



**Evaluation of the New York State
Renewable Portfolio Standard Program
Request for Proposals (RFP) 1133
Up to \$500,000 Available**

Proposals Due: June 18, 2007 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (NYSERDA) requests the services of consultants to assist NYSERDA with conducting analyses in support of an evaluation of the New York State Renewable Portfolio Standard (RPS) Program in 2009. Proposers are asked to present their experience, qualifications and capabilities in renewable energy program evaluation, renewable electric generation, and renewable markets characterization and assessment; and in conducting one, all, or any combination of the broad categories of analyses described in this RFP. NYSERDA plans on entering into task order agreements for one or more of the analyses areas requested in this RFP beginning in the Fall 2007. NYSERDA is required to prepare an evaluation report that will be issued for public comment by March 31, 2009

In 2004 the New York State Public Service Commission (PSC) adopted a goal to increase the electricity used by retail customers in New York generated from renewable resources from approximately 19% to 25% by 2013. (See PSC Case 03-E0188 and the various orders issued under that proceeding at <http://www.dps.state.ny.us>.) In April 2005 the PSC adopted the Order Approving Implementation Plan (April 2005 Order) authorizing NYSERDA to procure renewable electric generation through a two-tiered, centralized approach. The Main Tier procures the environmental attributes associated with wholesale renewable electric generation for delivery to New York customers. The Customer-Sited Tier offers incentives to retail electric customers in New York for renewable technologies installed at the customer's site.

This RFP seeks one or more contractors or a lead contractor with a team of subcontractors (collectively referred to as "contractor(s)") to provide technical and analytical support deemed relevant for documenting the results and impacts of the RPS program through year-end 2008, and to provide analyses deemed necessary to address any additional emerging policy issues and program needs, including analytical support for program changes that may be proposed through 2013. Proposers should have the expertise to respond to discrete evaluation questions concerning, but not limited to:

- RPS program cost effectiveness and benefit/cost analyses;
- RPS program impacts on the environment, energy diversity and economic development;
- RPS program impacts on the electric transmission and distribution system; and
- Market conditions including impacts of the RPS Program and other factors on the development of wholesale, retail, and voluntary power markets for renewable resources.

Proposal Submission: Proposers must submit 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. Proposals must be clearly labeled and submitted to:

**Roseanne Viscusi, RFP 1133
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399**

For technical questions concerning this solicitation, contact Carole Nemore at (518) 862-1090, ext. 3217 or csn@nyserda.org. For contractual questions concerning this solicitation, contact Doreen Darling at (518) 862-1090, ext. 3216 or djd@nyserda.org. No communication intended to influence this procurement is permitted except by contacting Carole Nemore. Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract. *Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned. Faxed or e-mailed proposals will not be accepted. Proposals will not be accepted at any other NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA's web site at www.nyserda.org.

I. BACKGROUND

Pursuant to Case 0-E-0188 - "Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard," the PSC adopted as a policy goal that at least 25% of the electricity used by retail customers in New York be generated from renewable resources by 2013. In its "Order Regarding Retail Renewable Portfolio Standard," (the September 2004 Order), the PSC designated NYSERDA as the central procurement administrator of the RPS Program, and authorized NYSERDA to administer a two-tiered program (Main Tier and Customer-Sited Tier) to procure the environmental attributes of renewable electric generation associated with wholesale facilities and with customer-sited installations. The 25% goal represented an incremental increase in renewable electric generation from a 2004 baseline of approximately 18.5% and included a projection that the voluntary private sector green market would contribute 1% of the total goal. The September 2004 Order established a non-bypassable RPS Program surcharge levied on the delivery portion of electricity bills for all New York retail customers who also pay the System Benefits Charge (SBC). The RPS Program surcharge is collected by the State's six investor-owned utilities and transferred to NYSERDA. Approximately \$741 million through 2013 will be collected to fund the RPS Program. The September 2004 Order set forth annual energy targets (expressed in Mega Watt hours or MWh) that represent, on a cumulative basis from 2006 through 2013, the amount of renewable energy that should be sold to retail electric consumers in New York. Through 2008, the RPS Program is targeted to procure 3,549,026 MWh through the Main Tier and 75,685 MWh through the Customer-Sited Tier. By 2013, the Main Tier targets increase to 9,854,036 MWh and the Customer-Sited Tier targets increase to 201,130 MWh.

Main Tier

In many other states that have adopted Renewable Portfolio Standards, utilities are required to buy a certain percentage of the energy their customers need from renewable sources. In the New York RPS Program, NYSERDA, as the central procurer pays a production incentive on the basis of energy produced by the renewable generator that is ultimately used to satisfy demand in New York. NYSERDA does not procure the energy commodity; rather it competitively procures the environmental attributes of the wholesale electric generation that is to the New York electric grid. In exchange for receiving this incentive, the renewable generator agrees to relinquish all rights and claims to the environmental attributes associated with each MWh of delivered energy.

