



**Market Research and Evaluation Support Services**  
Request for Qualifications (RFQ) 3183

**Proposals Due: April 11, 2016 by 5:00 PM Eastern Time\***

**Information regarding upcoming Bidders' Conferences can be found here: [www.nyserda.ny.gov/rfq3183](http://www.nyserda.ny.gov/rfq3183).**

The New York State Energy Research and Development Authority (NYSERDA) is issuing this solicitation to establish pools of qualified consultants to support the NYSERDA Performance & Market Standards (P&MS) and Market Insights teams with a variety of objective market and evaluative research in order to inform program strategies and assess the effectiveness of results. NYSERDA's evaluation and market research capabilities are transitioning to become increasingly nimble and flexible to meet short turnaround requests and provide actionable insights while supporting accountability goals. The results of this work will allow NYSERDA to improve impact and innovation in deploying clean energy projects and strategies. In order to achieve these objectives cost-effectively and efficiently, evaluation tasks will be assigned for individual, discrete activities with firm timelines and deliverables.

NYSERDA's approach to program design involves working from the market back to initiate, measure, test and evolve offerings that accelerate the cost-effective deployment of clean energy and to stimulate technology and business innovation in clean energy. Our new program approaches are intended to enable NYSERDA to achieve the high-level State policy goals identified in the 2015 State Energy Plan including greenhouse gas reduction, energy efficiency, generation through renewable sources, and expansion of the clean energy economy. Interested parties may submit a proposal to provide support in one or more of the following Market Research and Evaluation Support Areas:

- Market Research
- Impact Evaluation/Field Verification
- Survey Data Collection

NYSERDA anticipates qualifying multiple consultants within each of the areas listed above. NYSERDA will define specific tasks and projects, which will be assigned to qualified consultants through individual task work orders which will outline scope, timelines, and budgets. NYSERDA will be responsible for coordinating and guiding work among consultants. This structure is a departure from NYSERDA's previous evaluation framework where NYSERDA competitively selected one contractor team for each evaluation area with a lead contractor coordinating and leading the work. The term of retention for each qualified consultant is up to three years with the option to renew for another two years at NYSERDA's discretion. NYSERDA intends to re-evaluate its qualified consultant pool and may reissue this RFQ to expand its qualified contractor pools on an annual basis, or more frequently as needed.

**Please Note: Consultant teaming arrangements (i.e., a primary contractor teamed with subcontractors) are discouraged in proposals submitted under this RFQ since NYSERDA is interested in direct and cost-effective access to individuals or firms most qualified to perform specific work tasks in a timely manner. As this new task- and project-based approach focuses on**

specific skills versus the breadth of each evaluation support area, NYSERDA encourages firms with specific skill sets, regardless of energy-industry experience, to propose.

**NYSERDA will hold Bidders' Conferences to provide an overview of the solicitation and answer questions. Questions must be submitted in advance. Please visit [www.nyserda.ny.gov/rfq3183](http://www.nyserda.ny.gov/rfq3183) for dates, times, instructions and details.**

**Proposal Submission:** Electronic submission is preferable. NYSERDA will also accept proposals by mail or hand-delivery. If submitting electronically, proposers must submit the proposal along with Attachments A, B, C and D in either PDF or Microsoft (MS) Word format. Proposal PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility, rather than scanning. For ease of identification, all electronic files must be named using the proposer's entity name in the title of the document. Proposals may be submitted electronically by following the link for electronic submissions found on this RFQ's webpage, which is located in the "Current Opportunities" section of NYSERDA's website (<http://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>). See Attachment E of this RFQ for instructions on how to submit electronically.

