



**DISTRIBUTOR FINANCIAL INCENTIVES
PREMIUM-EFFICIENCY MOTORS
Program Opportunity Notice (PON) No. 660-02
Applications accepted through December 31, 2004**

**Summary of Revisions for the Distributor Financial Incentives
Premium-Efficiency Motors Program:**

1. Application deadline has been changed from December 31, 2005 to December 31, 2004.
2. NYSERDA will accept invoices with a customer 'sold to' date through December 31, 2004.
3. All required documentation must be received by NYSERDA on or before March 31, 2005.



REVISION
DISTRIBUTOR FINANCIAL INCENTIVES
PREMIUM-EFFICIENCY MOTORS
Program Opportunity Notice (PON) No. 660-02

APPLICATION DEADLINE HAS BEEN CHANGED
Applications accepted through December 31, 2004

PROGRAM SUMMARY:

Through the **New York Energy SmartSM** Premium-Efficiency Motors program, the New York State Energy Research and Development Authority (NYSEDA) announces the availability of **financial incentives to motor vendors** for the sale of qualified premium-efficiency motors in New York State. Wholesale distributors, vendors, and dealers of electric motors, and original equipment manufacturers of equipment using qualified premium-efficiency motors are eligible to apply. For the purposes of this solicitation, the term vendor is used to refer to all eligible participants.

NYSEDA aims to encourage marketing and promotion activities that increase the availability and sale of qualified premium-efficiency motors in New York State. The program directs participating vendors to incorporate a motor systems approach into their sales strategy and to agree to include information on the benefits of energy saving system improvements, including premium-efficiency motors in their customer-marketing activities. Vendors who participated under previous program opportunity notices (PON 501-00 or PON 592-01) MUST reapply and are subject to the participation conditions of this program opportunity notice (PON 660-02). Vendors will have the opportunity at the end of the fourth quarter in each program year to revise their application.

Benefits include:

- Incentive payments of up to \$80 per motor are made to participating vendors based on proof of sale of qualified motors,
- Easy-to-use motor selection tools customized to meet your needs and targeted to your motor lines, and
- Targeted customer-marketing assistance to engage and educate your customers and to promote reliable and efficient motor management practices.

If changes are made to the program, an advance notification will be published in the New York State Contract Reporter. The changes will also be posted on the NYSEDA web site (www.nyserda.org).

APPLICATION SUBMISSION: The application is included as Attachment A. Applications with original signatures must be sent to one the following address: NYSEDA; Attention: Motors Project Manager; 17 Columbia Circle; Albany, New York 12203-6399.

Questions should be directed to **Laurie Kokkinides** at 518-862-1090, ext. 3353 or ljk@nyserda.org.

I. PROGRAM REQUIREMENTS

Through the **New York Energy SmartSM** Premium-Efficiency Motors Program, the New York State Energy Research and Development Authority (NYSERDA) announces an opportunity for vendors to earn incentives for promoting and selling qualified premium-efficiency motors. To become a participating vendor, vendors must submit the attached application and agree to basic participation conditions.

Applications will be accepted through December 31, 2004. The application is included as Attachment A.

Eligibility

Incentives are available to vendors who promote and sell qualified premium-efficiency motors to customers in the **New York Energy SmartSM** program territory, which consists of Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation electric utility service areas. Eligible vendors include wholesale distributors, vendors, and dealers of electric motors, and original equipment manufacturers of equipment using qualified premium-efficiency motors.

Qualifying Motors

To qualify for incentives, motors covered by this program **MUST** meet the following criteria:

- new, general purpose, three-phase, induction motors
- NEMA Design A or B
- 1 - 200 horsepower
- totally enclosed fan-cooled (TEFC) or open dripproof (ODP)
- 1,200-, 1,800-, or 3,600-speed
- perform equal to or better than the NEMA PremiumTM efficiency criteria

A sheet summarizing the NEMA PremiumTM efficiency levels is included as Attachment B.