Main Tier eligible technologies include intermittent and fuel-based renewable resources. Intermittent resources include wind, solar, tidal, ocean, and run-of-river hydroelectric; fuel-based resources include facilities using eligible feedstocks of biomass, biogas, and/or liquified bio-fuel, and large customer-sited facilities using renewable technologies having at least one MW capacity. To date, NYSERDA has completed two Main Tier solicitations and is supporting one "Maintenance Tier" resource (a renewable resource existing before the RPS was adopted), all of which have resulted in approximately \$500 million in funding commitments. The first solicitation occurred in 2005, and resulted initially in the awarding of predominately ten-year contracts to seven projects (3 hydropower and 4 wind). Funding commitments for contracts awarded under the first solicitation total approximately \$186 million for environmental attributes associated with approximately 821,617 MWh per year of production. The second solicitation was completed in February 2007 and approximately \$295 million is committed for contracts which will support approximately 2.36 million MWh/yr of production. A third solicitation is anticipated to occur in late 2007 or early 2008. Thus, the results of three rounds of Main Tier procurements may be included in the 2009 evaluation.

Customer-Sited Tier

Through the Customer-Sited Tier, NYSERDA offers incentives, on an open enrollment basis, for end-use customers to install eligible renewable generation technologies at the site where the generation is

primarily consumed. On June 28, 2006, the PSC issued its "Order on Customer-Sited Tier Implementation" which allocated a total of \$45 million through 2009 to be used as capital buy-down and performance-based incentives. The PSC allocated 80% of the \$45 million among eligible customer-sited technologies which include photovoltaic systems, fuel cells, small wind turbines, and anaerobic digesters, and allocated 20% as discretionary funds for emerging technologies and over-subscribed eligible technologies. In February 2007, a Customer-Sited Tier Operating Plan was issued which details how the RPS Program is to be operated, including eligibility criteria specific to each technology. (See the Operating Plan found at: www.dps.state.ny.us/03e0188.htm#related.) The Customer-sited Tier is essentially an outgrowth of the **New York Energy \$mart ProgramSM** which has been offering customers incentives for the installation of eligible renewable technologies since 1999. The Customer-Sited Tier shifted its funding source in 2007 from the SBC to the RPS Program. Consequently, the 2009 evaluation of the Customer-Sited Tier will include information from 2007 to year-end 2008, and compare the RPS Program with results accomplished when it was previously funded by the SBC.

Prior to, and while preparing a response to this RFP, it is strongly advised that proposers consult available documents and Orders relating to the RPS program. The official documents pertaining to the RPS program are available on the Department of Public Service website at: <http://www.dps.state.ny.us/03e0188.htm>. Explanatory documents about the RPS program, as implemented by NYSERDA, are available at: <http://www.nyserdera.org/rps/about.asp>. Specific attention should be paid to the Order issued April 14, 2005 found on the Department of Public Service website. On the NYSERDA website special attention should be paid to the two RFPs that were issued for Main Tier solicitations (RFPs 916 and 1037) and to the Customer-Sited Tier Operating Plan.

II. EVALUATION REQUIREMENTS

The goal of this solicitation is to select a contractor(s), to support NYSERDA's evaluation of the RPS program. The April 2005 Order required that an evaluation report of the RPS program be prepared by NYSERDA and submitted for public comment by March 31, 2009. NYSERDA is seeking assistance technical and analytical support deemed relevant for documenting the results and impacts of the RPS program through year-end 2008, and analyses deemed necessary to address any additional emerging policy issues and program needs, possibly including analytical support for program changes that may be proposed through 2013. The 2009 evaluation report will include program results from inception in 2004 through 2008 and findings based on the program evaluations supported by the contractor(s) selected under this RFP. On or about March 31, 2009 the PSC will release NYSERDA's draft evaluation report to the public for a comment period. The selected contractor(s) may be asked to provide:

- assistance in the preparation of a response to public comments during the Summer 2009; and
- assistance in the writing of NYSERDA's final Evaluation Report in Fall 2009.

Prospective contractor(s) are expected to be qualified and experienced concerning one, all, or any combination of RPS program evaluation areas, including but not limited to:

- RPS program cost effectiveness analyses;
- RPS program impacts on the environment, energy diversity, and economic development;
- RPS program impacts on the electric transmission and distribution system; and
- Market conditions including impacts of the RPS program and other factors on the development of wholesale, retail, and voluntary power markets for renewable resources.

Services Requested to Support NYSERDA's Evaluation and On-going Reporting

Proposers will be expected to have a demonstrated knowledge of renewable electric generation and renewable energy markets. Professional expertise in conducting rigorous energy program evaluations is required. Requested analyses and evaluations shall be based on the following principles:

- The process must ensure objectivity, fairness, and balance in terms of the types of data collected and analyses provided;
- A sound methodology must be employed, using credible data and analysis, and adherence to the highest professional standards; and
- Conclusions drawn from the evaluation shall be based on results of the analyses conducted by the selected evaluation contractor.

The selected contractor(s) may need to employ a variety of credible evaluation approaches to successfully conduct the anticipated evaluation activities, and the use of sub-contractors or teaming arrangements to meet the requirements of this RFP is encouraged. Proposers must be able to demonstrate that the teaming arrangement is directly applicable and consistent with the evaluation review needs of this RFP.