If mailing or hand-delivering, proposers must submit two (2) paper copies of their proposal including Attachments A, B, C, and D, along with a CD or DVD containing both a PDF and MS Word digital copy of the proposal, following the above guidelines. Mailed or hand-delivered proposals must be clearly labeled and submitted to:

**Roseanne Viscusi, RFQ 3183  
NYS Energy Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399**

If you have technical questions concerning this solicitation, contact the following Project Managers:

- Victoria Engel-Fowles (Market Research) at (518) 862-1090, ext. 3207, [Victoria.Engel-Fowles@nyserda.ny.gov](mailto:Victoria.Engel-Fowles@nyserda.ny.gov);
- Emily Shusas (Impact Evaluation/Field Verification) at (518) 862-1090, ext. 3465, [Emily.Shusas@nyserda.ny.gov](mailto:Emily.Shusas@nyserda.ny.gov); or
- Patricia Gonzales (Survey Data Collection) at (518) 862-1090, ext. 3338 or [Patricia.Gonzales@nyserda.ny.gov](mailto:Patricia.Gonzales@nyserda.ny.gov).

If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090, ext. 3507, [Venice.Forbes@nyserda.ny.gov](mailto:Venice.Forbes@nyserda.ny.gov).

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

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

## I. Introduction

In 2014, Governor Andrew M. Cuomo launched the Reforming Energy Vision (REV) strategy to build a cleaner, more resilient and affordable energy system. The Clean Energy Fund (CEF)<sup>1</sup> and NYSERDA's subsequent filings<sup>2</sup> supporting the CEF are critical pillars to support the mission of REV, and are designed to complement the related initiatives championed by New York State, including the New York State Public Service Commission's REV regulatory proceeding<sup>3</sup> and its Clean Energy Standard proceeding.<sup>4</sup>

Through the CEF, NYSERDA seeks to build on the success of its programs and momentum to meet evolving market and customer needs. NYSERDA has designed the CEF to pursue three long-term outcomes: thriving and self-sustaining clean energy industries able to operate without subsidies; greater levels of private capital invested in clean energy and jobs in New York; and significant reductions in greenhouse gas (GHG) emissions from the state's energy sector.

As market transformation and GHG emissions reductions goals are both long-term outcomes, NYSERDA requested a 10-year program authorization of approximately \$5 billion in new strategic investment through 2025. CEF investments will be made across four program portfolios, all of which will be addressed by consultants qualified under the RFQ<sup>5</sup>:

- Market Development, which will align with the REV Regulatory Proceeding and evolving utility strategies to reduce barriers, animate consumer demand for clean energy, and enable the private markets to provide the new products and services sought by an engaged consumer market;
- Innovation and Research, which will catalyze the development of innovative clean energy solutions, while growing New York's cleantech sector and accelerating the development and introduction of the new technologies that will be needed to foster increased levels of GHG reductions;
- NY Green Bank, which seeks market transformation in the financial sector, leveraging public investments with private capital in a self-sustaining manner while reaching new markets for clean energy services; and
- NY-Sun, which seeks to create a robust and self-sustaining solar market in New York State for solar electric technologies, and to build a program approach for other clean technologies to follow.

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<sup>1</sup> Case 14-M-0094 - Proceeding on Motion of the Commission to Consider a Clean Energy Fund; Case 10-M-0457 - In the Matter of the System Benefits Charge IV; Case 07-M-0548 - Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard; Case 03-E-0188 - Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard; Case 13-M-0412 - Petition of the New York State Energy Research and Development Authority to Provide Initial Capitalization for the New York Green Bank. *Order Authorizing the Clean Energy Fund Framework*, issued and effective January 21, 2016.

<sup>2</sup> As of February 22, 2016, NYSERDA had filed revised versions of its [Resource Acquisition Transition Chapter](#) and [Budget Accounting and Benefits Chapter](#) of its Clean Energy Fund Investment Plan; additional chapters describing interventions will follow during 2016.

<sup>3</sup> Case 14-M-0101 - Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision. *Order Adopting Regulatory Policy Framework and Implementation Plan*, issued and effective February 25, 2015.

<sup>4</sup> Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard.

<sup>5</sup> In addition to the four CEF program portfolios, consultants qualified under this RFQ will also assist NYSERDA in conducting ongoing evaluation work for the Regional Greenhouse Gas Initiative portfolio as well as post-program evaluation activities on the Energy Efficiency Portfolio Standard and System Benefits Charge portfolios.