Incentives Available

Participating vendors will be eligible for one of three Incentive Schedules based on their previous year's sales of motors meeting the NEMA PremiumTM efficiency criteria or motors with efficiency levels equivalent to NEMA PremiumTM levels. [Example: If you are submitting an application in 2002, regardless of which month, you should base your Incentive Schedule on 2001 sales of qualifying motors]. To encourage consistent levels of sales on a quarterly basis, the incentive amounts increase **over each quarter** as described in the Application. The 'sold to' date on the customer invoice will determine which quarter the sale is counted toward.

On the first day of each quarter, each applicant's count of qualified motors sold returns to zero. The four quarters are defined as follows: First: January - March; Second: April - June; Third: July - September; and Fourth: October - December. **Each quarter ends on the last day of March, June, September, and December.**

Participating vendors will receive incentive payments upon review and approval of required documentation including customer invoices providing proof of sales. NYSERDA will accept invoices

with a customer 'sold to' date through December 31, 2004. All required documentation must be received by NYSERDA on or before March 31, 2005.

Vendor Assistance

To support participating vendors in their efforts to promote qualified premium-efficiency motors, NYSERDA has retained a vendor-assistance contractor to provide one-on-one program assistance tailored to each vendor's needs *at no cost*. Available services include supplying simple, easy-to-use motor selection tools (*e.g.*, customized lists of qualified premium-efficiency motors you carry), coordinating joint marketing efforts targeted to the industries you serve, and providing informational materials (*e.g.*, quality motor repair practice resources, motor systems case studies, U.S. Department of Energy software). The vendor-assistance contractor will also help you collect and submit required reporting information, expedite incentive payment requests, assist you with the application required to participate in the program and, if requested, assist with other programmatic needs.

This program encourages vendors to incorporate a motor systems approach into their sales strategy by agreeing to inform customers of the benefits of motors meeting the NEMA Premium™ efficiency criteria. The vendor-assistance contractor will provide information and materials to participating vendors to assist them in promoting a motor systems approach in their customer-marketing activities.

Customer Education

To increase the demand for high-efficiency motors, NYSERDA is increasing its efforts on customer marketing. In an effort to educate customers on the benefits of a motor systems approach, the vendor-assistance contractor will assist participating vendors by offering the following customer services: motor system workshops to address motor installation practices, adjustable speed drives, and upgrading system components; promotions of quality motor repair practices and corporate motor management plans and policies; and decision-making tools to cut motor energy costs and increase productivity and reliability.

Financial Incentives for your Customers

Financial incentives are also available to eligible customers for the purchase and installation of qualified premium-efficiency motors through NYSERDA's Smart Equipment Choices Program. The application form for this program is available directly from NYSERDA's web site at <http://www.nyserda.org/rddopps.html> under the link for PON 853.

II. APPLICATION REQUIREMENTS

NYSERDA will accept applications from all vendors who meet and agree to comply with the Participation Conditions identified in the application. The application will establish the Incentive Schedule available to each vendor based on the previous year's sales of motors meeting the NEMA Premium™ efficiency criteria or motors with efficiency levels equivalent to NEMA Premium™ levels. Out-of-state vendor's previous year's sales should apply only to those sales within the eligible program territory.

Applications **MUST** be completed in consultation with either NYSERDA or the vendor-assistance contractor in order to ensure that the appropriate Incentive Schedule is selected. Vendors will have the opportunity at the end of the fourth quarter in each program year to move from their current Incentive

Schedule to a different Incentive Schedule. However, revisions MUST be completed in consultation with either NYSERDA or the vendor-assistance contractor to ensure the appropriate Incentive Schedule is selected.

National or chain distributors that operate from more than one location must submit a separate application for each location. The previous year's estimated number of new motors sold must correspond to the location identified in the application.

