROFIT

List the rate proposed for profit. No fee or profit is allowable under a cost-sharing agreement.

Attachment G

Agreement No:

Amount:

Type: **Fixed-Price**

Agreement

Agreement dated this ___ day of _____, 2____ by and between the **NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY** ("NYSERDA"), a New York public benefit corporation having its principal office and place of business at 17 Columbia Circle, Albany, New York 12203-6399, and _____ having its principal office and place of business at _____ (the "Contractor").

In consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties do hereby agree as follows:

Article I

Definitions

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

(a) General Definitions:

Agreement: This Agreement and Exhibits A, B, C, and D hereto, all of which are made a part hereof as though herein set forth in full.

Budget: The Budget set forth in Exhibit A hereto.

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

Effective Date: The effective date of this Agreement shall be the date in the first paragraph of page one, above.

Final Report: The Final Report required by the Statement of Work hereof.

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

Progress Reports: The Progress Reports required by the Statement of Work hereof.

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

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

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

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

(b) Data Rights and Patents Definitions:

Contract Data: Technical Data first produced in the performance of the contract, Technical Data which are specified to be delivered under the contract, or Technical Data actually delivered in connection with the contract.

Practical Application: To manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system, and under conditions which indicate that the benefits of the invention are available to the public on reasonable terms.

Proprietary Data: Technical Data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

- (i) are not generally known or available from other sources without obligation concerning their confidentiality;
- (ii) have not been made available by the owner to others without obligation concerning its confidentiality; and
- (iii) are not already available to NYSERDA without obligation concerning their confidentiality.

Subject Invention: Any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this Agreement, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented, under the Patent Laws of the United States of America or any foreign country.

Technical Data: Recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental or developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer software programs, computer software data bases, and computer software documentation). Examples of Technical Data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical Data as used herein does not include financial reports, cost analyses, and other information incidental to contract administration.

Unlimited Rights: Rights to use, duplicate, or disclose Technical Data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

Article II

Performance of Work

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

Section 2.02. Project Personnel. It is understood and agreed that Mr./Ms. _____ shall serve as Project Director and as such shall have the responsibility of the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the requested change in Project Director shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days.

Article III

Deliverables

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

Article IV

Compensation

Section 4.01. Payments. The Contractor will be paid, upon submission of proper invoices, the prices stipulated herein for Work delivered or rendered and accepted, less deductions, if any as herein provided. The total price which NYSERDA will pay to the Contractor represents the price of the Work. Subject to the limiting provisions of Article XII hereof, as NYSERDA's price of the Work, NYSERDA will pay to the Contractor the total price of \$ _____, payment of which will be made according to the Schedule of Payments contained in Section 4.02 hereof.

Section 4.02. Schedule of Payments. At the completion of each Milestone Billing Event so identified, the Contractor may submit invoices requesting payment by NYSERDA of the amounts corresponding to the amounts indicated below. NYSERDA shall make payment to the Contractor in accordance with and subject to its Prompt Payment Policy Statement attached hereto as Exhibit D. The Contractor shall be notified by NYSERDA in accordance with Section 504.4 (b)(2) of such Exhibit D, of any information or documentation which the Contractor did not include with such invoice.

Milestone Event

Price

Section 4.03. Title to Equipment. Title shall vest in the Contractor to all equipment purchased hereunder.

[OR, if specific equipment has been identified by the Project Manager for NYSERDA to retain title in, then use the following:]

Section 4.03. Title to Equipment. Title shall vest in NYSERDA to all of the following equipment purchased hereunder:

- 1)
- 2)
- 3)
- 4)

Upon the request of NYSERDA, the Contractor shall execute, acknowledge, deliver and perform, or cause to be executed, acknowledged, delivered or performed, all such bills of sale, assignments, conveyances or other documents or acts as NYSERDA may reasonably request in order to assure the better vesting in and confirming to NYSERDA, its successor and assigns, of title to and possession of such equipment. If, after six months following the completion of the Work or the termination of this Agreement, NYSERDA has not removed any such equipment, it

will be deemed abandoned and become the property of the Contractor. Any such removal of equipment by NYSERDA shall be at NYSERDA's expense.