As NYSERDA transitions to the CEF, NYSERDA's market research and evaluation strategy will be rooted in a clear understanding of the markets within which we operate and will support the following principles:

- Accountability for use of public funds to achieve credible and sizeable outcomes: Reporting metrics and supporting evaluation analysis will focus on market change and progress toward the 2015 New York State Energy Plan policy goals related to environmental, energy and economic benefits.<sup>6</sup> Key high-level metrics include, but are not limited to: energy savings, energy cost savings, GHG emission reductions, dollars invested in clean energy and market penetration of clean energy technologies.
- Market insights that support concept development and design: Actionable insight into the economics and decision-making of customers, partners, and the markets within which we operate is foundational to our work to inform and develop strategies to overcome market barriers, animate the market, encourage private capital and investment, and increase the scale and adoption of clean energy.
- Actionable insights that evolve strategy and portfolio optimization: Timely feedback cycles on the performance of our strategies and the impacts on the market will enable us to determine which programs are working and which are not. We will deploy pilots and collect data to test hypotheses about the marketplace and barriers to private investment in energy efficiency, measure impacts of these initiatives in real-time, and adjust strategies at the pace of the market to account for new understandings of market barriers and existing conditions.
- Transparency in terms of methods and results: NYSERDA will publish regular reporting on investments, outputs and outcomes. Evaluation studies and methods will be made publicly available. Data sets gathered through evaluation activities will also be shared with the market.

This RFQ will align NYSERDA's Market Research and Evaluation Support effort with the above CEF principles, in particular ensuring effective and timely feedback cycles to provide information on market conditions and needs that can enrich strategies going to market, to assess program and strategy performance and market impact, and to support active management and cost-effective, value-added strategic adjustments in the future.

Evaluation elements supported through this RFQ include Market Research, Impact Evaluation/Field Verification and Survey Data Collection. Additionally, information that can support process evaluation and statewide building stock characterizations may be embedded within these areas, as applicable. More information describing each of these areas is provided in **Section II, Services Requested and Qualifications**.

At this time, NYSERDA has allocated nearly \$43 million of existing program evaluation funds (to be later supplemented with other available CEF evaluation funds) to the Market Research and Evaluation Support Areas described in this solicitation. NYSERDA envisions that approximately 60% of its evaluation funding will support Market Research, 25% will support Impact Evaluation/Field Verification,

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<sup>6</sup> [New York State Energy Plan](#).

and 15% will support Survey Data Collection. The overall dollar value and area allocations are subject to change, but are provided here as a reference for potential workload and emphasis. Funding will only be allocated to qualified consultants as specific tasks/projects/studies are defined by NYSERDA through individual Task Work Orders (TWOs). NYSERDA cannot anticipate when, or at what frequency, funding opportunities will arise for each qualified proposer under the Market Research and Evaluation Support Areas described in this solicitation.<sup>7</sup>

Consultants qualified under this solicitation will not be NYSERDA's sole resource for conducting evaluation and market insights research. Separately, NYSERDA may issue other solicitations in the future to invite proposers to offer innovative ideas and solutions. Proposers qualified under this RFQ will not be precluded from applying.

## **II. Services Requested and Qualifications**

NYSERDA expects to qualify multiple contractors to provide services in each of the specified Market Research and Evaluation Support Areas outlined in this RFQ (Areas 1-3 described below). The level and type of services requested from each qualified contractor will depend on NYSERDA's project needs, the contractor's expertise and contractor performance. Generally, research and evaluation activity will align with test-measure-adjust principles to ensure real-time feedback to NYSERDA.

NYSERDA encourages all firms that can demonstrate the qualifications and skill sets described within this solicitation to propose, regardless of whether or not they have energy industry-specific experience.

Proposers are invited to submit, in the format described in **Section IV, Proposal Requirements**, a proposal demonstrating their skills, expertise, qualifications and personnel rates in any or all of the three areas described below.

### **Overarching Minimum Contractor Qualifications**

All contractors, regardless of the area(s) being proposed, must possess the following minimum, basic qualifications:

- Ability to quickly develop tactical and cost-effective approaches to evaluation and market research
- Ability to quickly implement evaluation and market research to assist in planning future activities, as specified by NYSERDA
- Ability to work with data provided by others (e.g., survey contractor, industry data sources – open and commercially available)
- For any data collected on behalf of NYSERDA, ability to provide clean, coded data in a manner satisfactory to NYSERDA and in a manner consistent with [OpenNY guidelines](#)
- Demonstrated expertise in appropriate statistical analyses and interpretation of various statistical tests associated with survey or other data
- Statistical software expertise with SPSS, SAS, or similar packages
- Solid understanding and ability to engage in advisement or development of sampling approaches to meet NYSERDA's needs
- Computer software proficiency in MS Excel, MS Access, MS PowerPoint, MS Word, etc.