As a result of this RFP, multiple qualified contractors may be retained to provide various services. Services will generally fall into the areas outlined in Section III of this RFP. The number and type of services requested from the selected contractor(s) will depend on the nature and complexity of the project, the expertise of the contractor(s), the volume and frequency of the services requested by NYSERDA, and performance.

III. ANALYSES THAT MAY BE REQUESTED OF SELECTED CONTRACTOR(S)

Proposers are asked to summarize their skills, expertise, qualifications, and personnel rates to establish a task order contract relationship in any or all of the following areas: Cost Effectiveness, Impact Analyses, and Market Conditions Assessments.

A. Cost Effectiveness, including but not limited to:

1) Program Benefit/Costs

- Identification of the appropriate benefits and costs for each Tier and determining RPS Program cost effectiveness using a benefit/cost analysis, including a total resource cost test that may include such costs and benefits variables as:
 - capital costs,
 - transmission/integration costs,
 - prices resulting from demand for renewable energy from other sources,
 - potential future carbon regulations,
 - availability of a federal Production Tax Credit,
 - displacement of fossil fuels,
 - capacity value, and
 - administration and transaction costs.

2) Program Cost Analyses

- The cost effectiveness of the amounts and type of incentives used to procure renewable energy credits for the Main Tier and the Customer-Sited Tier in achieving their respective procurement energy targets. For example the Customer-Sited Tier employs front-ended capital buy-down incentives in combination with production or performance based incentives. The Main Tier offers production based incentives typically over a ten year period; and
- A comparison of actual Program costs and targets achieved for capacity and energy with past expectations expressed in the PSC's RPS Orders. If inconsistent, a determination of what could be adjusted in order to reach the targets and goal.

B. Impacts Analyses, including but limited not to:

1) An evaluation of impacts on the environment, energy diversity, and economic development in New York resulting from the addition of renewable resources due to the RPS Program, including but not limited to:

- Air Quality improvements in New York based on the displacement of fossil fuel combustion;
- Degree that resource diversity has increased with the RPS Program and its spillover effects;
- The economic development impacts of Main Tier procurements, including: long and short-term jobs created, state and local taxes or payments made in lieu of taxes, payments made to access resources such as land leases for wind installations, and the purchase of in-state goods and services during construction and operation; and
- The economic development impacts of Customer-Sited Tier supported installations, including the number of eligible and certified installers in New York, and the number and activity levels of new businesses created by vendors, marketers, and manufacturers.

2) An evaluation of the impacts on the electric transmission and distribution system resulting from the addition of renewable resources in New York due to the RPS Program, including but not limited to:

- The experience of the New York Independent System Operator with electric transmission reliability resulting from the addition of intermittent wholesale renewable resources to the grid;
- The experience in the service territories of the six utilities (involved in the RPS Program) with electric distribution reliability resulting from installations of end-use, grid-connected distributed generation renewable resources;

C. Market Conditions Assessments.

Renewable Markets include the RPS Program, the competitive markets for wholesale and retail generation and end-use customers, and the market for the voluntary purchase of credits or attributes of renewable resources. Such analyses could include, but not be limited to:

1) Impact of the RPS Program on the energy marketplace including but not limited to:

- Market assessments that compare the actual impacts of the RPS Program with market forecasts done before the RPS Program was initiated. The contractor should identify what historical market data, information or reports/analyses would need to be consulted in order to effectively assess the influence of the RPS on the competitive market for those eligible renewable resources that received RPS incentives (e.g., PV, large and small wind, biomass, biogas, fuel cells, hydro repowering). Such assessment will include a review of pre-RPS evaluation studies that were done for the **New York Energy \$mart ProgramSM** administered by NYSERDA;
- The impact of the Main Tier procurements on the cost for wholesale energy in New York;
- The impact of the Main Tier procurements on the development of facilities that deliver wholesale renewable energy in New York;
- The impact of the Main Tier's evolving procurement approaches on the price paid for Renewable Energy Attributes (RECs) by NYSERDA;
- The impact of the Main Tier procurements on the level of price competition among bidders;
- The effect of 10-year contracts offered through the Main Tier program on the financial feasibility of new investment ventures;
- Impacts of the Customer-Sited Tier on:
 - retail renewable energy resource prices and affordability,
 - public awareness and acceptability of end-use renewable technologies in their communities.
 - public confidence in the performance of renewable end-use technologies, and
 - availability of renewable technologies in the marketplace; and
- The spillover effect of the RPS Program on:

- new renewable resources purchased by participants or non-participants of the Customer-Sited Tier; and
- new renewable generation capacity developed in New York without RPS Main Tier Program support.