How To Apply

1. Fill out all applicable spaces on the Premium-Efficiency Motors Application.
2. Check the box to indicate the Incentive Schedule (A, B, or C) that corresponds to your previous year's estimated qualified premium-efficiency motors sold. The Incentive Schedule identifies the level of incentives you are eligible to earn.
3. Read the Participation Conditions included in the Premium-Efficiency Motors Application and sign and submit the completed and originally signed application by December 31, 2004 to: NYS Energy Research and Development Authority, **Attention: Motors Program Project Manager**, 17 Columbia Circle, Albany, NY 12203-6399.

III. APPLICATION EVALUATION

Applications will be reviewed to assure that appropriate information and signatures are provided and that the Incentive Schedule you selected corresponds with your previous year's estimated premium-efficiency motor sales of qualified motors. Upon application approval, NYSERDA will issue a Purchase Order, under which the Participant will be required to fulfill duties and obligations set forth in the application and in the Purchase Order. A Sample Purchase Order is included as Attachment C.

IV. GENERAL CONDITIONS

PROPRIETARY INFORMATION - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your application. The applicant should determine whether the information is critical for evaluating an application or whether general, non-confidential information, may be adequate for review purposes. The New York State Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(d) (2) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the applicant wishes to have treated as proprietary, including 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.

MINORITY-AND WOMEN-OWNED BUSINESS POLICY-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: NYS Department of Economic 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: NYS Department of Economic Development, Minority and Women's Business Development Division, 30 South Pearl Street, Albany, NY 12245.

CONTRACT AWARD - NYSERDA may award a purchase order based on initial applications without discussion, or following limited discussion or negotiations. NYSERDA may request additional data, or material to support applications.

LIMITATION - This solicitation does not commit NYSERDA to award a purchase order, pay any costs incurred in preparing an application, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all applications received, to negotiate with all qualified sources, or to cancel or change 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 an 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.

V. ATTACHMENTS

Attachment A - Premium-Efficiency Motors Application ([48kb .pdf](#)) ([234kb .doc](#)) ([518kb .wpd](#)) - NOTE: right-click and save to your computer)

Attachment B - National Electrical Manufacturers Association (NEMA) Premium™ Efficiency Criteria ([8kb .pdf](#))

Attachment C - Sample Purchase Order ([79kb .pdf](#))



**ATTACHMENT A
PREMIUM-EFFICIENCY MOTORS
APPLICATION**

Applicant Name: _____

Title: _____

Company: _____

Address (include County): _____

Area code and phone: _____ Fax: _____

E-mail: _____ Federal ID number: _____

INSTRUCTIONS

1. CHECK THE BOX to indicate the Incentive Schedule (A, B, or C) that corresponds to your previous year's estimated number of qualified premium-efficiency motors sold. [Example: If you sold between 0 and 20 qualified motors during the previous year refer to Incentive Schedule A below]. *The Incentive Schedule identifies the level of incentives you are eligible to earn.*

Previous Year's Number of Qualified Premium-Efficiency Motors Sold	Incentive Schedule
0 - 20	A <input type="checkbox"/>
21 - 60	B <input type="checkbox"/>
61 or more	C <input type="checkbox"/>

The incentive amounts for each Incentive Schedule (A, B, and C) are as follows:

For Incentive Schedule A	For Incentive Schedule B	For Incentive Schedule C
\$25 for the first (1) motor sold <i>per quarter</i>	\$25 for the first through fifth (1 - 5) motor sold <i>per quarter</i>	\$25 for the first through fifteenth (1 - 15) motor sold <i>per quarter</i>
\$50 for the second through fourth (2 - 4) motor sold <i>per quarter</i>	\$50 for the sixth through fifteenth (6 - 15) motor sold <i>per quarter</i>	\$50 for the sixteenth through thirtieth (16 - 30) motor sold <i>per quarter</i>
\$65 for fifth or more (5 +) motor sold <i>per quarter</i>	\$75 for sixteenth or more (16 +) motor sold <i>per quarter</i>	\$80 for thirty-first or more (31 +) motor sold <i>per quarter</i>

2. Read the Participation Conditions included on the other side of this sheet.

This application has been signed below by a duly authorized representative of the Participant. If this application is approved, NYSEDA will issue a Purchase Order, under which the Participant will be required to fulfill duties and obligations set forth in this application and in the Purchase Order.