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of the Final Report and all other deliverables contained in Exhibit A, Statement of Work pursuant to Section 6.02 hereof, the Contractor shall submit a request for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. A request for final payment shall include a statement as to whether any invention or patentable devices have resulted from the performance of the Work. All requests for final payment hereunder must, under any and all circumstances, be received by NYSERDA prior to _____ . In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such request for final payment, the total amount payable pursuant to Section 4.01 hereof, less all Milestone Billing payments previously made to the Contractor with respect thereto.

Section 4.05. Release by the Contractor. The acceptance by the Contractor of final payment shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to this Agreement.

Section 4.06. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to the performance of the Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance.

Section 4.07. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor hereunder is \$ _____. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.08. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.06 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and Purchase Orders

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

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a Subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any Subcontract or order for equipment, supplies or materials from a single Subcontractor or supplier totaling under \$15,000, the Contractor shall select all Subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a Subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a Subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the Subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a Subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a Subcontractor or supplier, and those set forth in Exhibit B to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any Subcontract(s) specified in the Statement of Work as requiring NYSERDA approval.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action which would impair its rights thereunder. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of the Contract Administrator as long as this Agreement remains in effect. Such approval shall not be unreasonably withheld and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the requested assignment, cancellation, or termination of the Subcontract shall be considered approved by NYSERDA. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days.

Article VI

Schedule; Acceptance of Work

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

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

Article VII

Force Majeure

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

Article VIII

Technical Data; Patents

Section 8.01. Rights in Technical Data

(a) Technical Data: Rights in Technical Data shall be allocated as follows:

(1) NYSERDA shall have:

- (i) unlimited rights in Contract Data except as otherwise provided below with respect to Proprietary Data; and
- (ii) no rights under this Agreement in any Technical Data which are not Contract Data.

(2) The Contractor shall have:

- (i) the right to withhold Proprietary Data in accordance with the provisions of this clause; and
- (ii) the right to use for its private purposes subject to patent, or other provisions of this Agreement, Contract Data it first produces in the performance of this Agreement provided the data requirements of this Agreement have been met as of the date of the private use of such data.

The Contractor agrees that to the extent it receives or is given access to Proprietary Data or other technical, business or financial data in the form of recorded information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless another use is specifically authorized by prior written approval of the Contract Administrator.

Section 8.02. Patents.

(a) The Contractor may elect to retain the entire right, title and interest throughout the world to each Subject Invention of the Contractor conceived or first actually reduced to practice in the performance of the Work under the Agreement; except, that with respect to any Subject Invention in which the Contractor elects to retain title, NYSERDA shall have a non-exclusive, non-transferrable, irrevocable, paid-up license for itself, the State of New York and all political subdivisions and other instrumentalities of the State of New York, to practice or have practiced for or on their behalf the Subject Invention throughout the world, exclusively for their own use of the Subject Invention.

(b) Within six months of the time a Subject Invention is made, or as part of the request for final payment, whichever shall occur first, the Contractor shall submit to NYSERDA a written invention disclosure. Within twelve months of the time a Subject Invention is made, or as part of the request for final payment, whichever shall occur first, the Contractor shall advise NYSERDA in writing whether the Contractor elects to retain principal rights in the Subject Invention. The Contractor shall file the patent application for a Subject Invention within two years of the date of election. If the Contractor fails to disclose a Subject Invention, fails to elect to retain principal rights thereto, or to file a patent application within the time specified in this paragraph, or if the Contractor elects not to retain principal rights in a Subject Invention, the Contractor shall convey to NYSERDA title to the Subject Invention unless NYSERDA shall waive in writing its right to take title. In the event the Contractor elects not to retain principal rights in a Subject Invention, the Contractor shall retain a non-exclusive, royalty-free license throughout the world in such Subject Invention transferable only with the written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the requested transfer shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days.