2) Interaction among the RPS Program, the voluntary market (voluntary purchases of renewable resources credits by customers) and competitive markets (generators developing new generation capacity) including but not limited to:

- The effectiveness of the current voluntary market to support the development of large-scale and end-use renewable resources;
- The influence of the restructured, competitive energy markets in the region on the results achieved through the RPS Program;
- An assessment of whether the RPS surcharge affects the willingness of utility ratepayers to voluntarily pay for green power purchases; and
- An assessment of whether the RPS Program, as designed and implemented by NYSERDA, fosters or hinders the voluntary and competitive markets, taking into consideration such program elements as:
 - Ownership of “Renewable Energy Attributes” (RECs);
 - Mandatory set-asides of 5% of the total capacity of the generator’s facility for the voluntary market;
 - Options to bid in different levels of capacity from the same generation facility for sale to NYSERDA in the Main Tier solicitation; and
 - Generator’s right to suspend their contract with NYSERDA in favor of sales to the voluntary market.

3) Conditions precedent or necessary to successfully develop new renewable generation including wholesale and end-use generation in New York including, but not limited to:

- A comparison of the market influences/conditions that are ideal for market development of new capacity with what is currently present, with respect to the role and presence of key policies and market actors such as financial investors, marketers, and traders;
- Actions that could be taken by NYSERDA to accelerate the pace of the voluntary and competitive markets maturation, including but not limited to modifications to the RPS Program; and
- Actions that New York State could take to address other impediments that may be hindering development of a robust markets for large-scale and end-use renewable resources in New York, such as, but not limited to:
 - net metering laws and other public policy constraints;
 - environmental siting controversies and siting costs; and
 - utility interconnection practices and issues; and
- Steps needed to transition to a self-sustaining renewable energy market-based system by 2013.

4) NYSERDA’s role in the renewable energy marketplace including but not limited to:

- Comparison of New York’s centrally administered RPS Program with RPS Programs in other states that operate their RPS at the utility level; and
- Assessment of the future role for NYSERDA as the renewable market matures.

IV. TASK ORDER AGREEMENTS

One or more contractors or a lead contractor with a team of subcontractors may be retained through this RFP. NYSERDA will enter into a general **Task Order Agreement** with each contractor and/or lead contractor selected, with the flexibility to request services for a variety of activities. A Task Order

Agreement is used because no estimate can be made in advance as to the type, amount, and complexity of the work that each contractor will be required to perform. The number and types of activities in each area will be determined by NYSERDA.

The Task Order Agreements will not guarantee any specific amount of work but may contain a maximum dollar amount that cannot be exceeded.. The amount of work assigned to a contractor will depend on their particular expertise, the amount of work requested in the contractor's technical area, past performance, current workload, deadline requirements, and the ability of the contractor to provide high quality, cost-effective, and timely services. NYSERDA reserves the right to negotiate among finalists to ensure access to specific expertise. If multiple contractors are selected with overlapping areas of expertise, NYSERDA may also ask selected contractors for proposals and bids on specific assignments.

Once a contractor enters into a Task Order Agreement through this RFP, projects will be assigned and initiated through a written Task Order Plan, which will become a binding agreement for all parties. The Task Order Plan will be prepared by the contractor in cooperation with NYSERDA.

A. Task Order Plans shall include:

- The goals and objectives of the project
- The approach that will be taken outlined by tasks
- Any relevant background information
- Defined deliverables
- The project time frame
- The names or titles of individuals to work on the project
- The total not-to-exceed cost of the project, including a breakout by task and by title, hourly rate, hours, and non-labor costs
- The identification of measures and ability to track project success

The details of any Task Order Plan will be consistent with the level of complexity of the proposed project or activity. The Task Order Plan for projects is expected to be 1-5 pages depending on the complexity of each project. NYSERDA must review and approve all Task Order Plans before projects are implemented.

B. Contractor's Responsibility

For every project assigned, the selected contractor(s) shall be required to:

- Prepare a Task Work Order Plan for each project for review and approval by NYSERDA;
- Negotiate the scope and cost of the technical assistance with NYSERDA;
- Upon agreement by all parties to the Task Work Order Plan, provide the required assistance within the required time frame;
- Selected contractor(s) must assume overall responsibility for coordinating and conducting work and surveys done by the contractor(s) and subcontractors,
- Act as liaison with participating NYSERDA program staff and external organizations such as the New York State Department of Public Service,
- Submit any deliverables to NYSERDA for review and approval; NYSERDA's review will ensure that the deliverable conforms to the Task Work Order and;
- Provide required documentation of expenditures by task, based on the Task Work Order Plan, when seeking reimbursement from NYSERDA.
- The firm, its principals, subcontractors, and any personnel of the firm must disclose any financial or similar interest in any product or service which may conflict with or appear to conflict with the

objectivity of the services provided to NYSERDA.

C. NYSERDA's Responsibility

The NYSERDA Project Manager will be responsible for overseeing and managing all tasks undertaken by the selected contractor(s), including assisting in the development of the Task Order Agreement; approving and authorizing such work; reviewing, commenting, and approving work plans and subsequent deliverables; coordinating with program staff; promoting coordination between the selected contractor(s) and information that needs to be provided by NYSERDA RPS program staff; and approving invoices promptly.

V. FUNDING AND SCHEDULE

Under this RFP, up to \$500,000 may be spent over approximately the next two years for services provided in Task Order Agreements (outlined in Part II above) resulting from this RFP. Additional funds may become available should NYSERDA's responsibilities in evaluating the RPS Program change.