AUTHORIZED SIGNATURE

DATE

NAME: _____

TITLE: _____

COMPANY AND PHONE: _____

**Distributor Financial Incentives
Premium-Efficiency Motors Program
Participation Conditions**

If my application is approved, I agree to adhere to the program requirements contained in this application and the Purchase Order, including the requirement that I certify the following:

(a) I am a wholesale distributor, vendor, or dealer of electric motors, or original equipment manufacturer of equipment using qualified premium-efficiency motors.

(b) I will promote: new, general purpose, three-phase, induction; NEMA Design A or B; 1-200 horsepower; totally enclosed fan-cooled or open-dripproof; 1,200-, 1,800-, or 3,600-speed motors, that perform equal to or better than the NEMA Premium™ efficiency levels.

(c) I will work with NYSERDA and the vendor-assistance contractor to carry out customer education and marketing activities that support sales of qualifying premium-efficiency motors, both in the near and long term, including informing customers about the benefits of motors meeting the NEMA Premium™ efficiency criteria.

(d) If I choose to use the **New York Energy \$mart**SM program logo in joint advertising or on informational materials, I will submit materials in advance of release or distribution to NYSERDA for approval. I understand that I can submit these materials through the vendor-assistance contractor.

(e) I understand that NYSERDA must issue a Purchase Order before unit sales will count toward my count of qualified motors sold.

(f) I understand that to receive incentives, my sales of qualified premium-efficiency motors must be to customers in the **New York Energy \$mart**SM program territory. The **New York Energy \$mart**SM program territory includes electricity distribution customers of Consolidated Edison Company of New York, Inc., Central Hudson Gas and Electric Corporation, Niagara Mohawk Power Corporation, New York State Electric and Gas Corporation, Orange and Rockland Utilities Inc., and Rochester Gas and Electric Corporation.

(g) I understand that the 'sold to' date on the customer invoice will determine which quarter the sale is counted toward.

(h) I understand that all applications must be submitted on or before December 31, 2004. I understand that NYSERDA will accept invoices with a customer 'sold

to' date through December 31, 2004. Verification of sales must be provided to NYSERDA on or before March 31, 2005.

(i) I understand that submission of invoices to NYSERDA for the sale of qualified premium-efficiency motors must include:

- Documented sales which show that a new, qualified premium-efficiency motor was sold to an eligible customer after the date of NYSERDA's Purchase Order.

- Manufacturer, model, enclosure, nominal efficiency, RPM, and horsepower information.

- The customer's purchase price, plus any incentives, discounts, or other promotions that you may have provided to the customer.

- The customer's location (at least by zip code).

- A list of customer marketing activities and strategies used to promote sales of qualified premium-efficiency motors.

- Full customer information (name, organization, full address, and telephone number) for one out of every 20 motors submitted for incentive payment.

(j) I understand that NYSERDA will process incentive payments of up to \$80 per motor on a monthly basis, in accordance with the Incentive Schedule, provided that program requirements are met.

(k) I will cooperate with NYSERDA's vendor-assistance contractor to provide the required reporting information.

(l) I have read the Disclosure Requirement in Section IV of the Program Opportunity Notice and, if necessary, attached information in response.