(c) The Contractor shall submit to NYSERDA, not less frequently than annually, written reports which indicate the status of utilization of Subject Inventions in which the Contractor retains principal rights. The reports shall include information regarding the status of development, date of first commercial sale or use, and gross royalties received by the Contractor. Such report shall be furnished to NYSERDA not later than February 1 following the calendar year covered by the report. In the event the Contractor fails to demonstrate that the Contractor has taken effective steps within three years after a patent is issued to bring the Subject Invention to the point of Practical Application, then NYSERDA shall have the right to grant a non-exclusive or exclusive license to responsible applicants under terms that are reasonable under the circumstances, or to require the Contractor to do so.

(d) The Contractor shall include the foregoing patent clauses, suitably modified to identify the parties, in all subcontracts which involve the performance of Work under this Agreement. The Subcontractor shall retain all rights provided for the Contractor, and the Contractor shall retain all rights provided for NYSERDA, as set forth above.

Article IX

Warranties and Guarantees

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

- (a) it is financially and technically qualified to perform the Work;
- (b) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;
- (c) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted scientific standards and engineering practices;
- (d) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted scientific standards and engineering practices;
- (e) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for claim that the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;
- (f) there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or NYSERDA's rights hereunder;

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

(h) Contractor certifies that all information provided to NYSERDA with respect to Executive Order Number 127 is complete, true and accurate.

Article X

Indemnification

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

Article XI

Insurance

Section 11.01. Maintenance of Insurance; Policy Provisions. The Contractor, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in the Section hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

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

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

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

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

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

or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and

(b) Commercial automobile liability insurance in respect of motor vehicles owned, licensed or hired by the Contractor and the Subcontractors for bodily injury liability, including death and property damage, incurred in connection with the performance of this Agreement, with minimum limits of \$500,000 in respect of claims arising out of personal injury, or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$500,000 in respect of claims arising out of property damage in any one accident or disaster.

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by this Article and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

Article XII

Stop Work Order; Termination

Section 12.01. Stop Work Order.

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

- (i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or

- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

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

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

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

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

Section 12.02. Termination.

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon 30 days prior written notice to the Contractor. In such event, compensation shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Compensation and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor).

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

(c) NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Executive Order Number 127, signed by Governor Pataki on June 16, 2003, was intentionally false or intentionally incomplete. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

Article XIII

Independent Contractor

Section 13.01. Independent Contractor. The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, the Subcontractors, and their respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

Article XIV

Compliance with Certain Laws

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

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

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

Article XV

Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices. All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be deemed to have been sufficiently given for all purposes hereunder when delivered or mailed by registered or certified mail, postage prepaid, return receipt requested, (i) if to NYSERDA, at 17 Columbia Circle, Albany, New York 12203-6399 or at such other address as NYSERDA shall have furnished to the Contractor in writing, and (ii) if to the Contractor, at _____, or such other address as the Contractor shall have furnished to NYSERDA in writing.

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

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

Article XVI

Publicity

Section 16.01. Publicity.

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

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

(c) Commercial promotional materials or advertisements produced by the Contractor shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit,

provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Contractor do not agree on the wording of such credit in connection with such materials, the Contractor may use such materials, but agrees not to include such credit.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month and year first above written.

NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY

By _____

Name _____

Title _____

By _____

Jeffrey J. Pitkin

Treasurer

EXHIBIT B

REVISED 6/98

STANDARD TERMS AND CONDITIONS
FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts)

The parties to the attached agreement, contract, license, lease, amendment, modification or other agreement of any kind (hereinafter, "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the Agreement (the word "Contractor" herein refers to any party other than NYSERDA, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. NON-DISCRIMINATION REQUIREMENTS. In accordance with 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, age, disability 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.

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. 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 B, the terms of this Exhibit B shall control.