Compensation

Compensation will be based on the contractor(s)'s direct and indirect personal services costs plus allowable expenses. Fees will be based on the contractor(s)'s hourly rates for the appropriate level of staff. NYSERDA will negotiate contracts for services in fulfillment of the needs of this RFP on the basis of demonstrated competence and qualifications, at fair and reasonable fees. Fee schedules shall be included in each proposal that identify rates for each member of the team. Proposers are asked to consider the potential maximum length of the Task Order Agreements (two years) in proposing their fee schedules.

Fees, based on rates negotiated in the Task Order Agreements, for all work conducted will be included in the Task Work Order Plan and approved by NYSERDA. The Task Work Order Plan will also place a ceiling or not-to-exceed amount for each project. Contractors who accrue billable hours beyond the ceiling in the Task Work Order Plan, without approval in writing by NYSERDA, will do so at their own risk. Contractors will not be compensated for time spent in the preparation of any Task Work Order Plan. Preparation of the Task Work Order Plan is considered to be covered by the contractor's overhead expense. See Attachment D for documentation required to support indirect cost (overhead) rate(s) included in your cost proposal.

VI. PROPOSAL REQUIREMENTS

All responses submitted as part of the RFP 1133 solicitation process become the property of NYSERDA. Proposers will not be reimbursed by NYSERDA for any costs associated with the preparation of their proposals. 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 11 point.

Proposers must submit one original proposal with a completed and signed Proposal Checklist (Attachment A to this RFP). In addition, proposers must submit ten (10) copies of the complete proposal. These materials must be received by 5 pm on June 18, 2007 to the attention of Roseanne Viscusi at the address on the front of this RFP. **Late proposals and proposals lacking the appropriate completed and the signed Proposal Checklist will be returned.** The individual signing the checklist must be authorized to commit the proposer's organization to the proposal as submitted. Proposals that include teaming arrangements must designate one party as the lead contractor. Faxed or e-mailed copies will not be accepted.

Proposals are sought that are complete, comprehensive, and respond effectively to this RFP; however, they should not be excessively long or submitted in an elaborate format that includes expensive binders

or unnecessary graphics or attachments. Unnecessary attachments beyond those sufficient to present a complete and effective response will not influence the evaluation of the proposal. The target areas of this RFP, as specified in Part III are not inclusive. Proposers may prioritize areas if more than one is selected and specify areas that are specifically excluded.

Each page of the proposal should state the name of the proposer, the RFP number, and the page number. The proposal must be in the following format:

1) Cover Letter

Proposers shall submit a cover letter on company letterhead that references RFP 1133 and summarizes their understanding of the objectives and requirements of this RFP. It should specify which services are being offered. The cover letter should also summarize the proposer's ability to perform such services.

The cover letter must be signed by a person with the authority to enter into a contract with NYSERDA. Letters from subcontractors must be attached to the proposal and include the same information included in the proposer's cover letter.

2) Table of Contents

Proposers should separate and list proposal sections by each **Analysis Area** (explained in Part III) where services are being offered and may include any or all of the following:

- § RPS Program cost effectiveness including benefit/cost analysis and program costs analyses;
- RPS Program impacts on the environment, energy and economic development;
- RPS Program impacts on electric transmission and distribution system; and
- Market conditions. Renewable Energy Markets include the RPS Program, the competitive markets for wholesale and retail generation and end-use customers, and the market for the voluntary purchase of credits or attributes of renewable resources.

3) Overall Experience and Capabilities and Per Analysis Area for which services are being offered. Proposers shall briefly identify key information about their organization and other organizations that are part of the proposer's team. Describe previous experience in the conduct and delivery of similar or related services, including the aggregate number of years working in the areas of the analyses requested in Part III for which services are being offered. This should include the expertise and ability as a team/firm to deliver services in any, all, or a combination of the proposed analyses requested:

Proposers should provide a sample of work products (in electronic form on compact disk or equivalent) previously done on a project that is similar to each analysis area for which services are being offered. Such sample work products should be evidence of the quality and relevance of the proposer's previous work. The project descriptions should specify the level of involvement of the proposing firm and subcontractors and the results/deliverables of the project. Provide the name and telephone number of one reference for each of the relevant projects

4) Personnel and Qualifications

Identify and describe the company or organization that will be the prime contractor under this RFP and describe any personnel, teams, and subcontractors. Describe how the organization or team is qualified to perform and complete the services requested under this RFP. Specific areas of importance include electric generation, renewable energy markets, energy analysis and renewable energy program evaluation. Describe past relationships with team members and subcontractors. Include an organizational chart, if necessary, identifying the team leader and all other key personnel. Describe the accomplishments, experiences, and expertise of the individuals comprising the proposing team relevant to this RFP. Specifically:

- For each member of the team describe specific qualifications which are relevant to the work which may be requested under this RFP.
- If teaming, state the team's individual and collective expertise, including the aggregate number of years working in this area, that would enable successful completion of the work requested. Clearly identify staff that will be assigned to various project types.