ATTACHMENT B

National Electrical Manufacturers Association (NEMA) Premium™ Efficiency Criteria

Open Dripproof (ODP) Motors

HP	Speed		
	1200	1800	3600
1	82.50	85.50	77.00
1.5	86.50	86.50	84.00
2	87.50	86.50	85.50
3	88.50	89.50	85.50
5	89.50	89.50	86.50
7.5	90.20	91.00	88.50
10	91.70	91.70	89.50
15	91.70	93.00	90.20
20	92.40	93.00	91.00
25	93.00	93.60	91.70
30	93.60	94.10	91.70
40	94.10	94.10	92.40
50	94.10	94.50	93.00
60	94.50	95.00	93.60
75	94.50	95.00	93.60
100	95.00	95.40	93.60
125	95.00	95.40	94.10
150	95.40	95.80	94.10
200	95.40	95.80	95.00

Totally Enclosed Fan-Cooled (TEFC) Motors

HP	Speed		
	1200	1800	3600
1	82.50	85.50	77.00
1.5	87.50	86.50	84.00
2	88.50	86.50	85.50
3	89.50	89.50	86.50
5	89.50	89.50	88.50
7.5	91.00	91.70	89.50
10	91.00	91.70	90.20
15	91.70	92.40	91.00
20	91.70	93.00	91.00
25	93.00	93.60	91.70
30	93.00	93.60	91.70
40	94.10	94.10	92.40
50	94.10	94.50	93.00
60	94.50	95.00	93.60
75	94.50	95.40	93.60
100	95.00	95.40	94.10
125	95.00	95.40	95.00
150	95.80	95.80	95.00
200	95.80	96.20	95.40



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

17 Columbia Circle
Albany, New York 12203-6399
Phone: (518) 862-1090 * Fax: (518) 862-1091

ATTACHMENT C - SAMPLE PURCHASE ORDER

Federal taxpayer ID #: 14-1731395
N.Y. State sales tax exemption #: 14740026K

TO:	DATE	PURCHASE ORDER NUMBER
(The "Participant")	11/29/04	XXXX
		SHOW ON INVOICES AND SHIPMENTS

SHIP TO: Unless otherwise indicated, all prices are F.O.B. Destination
 NYS Energy Research & Development Authority
 17 Columbia Circle
 Albany, NY 12203-6399
ATTN: LAURIE KOKKINIDES

Discount Terms _____ % _____ Days.
 DELIVERY DATE _____

PLEASE FURNISH THE FOLLOWING, SUBJECT TO THE CONDITIONS NOTED:

QTY	DESCRIPTION	UNIT COST	TOTAL COST
	<p>For incentives to the Participant for the sale of qualified premium-efficiency motors in accordance with the requirements of Attachment A Premium-Efficiency Motors Application submitted under PON 660-02 (the "Application"), which is attached hereto.</p> <p>NYSERDA shall pay the Participant for each qualified motor sold, in accordance with the Incentive Schedule on Attachment A, up to a maximum amount of \$_____ (the "Incentive Award"). The Participant may submit invoices to NYSERDA once each month for eligible incentives; such invoices shall be prepared in accordance with the requirements of the Application and shall contain the documentation requested therein.</p> <p>All requests for an Incentive must be received on or before March 31, 2005 for qualified premium-efficiency motors sold before December 31, 2004. Payment will be made to the Participant following NYSERDA's receipt of a valid invoice with the required documentation in accordance with the terms of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit A. The Standard Terms and Conditions for this Purchase Order are also attached hereto as Exhibit B.</p> <p>TOTAL COST NOT TO EXCEED</p>	\$00,000.00	
			\$00,000.00

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY IS EXEMPT FROM PAYMENT OF ALL FEDERAL AND NEW YORK SALES TAXES, COMPENSATING USE TAXES AND EXCISE TAXES. DO NOT INCLUDE SUCH TAXES WHEN SUBMITTING INVOICES.