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<sup>7</sup> The framework described in this RFQ differs from NYSERDA's prior evaluation structure where one consultant team, consisting of several firms, was competitively selected for each evaluation area.

## **Area 1: Market Research**

### **Market Characterization and Market Progress/Impact Studies**

Market characterization and market progress/impact studies (herein referred to as “market studies”) will be designed to identify and assess the theory of change (i.e., how early and intermediate accomplishments lead to long-range results) and market progress associated with specific NYSERDA interventions, either individually or collectively in a given market. These studies will monitor indicators over time including those associated with awareness, knowledge, behavior, soft costs, and adoption (e.g., market penetration, market share, and private investment) of clean energy technologies and practices. While clean energy investment and market share are the paramount longer-term indicators for NYSERDA, market studies may focus on awareness, knowledge and behavior in more nascent markets, as early and intermediate indicators leading to longer-term adoption. Market studies may also, in limited cases, include developing technology commercialization projections or technology adoption curves to project and later measure the market penetration of specific clean energy technologies and practices over time. The information provided by market studies will inform program design and operation, provide credible quantification of outcomes and market impacts due to the program, and support program evolution and exit decisions.

Investment plans,<sup>8</sup> grounded through development of streamlined logic models, will be developed early in the planning phase to identify the theory of change, indicators of progress, and approaches to market tracking.<sup>9</sup> Although market change occurs over time, and longitudinal market tracking will typically have a longer time horizon, wherever possible, market tracking will be integrated into NYSERDA’s test-measure-adjust approach. For example, where appropriate, annual surveys of market actors may be conducted to assess early and intermediate indicators of clean energy technology adoption, or commercially-available data sets on market share could be assessed annually to identify the level of market share increase occurring throughout the targeted market.

When applicable, process evaluation may also be conducted as part of a market study on a given program or intervention based on the theory of change outlined in the logic model constructed by NYSERDA as part of its investment planning process. Process evaluation provides actionable recommendations to improve programs and will be designed and implemented for quick-cycle feedback and in support of continued program refinement. When appropriate, issues addressed may include program efficiency and effectiveness, participant satisfaction and barriers to participation. In comparison to prior program funding cycles and in line with test-measure-adjust principles, NYSERDA envisions conducting significantly more focused, targeted or phased process evaluations, when warranted, to provide better and timelier information to aid in program development, refinement and optimization.

### **Market Insights**

In close coordination with market characterization and market progress activities, market insights activity will leverage a wide range of traditional and new market research techniques to identify and apply actionable insights and trends to interventions so that they are most likely to be successful in the market. Research activities will largely focus on market discovery methods designed to understand customer and partner attitudes/perceptions, customer decision-making drivers/barriers affecting market growth, and techniques that will provide a clear understanding of partner/service provider and end-user economics, values, and business models to ensure the design of interventions and approaches will be compelling. Concept testing will also be a focus to confirm that strategies and approaches resonate with the market.

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<sup>8</sup> For the New York Green Bank, transaction profiles contain information similar to investment plans.

<sup>9</sup> Logic models will typically be developed by internal NYSERDA staff with Evaluation contractor support as needed.

Activities may also include continuous monitoring of social, economic, demographic and financial conditions which impact NYSERDA's efforts. This research will inform future programmatic decisions.

Another goal of the Market Research Area, generally, is assessing the future state of market activity. While market characterization and market progress/impact activity as well as market insights activity will work to describe the current state of the market, there is strong interest in identifying key indicators to track anticipatory insights within the market as well (e.g., future technology innovation, market trends). Proposals that demonstrate a capability in effectively measuring and assessing anticipatory insights are encouraged.