5) Project Personnel and Rates

Proposers must include a fee schedule for the services proposed under this RFP. See Attachment D for details. Rates for proposers and all subcontractors shall include: direct labor costs for project managers and all key personnel presented by name, title, and hourly rate; travel and per diem costs; overhead rates (basis rate and items included in overhead rate); general and administrative costs and basis for application; and other costs. If applicable, escalation fees that appropriately account for the potential length of a Task Order Agreement must be identified. Indicate where word processing and clerical cost components are included. If a proposer is not located in New York, describe how travel costs will be minimized.

6) Potential Conflicts of Interest

Please describe all of your product, manufacturer or service-related affiliations. If any affiliations exist, you must provide a statement verifying if these affiliations conflict with or appear to conflict with the objectivity of providing services to NYSERDA and its customers. Disclose the nature of any potential conflicts of interest among team members in providing services to NYSERDA under this RFP. Identify possible conflicts of interest, actual and perceived, which could arise in connection with performance by team members of the proposed contract. Describe how your team would resolve conflicts of interest.

7) Appendices

Provide the resumes of all team members that show their education and highlight their relevant experiences

Provide the names and addresses of subcontractors.

Provide letters of commitment from team members who are subcontractors.

VII. EVALUATION OF PROPOSALS

All proposals received by the due date and meeting the submittal requirements stated in the RFP will be reviewed and ranked by a Technical Evaluation Panel (TEP) consisting of NYSERDA staff and selected outside reviewers possessing relevant expertise. Through its TEP review process, NYSERDA will review each proposal to determine whether a proposer has the necessary resources to provide offered services successfully under this program.

The number of proposers selected for contracting will be determined by the number of firms required to efficiently and effectively provide comprehensive services under this program. This number cannot be determined until all proposals are received and reviewed.

In general, proposers will be awarded contracts based on: qualifications, expertise in one or more of the analyses areas requested in this RFP, cost of services, and clarity of proposal. Specifically, responses to this RFP will be reviewed and assigned scores based on the criteria below (listed in order of importance):

- *Overall Experience and Capabilities.* Does the proposing organization have sufficient prior experience in the project area? Do the sample work products convincingly demonstrate excellence in the conduct of projects and the delivery of work products in the Analysis Area for which services are being offered?

- *Personnel and Qualifications.* Do the proposing organization and key personnel have the qualifications necessary to create and deliver work products in the Analysis Area? Are the education and capabilities of key personnel and staff appropriate for the Analysis Area?
- *Cost of Services.* How reasonable are the proposer's rates for the type of work envisioned in the Analysis Area description? Are the proposer's rates cost effective when compared to the rates of other proposers in the same Analysis Area?
- *Is the proposal well-organized, well-written, and complete* Does the proposal clearly communicate the proposer's understanding of the objectives of the RFP? Does the proposal respond to the request for technical and analytical support in the selected Analysis Area?

In addition other programmatic and management factors deemed appropriate by NYSERDA may be considered, such as:

Does the proposer offer economic benefits to New York? An in-state office and/or the employment of in-state staff, while not required, would be considered favorably.

Conflict of Interest. While disclosing a possible conflict of interest will not result in disqualification, if NYSERDA determines that a conflict of interest or the appearance of a conflict of interest exists, NYSERDA may: (1) take this into consideration in evaluating the proposal; (2) exclude the proposer from consideration for an award; (3) adjust the scope of work to avoid the conflict or appearance of conflict; or (4) negotiate other appropriate actions with the team member to avoid the conflict or appearance of conflict.

Further, as part of the evaluation process, proposers may be required to have appropriate representatives attend an interview NYSERDA's main office in Albany, NY prior to final selection.

VIII. GENERAL CONDITIONS

State Finance Law sections 139-j and 139-k

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

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

Proprietary Information

Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of

disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 www.nyserda.org/nyserda.regulations.pdf. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

Omnibus Procurement Act of 1992

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

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

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

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

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

Tax Law Section 5-a

NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at http://www.tax.state.ny.us/pdf/2006/killin/st/st220td_606_fill_in.pdf). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a perspective contractor prior to contacting and filed with NYSERDA. See, ST-220-CA (available at http://www.tax.state.ny.us/pdf/2006/killin/st/st220ca_606_fill_in.pdf). The Department has developed guidance for contractors which is available at http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf

Contract Award

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

|

IX. ATTACHMENTS

Attachment A – Proposal Checklist

Attachment B – Disclosure of Prior Findings of Non-responsibility Form

Attachment C – Intent to Propose

Attachment D – Project Personnel and Rates

Attachment E – Sample Agreement

ATTACHMENT A – RFP No. 1133 PROPOSAL CHECKLIST (MANDATORY)

Proposal Title Evaluation of the New York State Renewable Portfolio Standard Program		Due Date June 18, 2007	
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 and 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? (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)

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

Cover Letter _____ Table of Contents _____ Overall Experience & Capabilities _____ Personnel & Qualifications _____ Project Personnel & Rates _____ Potential Conflicts of Interest _____ Appendices _____ • Resumes _____ • Letters of commitment from Subcontractors _____	PART II Indictment/Conviction of Felony (if applicable) ___ NYSERDA Contracts Awarded (if applicable) ___ Prior and/or Competing Proposals (if applicable) ___ Exceptions to Terms & Conditions (if applicable) ___ Completed and Signed Contract Pricing Proposal Form(s) ___ Disclosure of Prior Findings of Non-responsibilityForm _____
--	---

AUTHORIZED SIGNATURE & CERTIFICATION

I certify that the above information, and all information submitted in connection with State Finance Law ' 139-j and ' 139-k, is complete, true, and accurate, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA-s procedures under ' 139-j(3) and ' 139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I the undersigned am authorized to commit my organization to this proposal.