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

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

EXHIBIT C
REPORT FORMAT AND STYLE GUIDE

PURPOSE

This document explains how to prepare a technical report for the New York State Energy Research and Development Authority (NYSERDA). It describes editorial and production procedures and gives electronic data-transfer information. NYSEDA's contractors prepare the reports describing NYSEDA research and development projects that NYSEDA publishes. Please direct questions about format and style to Diane Welch of NYSEDA's Technical Communications unit: (518) 862-1090, ext. 3276; fax (518) 862-1091; e-mail dlw@nyserda.org

COPYRIGHTS

All material borrowed or adapted from other sources should be properly identified (i.e., document, source, date, and page). The contractor must obtain and submit to NYSEDA the copyright owner's written permission to use copyrighted illustrations, tables, or substantial amounts of text from another publication.

REPORT FORMAT AND SEQUENCE

The following items are required in all technical reports and should be paginated in the following sequence:

- Title page (no page number)
- Notice (no page number)
- Abstract (iii)
- Acknowledgments (optional) (iv)
- Table of Contents, including listings of figures and tables (v or vii)
- Summary (S-1)

NOTE: the Abstract, Table of Contents, and each section begin on right-hand, odd-numbered pages.

Title Page

- The following information is required (see sample on last page):
 - Report title and type of report (i.e., final, interim, or summary)
 - Name of NYSEDA project manager(s)
 - Corporate name, city, and state of contractor(s), including contact person(s) or project manager(s)
 - Project cosponsors, including contact person(s) or project manager(s)
 - Contract number (e.g., 3178-ERTER-MW-94)

Notices

One of these legal notices or disclaimers is required:

- When NYSEDA is the project's sole sponsor, this notice must be used:

NOTICE

This report was prepared by _____ in the course of performing work contracted for and sponsored by the New York State Energy Research and Development Authority (hereafter "NYSEDA"). The opinions expressed in this report do not necessarily reflect those of NYSEDA or the State of New York, and reference to any specific product, service, process, or method does not constitute an implied or expressed recommendation or endorsement of it. Further, NYSEDA, the State of New York, and the contractor make no warranties or representations, expressed or implied, as to the fitness for particular purpose or merchantability of any product, apparatus, or service, or the usefulness, completeness, or

accuracy of any processes, methods, or other information contained, described, disclosed, or referred to in this report. NYSERDA, the State of New York, and the contractor make no representation that the use of any product, apparatus, process, method, or other information will not infringe privately owned rights and will assume no liability for any loss, injury, or damage resulting from, or occurring in connection with, the use of information contained, described, disclosed, or referred to in this report.

- When there are other project cosponsors, use the following notice instead:

NOTICE

This report was prepared by _____ in the course of performing work contracted for and sponsored by the New York State Energy Research and Development Authority and the _____ (hereafter the "Sponsors"). The opinions expressed in this report do not necessarily reflect those of the Sponsors or the State of New York, and reference to any specific product, service, process, or method does not constitute an implied or expressed recommendation or endorsement of it. Further, the Sponsors and the State of New York make no warranties or representations, expressed or implied, as to the fitness for particular purpose or merchantability of any product, apparatus, or service, or the usefulness, completeness, or accuracy of any processes, methods, or other information contained, described, disclosed, or referred to in this report. The Sponsors, the State of New York, and the contractor make no representation that the use of any product, apparatus, process, method, or other information will not infringe privately owned rights and will assume no liability for any loss, injury, or damage resulting from, or occurring in connection with, the use of information contained, described, disclosed, or referred to in this report.

Abstract and Key Words — right-hand, odd-numbered page [iii]

An abstract is a brief, 200-word description of project objectives, investigative methods used, and research conclusions or applications. This information will be used when NYSERDA registers the report with the National Technical Information Service (NTIS). A list of key words that describe the project and identify the major research concept should be submitted with the report. Four to six precise descriptors are generally sufficient and will be used for indexing, registering, and distributing the report through NTIS.

Acknowledgments (optional) — left-hand, even-numbered page [iv]

Acknowledgments precede the contents and should be no longer than two paragraphs.

Table of Contents and Lists of Figures and Tables — begin on odd-numbered, right-hand pages [v. vii, ix, etc.]

The Table of Contents should list section numbers, titles, second-level headings, and their page numbers. Third-level headings also may be listed. If the report contains five or more figures or tables, they should be listed using the style of the Table of Contents. The following samples are boxed only to set them apart in this document.