### Market Research Approaches/Tools

Market Research encompasses a variety of methods such as those described below. The Market Research Area may also include assistance with logic modeling and process evaluation, as needed. In all cases, deliverables shall be prepared and presented to NYSERDA in a highly useful and accessible format that aids in decision making.

- Longitudinal market actor and customer surveys involve interviews with key market actors designed to assess changes in the market over time by tracking, on a regular basis, key indicators. Indicators that can be tracked through such surveys include changes in awareness, knowledge, market share and business practices. Longitudinal surveys may include baseline studies, market characterization activities and retrospective and prospective modeling.
- Analysis of secondary data sources involves review of existing studies and data (e.g., sales data, market share data) to identify trends in key market indicators that can support primary data collection activities (e.g., increased market share of energy-efficient products through review of national product shipment data). This activity may also include development of case studies, bibliometric analyses (to demonstrate knowledge dissemination through counts and analysis of publications and patents), and historical tracing (to show the path by which a project funded by NYSERDA led to useful downstream products and processes).
- Targeted real-time surveys include brief surveys conducted at the time of participant engagement in an intervention and are designed to collect information on participant decision making and the factors that influenced participation. This type of real-time data collection effort will also be used to collect and analyze data to support and inform NYSERDA's pilot activities as these interventions get underway.
- Other focused methods are those targeting specific research questions or knowledge gaps and may include, but are not limited to, data collection efforts such as Delphi panels, in-depth interviews, segmentation research, concept testing and voice of customer research (to glean customer wants and needs, attitudes and perceptions, drivers and barriers, familiarity and other variables related to making clean energy decisions).
- Non-traditional research methods include ethnography, social media and community platforms to offer real-time and continuous feedback on concepts and strategies.

### Market Research Contractor Qualifications

In addition to the overarching contractor qualifications listed above, the market research work will require the qualified contractors to become familiar with and fully understand the breadth and depth of the CEF



and NYSERDA's interventions including interacting with key stakeholders and ensuring methods address appropriate audiences. Specifically, one or more of the following requirements must also be fulfilled by the qualified contractors:

- Expertise or capability to evaluate theory of change and market progress for a large variety of projects and interventions
- Ability to use innovative approaches and solutions to monitor indicators over time and assess efficiency and effectiveness of interventions; methods proposed should not be limited to those used to evaluate NYSERDA's programs in the past
- Ability to leverage a wide range of traditional and new market research techniques (including ethnography, social media and community platforms and behavioral approaches) to effectively glean relevant market and customer insights particularly in the areas of customer decision making and drivers/barriers affecting market growth
- Past projects relevant to supporting knowledge and experience in market effects/transformation (including theory of change evaluation) and process evaluation experience
- Experience and training in applying guiding principles, ethics, and industry standards to market research

As the Market Research Area is tied closely with data collection, Market Research proposers with existing data collection resources **within their firms** are asked to identify and **briefly** describe the qualifications of those resources within their Market Research proposals. Refer to the qualifications listed in **Area 3: Survey Data Collection** when describing qualifications associated with these resources.

## **Area 2: Impact Evaluation/Field Verification**

Impact evaluation/field verification assesses technology performance and use in order to verify program energy impacts. This serves mainly as an accountability mechanism to ensure accurate and credible energy and GHG emission impacts, but it will be implemented in as "real-time" a manner as possible. In doing so, impact evaluation/field verification will be designed to identify ways to improve current project-level impacts, and to gain knowledge to improve future initiative impact projections. Data from impact evaluation/field verification studies will also be publicized to support market confidence in clean energy technology performance.

Historically, significant resources have been spent on impact evaluation/field verification for incentive programs. Given the nature of the CEF interventions, NYSERDA envisions impact evaluation/field verification to remain an important area of work, but to constitute less of NYSERDA's overall evaluation spending than in the past. Where targeted incentives continue (e.g., low-to-moderate income programs), and for certain pilot projects, impact evaluation/field verification will be conducted on known participant projects, usually a sample. Market-based interventions will make it more difficult to identify direct participants. In these cases, impact evaluation/field verification may still seek to identify sample projects to evaluate or may involve other types of non-project based analyses to support credible savings estimates, such as development of deemed savings values, prototypical models, etc.