Signature	Name
Title	Organization
Phone	Date

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

**Attachment B
Disclosure of Prior Findings of Non-responsibility Form**

(Mandatory)

Name of Individual or Entity seeking to enter the procurement contract:		
Address:		
Date:		
Solicitation or Agreement Number: RFP 1133 Name and Title of Person Submitting this Form:		
Has any Governmental Entity made a finding of non-responsibility regarding the Individual or Entity seeking to enter the Procurement Contract in the last four years? (Please indicate with an AX@)	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
Was the basis for the finding of non-responsibility due to due to a violation of ' 139-j of the State Finance Law? (Please indicate with an AX@)	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please indicate with an AX@)	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.		
Government Agency or Authority:		
Date of Finding of Non-responsibility:		
Basis of Finding of Non-responsibility: (Add additional pages as necessary)		

Has any Government al Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information ? (Please indicate with an AX@)		Yes
		No

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding: (Add additional pages as necessary)

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

By: _____ Date: _____
Signature

Name: _____ Title: _____

**ATTACHMENT C
INTENT TO PROPOSE**

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

Roseanne Viscusi - RFP No. 1133
New York State Energy Research and Development Authority
17 Columbia Circle, Albany, NY 12203-6399

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.)

- | | |
|---|---|
| <input type="checkbox"/> announcement notice in mail | <input type="checkbox"/> NYSERDA-s website |
| <input type="checkbox"/> notice in NYS Contract Reporter | <input type="checkbox"/> word-of-mouth |
| <input type="checkbox"/> notice in other media (please list): | <input type="checkbox"/> NYSERDA staff/booth at meeting (please specify): |

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

ATTACHMENT E

New York State Energy Research and Development Authority			Solicitation/Contract No. 1133	Page	
Contractor:			Name of Proposed Project: Evaluation of the NYS Renewable Portfolio Standard Program		
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 (If allowable) 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:					

ATTACHMENT E

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 cross-reference 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 \$15,000.

- 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 the Subcontract Procedures section of the attached Sample Agreement.

1b. OTHER DIRECT MATERIALS

In accordance with the requirements of the Subcontract Procedures section 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)

ATTACHMENT E

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 the Subcontract Procedures section 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 allowed under product development, demonstration or other certain cost-sharing projects.

Attachment F

New York State Energy

Research and Development Authority

SAMPLE AGREEMENT

- | | |
|------------------------------------|---------------------------|
| 1. Agreement Number: | 5. Project Period: |
| 2. Contractor: | 6. Federal ID: |
| 3. Contact: | 7. Total Amount of Award: |
| 4. Award Date: | |
| 8. Commitment Terms and Conditions | |

This Agreement consists of this form plus the following documents:

- ! Exhibit A, Statement of Work;
- ! Exhibit B, General Contract Provisions, Terms and Conditions;
- ! Exhibit C, Standard Terms and Conditions;
- ! Exhibit D, Prompt Payment Policy Statement; and
- ! Exhibit E, Guidelines for NYSERDA Print Deliverables.

9. ACCEPTANCE

[CONTRACTOR]

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

By _____

By
Jeffrey J. Pitkin
Treasurer

Name _____

Title

STATE OF)
) SS.:
COUNTY OF)

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

Notary Public

Exhibit A

Statement of Work

(To be developed between NYSERDA and Contractor)

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

Agreement: The Agreement and Exhibits A, B, C, D and E 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.

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.

Contractor: The Contractor identified in Item 2 of page one of the Agreement.

Effective Date: The effective date of this Agreement shall be the date appearing in Item 4 of page one of the Agreement.

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.

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.

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.

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 Contract Data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

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

Article II

Performance of Work

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

Section 2.02. Project Personnel. It is understood and agreed that the "Contact Person" identified in Item 3 of page one of the Agreement 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. NYSERDA shall be notified in writing of any change of Project Director by the Contractor.

Article III

Deliverables

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

Article IV

Payment

Section 4.01. Compensation. In consideration for this Agreement and as full compensation for the costs for the performance of all Work and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor the actual cost incurred as set forth in the Budget up to a maximum amount set forth in Item 7 of page one of the Agreement, subject to the provisions and restrictions contained herein. Such amount shall be paid only to the extent that costs are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement, the Budget and the following:

(a) Staff Charges: The Contractor shall be compensated for the services performed by its employees under the terms of this Agreement at the employee's actual wage rate.