Summary — right-hand, odd-numbered page [S-1]

The Summary, which immediately precedes the body of the text, should be written for a general audience. The Summary may be the only part of the technical report closely read by a number of people, many of whom lack a technical background. These may include industry and utility executives, government officials, legislators, the general public, and media representatives. The Summary should be 500-1000 words long.

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
SUMMARY	S-1
1 DESCRIPTION OF STUDY	1-1
Sources of Information	1-5
Bases of Evaluation	1-9
2 EXISTING CONDITIONS	2-1
Architecture	2-3
Mechanical and Electrical Systems	2-13
3 ANALYSIS OF PRESENT ENERGY USE	3-1
Analysis of Use by Systems	3-3

FIGURES

<u>Figure</u>	<u>Page</u>
1-1 Comparative Energy Use Per Cubic Foot in Hospitals Under 200 Beds	1-2
2-1 View of Community Hospital from South	2-1
2-2 Site Plan	2-5

GENERAL INFORMATION

The first reference to NYSERDA should read “the New York State Energy Research and Development Authority (NYSERDA).” Subsequent references should read simply “NYSERDA.” When it is clear that you are referring to New York State, use State; otherwise, use New York State or the State of New York.

COPY

- Page format:
 - Margins should be 1.25 inches left and right; 1 inch top and bottom.
 - Use left-hand justification only.
 - Text should be in a 10-point serif font (i.e., Times Roman, Bookman, etc.); captions, tables, and figures should be in a sans-serif font (i.e., Helvetica, Arial, etc.).
 - Spacing should be 1.5 lines, printed on one side of the paper.
 - Block-style paragraphs should be used, with no indentation (except for fifth-level headings, which should be blocked on the left; see Heading Styles, below).

- There should be two returns between a paragraph and the next heading.
- Material borrowed or adapted from external sources must be identified (i.e., document, source, date, and page). Written permission to use copyrighted illustrations, tables, or text taken from another publication must be submitted with the report.
- Avoid half-page and one-sentence paragraphs.
- Do not use contractions.
- When referring to a specific figure or table, spell out and capitalize the words "Figure" and "Table."
- Indented lists of material should be set off with bullets:
 - If a typographical bullet is unavailable, the bullet is a lower case "o," not zero.
 - One blank line should precede and follow a list.
 - Bulleted items should be indented left and right.
- All new sections should begin on a right-hand, odd-numbered page (e.g., 1-1, 2-1, A-1, etc.).
- Percentages should be written as follows: 1%, 76%, etc.
- Acronyms must be spelled out the first time used, followed by the acronym in parentheses.

HEADING STYLES

The heading styles illustrated below should be used. (Only section headings should be numbered.)

FIRST-LEVEL HEADING

Section 1

INTRODUCTION

The heading is upper case, centered, and boldfaced; the text is below the heading, at the left margin.

SECOND-LEVEL HEADING

The heading is upper case, at the left margin, and boldfaced; the text is at the left margin.

Third-Level Heading

The heading is upper and lower case, at the left margin, boldfaced, and underscored; the text is at the left margin.

Fourth-Level Heading. The heading is upper and lower case, at the left margin, boldfaced, and underscored, with a period at the end. The text continues on the same line as the heading. The remaining text goes back out to the left margin.

Fifth-Level Heading. The heading is upper and lower case, indented, boldfaced, and underscored with a period at the end. The text continues on the same line, with the remaining text indented left and right.

TABLES AND FIGURES

- Tables and figures must be numbered sequentially and titled individually.
- Place tables and figures as close as possible to the text in which they are mentioned.
- Distinguish tabular material from the text.
- Cite a source if the tabular material or figure content has not been generated by the contractor.
- Figure captions should be complete sentences when appropriate.
- Use "Figure 1," not "Fig. 1," or "Table 1." in the text, as well as for captions. Examples:
 - Table 1 details demand-side management options.
 - As shown in Figure 1, the demand-side management program offers numerous options.
- Figure captions should be typed in boldface.
 - **Figure 1. Demand-Side Management Options in New York State.**
- Unless generated by the contractor, a source should always be cited. The figure source should appear after the caption (e.g., Source: Lawrence Berkeley Laboratory); the table source should be noted with an asterisk and footnoted.
- Photographs and drawings should be limited in number, with the following guidelines:
 - Black-and-white line drawings or good-quality, clear halftones (black-and-white photographs) may be used. Color artwork and photos will be printed in black-and-white.
 - Slides should be converted to black-and-white photos before being submitted.
 - Photographs should be printed on glossy stock, preferably 5"x7".