THE CONTRACT ESTABLISHED BY THIS PURCHASE ORDER IS GOVERNED BY EXHIBIT B, STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS (BASED ON APPENDIX A, STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS), WHICH IS INCORPORATED HEREIN AND MADE A PART HEREOF. PARTICIPANT SIGNIFIES ITS ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS PURCHASE ORDER AND EXHIBIT B BY DELIVERY OF THE GOODS OR SERVICES AND BY THE ACCEPTANCE OF PAYMENT.

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By _____
 AUTHORIZED SIGNATURE

EXHIBIT B

REVISED 6/98

STANDARD TERMS AND CONDITIONS
FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts)

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

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

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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

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

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

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

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

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

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

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

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

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

13. ADDITIONAL TERMS AND CONDITIONS. The following terms and conditions shall apply to this Purchase Order:

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

(b) Maintenance of Records. The Participant shall keep, maintain, and preserve at its principal office throughout the term of the Purchase Order 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 Purchase Order, 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 Participant in the course of such performance.

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

(d) Indemnification. The Participant 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 Purchase Order. The obligations of the Participant under this clause shall survive any expiration or termination of this Purchase Order, and shall not be limited by any enumeration herein of required insurance coverage.

(e) Termination. This Purchase Order may be terminated by NYSERDA at any time during the term of this Purchase Order, with or without cause, upon 30 days prior written notice to the Participant. In such event, compensation shall be paid to the Participant for documented unit sales of qualified motors prior to the effective date of termination.

(f) Independent Contractor. The status of the Participant under this Purchase Order shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Participant and its subcontractors, and their respective officers, agents, employees, representatives and servants, shall at all times during the term of this Purchase Order conduct themselves in a manner consistent with such status and by reason of this Purchase Order 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.

(g) Laws of the State of New York. The Participant shall comply with all of the requirements set forth in Exhibit B hereto. References to particular laws of the State of New York in this Exhibit B and elsewhere in this Purchase Order, however, are not intended to be exclusive and nothing contained in such Exhibit and Purchase Order shall be deemed to modify the obligations of the Participant to comply with all legal requirements.

(h) Funding Amounts. NYSERDA reserves the right to increase funding for the Premium-Efficiency Motors Program.

EXHIBIT C
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 NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under contracts. This Part constitutes NYSERDA's prompt payment policy statement as required by that section.

(b) This Part generally applies to payments due and owing by NYSERDA to a person or business in the private sector under a contract it has entered into with NYSERDA 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 NYSERDA 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) "NYSERDA" means the New York State Energy Research and Development Authority.

(b) "Contract" means an enforceable agreement entered into between NYSERDA 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 NYSERDA pursuant to a contract;
- (2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, NYSERDA pursuant to a contract; or
- (3) rendering or providing services to NYSERDA pursuant to a contract.

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

(e) "Designated payment office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203-6399.

(f) "Payment" means provision by NYSERDA 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 NYSERDA'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 NYSERDA 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 NYSERDA not to be liable for interest pursuant to Section 506.

(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 NYSERDA may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to NYSERDA'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, NYSERDA has actually received all the purchased goods, property or services covered by a proper invoice previously received in the designated payment office.
- (ii) if 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 NYSERDA for the portion working, completed or delivered, NYSERDA will not be in receipt of an invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

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

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 NYSERDA 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 NYSERDA.

(b) NYSERDA 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 NYSERDA 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 NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the payment due date shall be calculated using the original date of receipt of an invoice.

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

Section 504.5 Exceptions and extension of payment due date. NYSERDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this 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 NYSERDA on a timely basis, then the payment due date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to NYSERDA and the date when NYSERDA has actually

received such matter.

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

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

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

Section 504.6 Interest eligibility and computation. If NYSERDA fails to make prompt payment, NYSERDA 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 NYSERDA 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 NYSERDA 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 NYSERDA 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 NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, 17 Columbia Circle, Albany, New York 12203-6399. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA'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 NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed 30 working days.

Section 504.10 Judicial Review. Any determination made by NYSERDA 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 NYSERDA 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 NYSERDA after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

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