### **Impact Evaluation/Field Verification Approaches and Tools**



Impact evaluation/field verification broadly encompasses methods such as utility billing analysis, engineering reviews, deemed savings analysis, and site visits for verification and monitoring, as outlined below. The results from impact evaluation/field verification analyses will provide performance data to measure program energy impacts and realization rates, inclusive of energy efficiency, renewable energy and on-site generation activities. Data collected by these approaches will also support valuation of callable load and impact on energy reliability. Analyzing and researching in-service rates (i.e., percentage of measures in service), persistence, and snap-back will also be necessary in some cases. Ancillary benefits, including non-energy impacts, may be addressed inside of certain impact evaluation/field verification analyses. As applicable, impact evaluation/field verification methods will adhere to the International Performance Measurement and Verification Protocol (IPMVP) standards.

- Utility billing analysis to provide site specific changes in energy usage over time through the use of regression models and the use of historical billing data (kWh and MMBtu)
- Engineering reviews to assess reasonableness of baselines, engineering calculations and protocols used by programs to estimate energy impacts
- Developing and maintaining data on measure-level incremental energy savings and measure life in an existing database of deemed savings values
- Measurement and verification activities to validate energy efficiency measure installation, baseline conditions, operations, and energy impacts (kW, kWh and MMBtu) through activities such as site visits, metering and monitoring, modeling or other means as appropriate
- Surveys or interviews of site personnel or other parties for purposes of understanding operational and behavioral aspects that impact energy use/savings

As appropriate, elements of process evaluation and real-time surveys on decision making considerations may be incorporated into impact evaluation/field verification activities.

#### Impact Evaluation/Field Verification Contractor Qualifications

In addition to the overarching contractor qualifications listed above, the impact evaluation/field verification work will require the qualified contractors to become familiar with and fully understand the breadth and depth of the Clean Energy Fund and NYSERDA's interventions including interacting with key stakeholders. Specifically, one or more of the following requirements must also be fulfilled by the qualified contractors:

- Demonstrated expertise or capability to evaluate impacts of various types of energy programs including electric, natural gas, fuel oil and propane energy efficiency projects, electric demand reduction projects, as well as renewable energy, demand response and other on-site generation activities
- Experience or capability to work with, and conduct analysis for, a wide-variety of energy users including, but not limited to: residential customers (homeowners, renters, low-income households, etc.), commercial buildings (building owners, property managers, occupants, etc.), decision makers for municipal buildings and facilities, industrial buildings and facilities, etc.
- Experience and training in applying International Performance Measurement and Verification Protocol (IPMVP) guidelines to project evaluations
- Ability to use innovative approaches and solutions to achieving credible energy savings and generation values

- Past projects relevant to supporting knowledge and experience in impact evaluation/field verification, which shall be included and summarized in the proposal

### **Area 3: Survey Data Collection**

NYSERDA will retain qualified survey data collection contractors to meet various discreet tasks or to work collaboratively with other qualified consultants to meet data collection needs of specific Market Research or Impact Evaluation/Field Verification projects. Survey data collection and design assistance will support NYSERDA in measuring markets addressed by its programs and interventions. For purposes of this solicitation, a survey is defined as a systematic data collection effort conducted either in person, by telephone, by mail, or using the internet, including large-scale mail surveys, panel surveys, unstructured interviews, and focus groups.

Qualified contractors may be tasked by NYSERDA to:

- Design and develop surveys, questionnaires, interview guides, and other forms of data collection
- Develop and implement strategies to select appropriate samples
- Pre-test data collection instruments to ensure maximum effectiveness
- Administer data collection instruments
- Provide cleaned, coded and analysis-ready data to NYSERDA and its evaluation contractors
- Prepare a methodology and survey disposition report for each project
- Perform other ad hoc survey-related work as assigned by NYSERDA

### **Survey Data Collection Approaches/Tools**

Specific survey methods to be used include, but are not limited to:

- Telephone: A method of surveying where telephone is the means used to contact potential respondents. Qualified contractors must possess centralized telephone interviewing facilities with Computer-Assisted Telephone Interviewing (CATI) capabilities. Qualified contractors must also have cell phone calling capabilities, where applicable/permitted.
- Mail: A data collection method in which respondents complete questionnaires on paper form and return them via the mail. Qualified contractors must possess mail survey processing capabilities.
- Internet/Web: A questionnaire that the target audience can complete surveys over the Internet. Qualified contractors must be able to host in-house web surveys.