REFERENCES AND BIBLIOGRAPHIES

The format in Manual of Style (University of Chicago Press, Chicago, Illinois) should be used for reference listings and bibliographies.

Bibliographic entries should be listed alphabetically by author, as follows:

Hawkins, R.R. Scientific, Medical, and Technical Books Published in the United States of America. 2d ed. New York: Bowker, 1958.

REPORT REQUIREMENTS

Two hard copies of the draft final report must be submitted to NYSERDA's Director of Communications. After review by the Project Manager and Technical Communications staff, the draft will be returned to the contractor for final corrections. The contractor is responsible for satisfactorily addressing technical comments from NYSERDA and other co-funders. When making editorial corrections, the contractor must ensure that technical content is not compromised.

After editorial corrections have been made, the contractor must submit two hard copies of the final report (one a camera-ready original and the other a photocopy) and the report on a compact disc, Iomega 100 PC-Zip disk, or IBM personal computer-compatible diskette to NYSERDA's Director of Communications.

Electronic Requirements

- Material must be submitted in any of the following formats:
 - Compact disc (CD-ROM)
 - Iomega 100 PC-Zip disk
 - IBM personal computer-compatible 3.5-inch, double-sided (DS), high-density (HD) diskette
- Textual material should be created in a format compatible with WordPerfect 9. While other word-processing programs may be able to be converted, results may vary. Characteristics such as underlining, bold, italics, and special characters that often appear in equations may be lost if WordPerfect 9 is not used.
- Reports that are to be published on the web must be submitted as either a PDF or HTML file.

If you are unable to meet these electronic transfer requirements, before submitting your report please contact Diane Welch of NYSERDA's Technical Communications unit at (518) 862-1090, ext. 3276; fax (518) 862-1091; e-mail dlw@nysERDA.org

**CITY OF LOCKPORT INFLUENT HYDROPOWER
FEASIBILITY STUDY**
Final Report

Prepared for

**THE NEW YORK STATE
ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**
Albany, NY

Lawrence J. Pakenas, P.E.
Senior Project Manager

Prepared by

CITY OF LOCKPORT
Lockport, NY

Michael Diel
Project Manager

and

MALCOLM PIRNIE, INC.
Buffalo, NY

Vincent J. Funigiello, P.E.
Project Manager

4311-ERTER-MW-97

NYSERDA
Report 98-11



July 1998

Sample title page. Font is a serif font (Times Roman). Bold-faced text is 13 pt., small caps. The rest of the type is 11 pt., plain text.

New York State Energy Research and
Development Authority
Technical Communications
17 Columbia Circle
Albany, New York 12203-6399

October 2000

EXHIBIT D

PART 504

PROMPT PAYMENT POLICY STATEMENT

Section 504.1 Purpose and applicability. (a) The purpose of this Part is to implement section 2880 of the Public Authorities Law by detailing the authority's policy for making payment promptly on amounts properly due and owing by the authority under contracts. This Part constitutes the authority's prompt payment policy statement as required by that section.

(b) This Part generally applies to payments due and owing by the authority to a person or business in the private sector under a contract it has entered into with the authority on or after May 1, 1988. This Part does not apply to payments due and owing:

- (1) under the Eminent Domain Procedure Law;
- (2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;
- (3) to the Federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;
- (4) if the Authority is exercising a legally authorized set-off against all or part of the payment; or
- (5) if other State or Federal law or rule or regulation specifically requires otherwise.