(b) Direct Charges: The Contractor shall be reimbursed for reasonable and necessary actual direct costs incurred (e.g., equipment, supplies, travel and other costs directly associated with the performance of the Agreement) to the extent required in the performance of the Work in accordance with the provisions of the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs should generally not exceed the daily per diem rates published in the Federal Travel Regulations. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate.

(c) Indirect Costs: The Contractor shall be reimbursed for fringe benefits, overhead, general and administrative (G&A), and other indirect costs included in the Budget at such rates as the Contractor may periodically calculate, consistent with appropriate federal guidelines or generally accepted accounting principles.

Furthermore, NYSERDA shall have no liability under this Agreement to the Contractor or to anyone else beyond funds paid to NYSERDA by third parties for the purposes of this Agreement.

Section 4.02. Progress Payments. The Contractor may submit invoices for progress payment no more than once each month or no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable." Such invoices shall make reference to the Agreement number shown in Item 1 of page one of the Agreement. Invoices shall set forth total project costs incurred. They shall be in a format consistent with the cost categories set forth in the Budget. Invoices shall provide reasonable documentation for the above to provide evidence of costs incurred, including:

(a) Staff charges: for each employee, the name, title, number of hours worked, hourly rate and labor extension;

(b) Direct charges: all direct costs shall be itemized on the invoice and supported by documentation, such as vendor invoices, travel vouchers or other documentation; and

(c) Indirect charges: indirect cost rates and method by which rates are applied.

The Contractor shall be notified by NYSERDA in accordance with Section 504.4 (b)(2) of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, of any such information or documentation which the Contractor did not include with such invoice.

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

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

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Item 7 of page one of the Agreement.

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 the amount shown in Item 7 of page one of the Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.08. Audit Adjustment. 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.

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 prior written notification to the Contract Administrator as long as this Agreement remains in effect.

Article VI

Schedule

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in Exhibit A, Statement of Work.

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

Section 6.03. Option to Renew. NYSERDA shall have an option to renew this Agreement, at NYSERDA's discretion, for three additional one year periods, upon the same terms and conditions as this Agreement. NYSERDA may exercise its option by providing written notice to Contractor not less than 30 days prior to the expiration of the initial term or any subsequent renewal term.

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

Contract Data

Section 8.01. Rights in Contract Data.

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

(1) NYSERDA shall have Unlimited Rights in Contract Data.

(2) The Contractor shall have no rights in Contract Data unless expressly provided by NYSERDA.

The Contractor agrees to keep all Contract Data confidential except to the extent that NYSERDA agrees to disclose Contract Data.

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 construction and design standards and best 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 construction and design standards and best 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 any claim that the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

(f) there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or the 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 State Finance Law ' 139-k 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 Payment and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor).

(b) NYSERDA reserves the right to terminate this agreement in the event it is found that the certifications filed by the Contractor in accordance with State Finance Law ' 139-k, were 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 this Agreement.

(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 Tax Law Section 5-a, was intentionally false when made. 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 C hereto.

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

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

Article XV

Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Publicity.

(a) 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. In addition the Contractor shall notify NYSERDA's Director of Communications regarding any media interview in which the Work is referred to or discussed.

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

Section 15.02. 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 15.03. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

EXHIBIT C

REVISED 1/05

STANDARD TERMS AND CONDITIONS
FOR ALL NYSERDA AGREEMENTS

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

The parties to the 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 C, the terms of this Exhibit C 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.

13. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to contractors that have entered into agreements in an amount exceeding \$15,000 for the purchase of goods and services:

- ! Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification Form (New York State Department of Taxation and Finance Form ST-220).
- ! Annually, during the term of the Agreement, and prior to any renewal period (if applicable) and annually thereafter during any renewal period, the Contractor is required to provide NYSERDA with a completed Form ST-220.
- ! Certifications referenced in paragraphs (a) and (b) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.
- ! NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

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.

EXHIBIT E
GUIDELINES FOR NYSERDA PRINT DELIVERABLES

PURPOSE

This document briefly describes editorial and production procedures and gives electronic data-transfer information. NYSERDA's contractors prepare the reports describing NYSERDA research and development projects that NYSERDA publishes. Please direct questions about format and style to Diane Welch of NYSERDA's Technical Communications unit: (518) 862-1090, ext. 3276; fax (518) 862-1091; e-mail dlw@nyserda.org

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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 NYSERDA the copyright owner's written permission to use copyrighted illustrations, tables, or substantial amounts of text from another publication.

GENERAL INFORMATION

The first reference to NYSERDA should read *the* New York State Energy Research and Development Authority (NYSERDA).[®] Subsequent references should read simply *ANY*SERDA.[®] 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*.

- \$ 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.
- \$ Acronyms must be spelled out the first time used, followed by the acronym in parentheses.

ELECTRONIC REQUIREMENTS

- \$ Material must be submitted in any of the following formats:
 - Compact disc
 - 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.

If you are unable to meet these electronic transfer requirements, before submitting material, please contact
Diane Welch of NYSERDA's Technical Communications unit at (518) 862-1090, ext. 33276; fax (518) 862-1091; e-mail dlw@nyserda.org

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