Section 504.2 Definitions. As used in this Part, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- (a) "Authority" means the New York State Energy Research and Development Authority.
- (b) "Contract" means an enforceable agreement entered into between the Authority and a contractor.
- (c) "Contractor" means any person, partnership, private corporation, or association:
 - (1) selling materials, equipment or supplies or leasing property or equipment to the Authority pursuant to a contract;
 - (2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, the Authority pursuant to a contract; or
 - (3) rendering or providing services to the Authority pursuant to a contract.

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

(e) "Designated payment office" means the Office of the Authority's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(f) "Payment" means provision by the Authority of funds in an amount sufficient to satisfy a debt properly due and owing to a contractor and payable under all applicable provisions of a contract to which this Part applies and of law, including but not limited to provisions for retained amounts or provisions which may limit the Authority's power to pay, such as claims, liens, attachments or judgments against the contractor which have not been properly discharged, waived or released.

(g) "Prompt payment" means a payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Part in order for the Authority not to be liable for interest pursuant to Section 504.6.

(h) "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 Part, in order for the Authority not to be liable for interest pursuant to Section 5.06.

(i) "Proper invoice" means a written request for a contract 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 the Authority may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to the Authority's Controller, marked "Attention: Accounts Payable," at the designated payment office.

(j)(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, the Authority has actually received all the purchased goods, property or services covered by a proper invoice previously received in the designated payment office.

(ii) if a contract 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 contract 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 the Authority for the portion working, completed or delivered, the Authority 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.

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

Section 504.3 Prompt payment schedule. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Part, the date of payment by the Authority of an amount properly due and owing under a contract shall be no later than 30 calendar days, excluding legal holidays, after such receipt.

Section 504.4 Payment procedures.

(a) Unless otherwise specified by a contract provision, 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 the Authority.

(b) The Authority shall notify the contractor within 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; and
- (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 the Authority fails to notify a contractor of a defect or impropriety within the fifteen 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 the Authority 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, the Authority shall make payment, consistent with any such correction or resolution and the provisions of this Part.

Section 504.5 Exceptions and extension of payment due date. The Authority has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Part, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the payment due date:

(a) If the case of a payment which a contract provides 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 the contract or other State or Federal mandate has not been submitted to the Authority 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 the Authority and the date when the Authority 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 the contract or by other State or Federal mandate, whether to be performed by or on behalf of the Authority or another entity, or is specifically permitted by the contract or by other State or Federal provision and the Authority 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, the Authority 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 the Authority 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 the Authority, 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 the Authority.

Section 504.6 Interest eligibility and computation. If the Authority fails to make prompt payment, the Authority shall pay interest to a contractor on the payment when such interest computed as provided herein is equal to or more than ten dollars. 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.

Section 504.7 Sources of funds to pay interest. Any interest payable by the Authority pursuant to this Part shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related contract payment.

Section 504.8 Incorporation of prompt payment policy statement into contracts. The provisions of this Part in effect at the time of the creation of a contract shall be incorporated into and made a part of such contract and shall apply to all payments as they become due and owing pursuant to the terms and conditions of such contract, notwithstanding that the Authority may subsequently amend this Part by further rulemaking.

Section 504.9 Notice of objection. Unless a different procedure is specifically prescribed in a contract, a contractor may object to any action taken by the Authority pursuant to this Part which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to the Authority. 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 address set forth in Section 504.2(e). The Vice President of the Authority, or his or her designee, shall review the objection for purposes of affirming or modifying the Authority's action. Within 15 working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the contractor either that the Authority'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 30 working days.

Section 504.10 Judicial Review. Any determination made by the Authority pursuant to this Part which 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 Part or any other review procedure that may be specified in the contract or by other law, rule, or regulation.

Section 504.11 Court action or other legal processes.

(a) Notwithstanding any other law to the contrary, the liability of the Authority to make an interest payment to a contractor pursuant to this Part 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 the Authority 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.

Section 504.12 Amendments. These regulations may be amended by resolution of the Authority, provided that the Chair, upon written notice to the other Members of the Authority, may from time to time promulgate nonmaterial amendments of these regulations.