### **Survey Data Collection Contractor Qualifications**

In addition to the overarching contractor qualifications listed above, the survey data collection activity will require the qualified contractors to become familiar with and fully understand the breadth and depth

of the CEF and NYSERDA's interventions including interacting with key stakeholders. Specifically, the following requirements must also be fulfilled by the qualified contractors:

- Expertise and experience in collecting data from a wide variety of respondent audiences and populations, including multi-generational, multi-lingual, professional, etc.
- Overall technical expertise in survey and interview guide design and development
- Demonstrated ability to successfully implement a variety of survey data collection approaches (e.g., simple random-digit dialing telephone surveys of consumers, to high level interviews with decision makers)
- Demonstrated ability to serve real-time needs with quick turn-around time frames
- Past projects relevant to supporting knowledge and experience in survey design and development, which shall be included and summarized in the proposal
- Experience and training in applying guiding principles, ethics, and industry standards to survey research

### **Evaluation Topics**

NYSERDA expects to address in part, or in whole, the end-use sectors, technology areas and interventions listed below in the future. This is not an exhaustive list, nor is it a list of requirements to assess experience. As applicable, proposers should demonstrate their understanding and experience in these areas within evaluation area-specific proposals. Proposers without energy industry-specific experience who have developed skills and qualifications in other industries (e.g., health, finance) are also invited to propose given NYSERDA's strong interest in expanding the types of approaches, tools and methods that could be effectively used in the energy field to assess the impact of its new initiatives.

### **End-Use Sectors**

- New and existing structures: Commercial, Industrial (including data centers and agriculture), Multifamily (including low and moderate income) and Residential (including low and moderate income)
- Transportation

### **Technology Areas**

- Energy efficiency retrofit or replacement measures
- On-site energy management practices (e.g., real time energy management)
- Renewable energy generation and renewable thermal
- Other on-site generation (e.g., combined heat and power)
- Demand management/reduction
- Emerging technologies (e.g., LEDs and OLEDs)
- Zero Net Energy buildings
- Transportation (e.g., demand management, smart mobility, electric vehicles, transit and freight)
- Smart grid (e.g., distribution and transmission systems, microgrids and community grids)
- Energy storage (e.g., standardized products, enabling storage technologies)

### Intervention Types

1. Enabling solutions for other market actors
  - Training and education
  - Enabling adoption of tools and software
  - Identifying and connecting qualified service providers with interested customers
  - Financing (e.g., reducing risks, supporting aggregation, supporting standardization, enhancing market confidence)
  - Demonstrating and developing real-time energy management approaches
  - Enabling customer confidence
  - Working with and enabling supply chain
  - Fostering stakeholder collaboration and integration
  - Providing technical support for communities with outreach and service (e.g., modular system design, community solar)
  - Market-facing energy data analysis and deployment
2. Providing direct financial incentives
  - Motivating service providers and product suppliers to capture latent opportunities and, where needed, to develop and support emerging markets that offer high carbon reduction potential
  - Providing direct financial subsidies to fill gaps in the market (e.g., low to moderate income and renewables)
  - Providing direct financial incentives via risk sharing
3. Serving as a policy advocate to improve codes, standards, and mandates
  - Supporting credible and reliable verification protocols and services
  - Exploring best practices
  - Reducing soft costs by creating tools for simplified and standardized auditing, modeling, and training
  - Quantifying and characterizing the value proposition of zero net energy
4. Working with stakeholders in New York to advance technical innovation
  - Supporting technology development and demonstration projects
  - Validating emerging technologies
  - Promoting the transfer of technology through networks
  - Publicizing top performers (e.g., case studies)
  - Disseminating information
  - Providing direct support for cleantech business
  - Supporting technology-to-market pathways to stimulate entrepreneurial activity
  - Engaging mid-market suppliers and forming strategic industrial partnerships

### **III. Contractual Arrangement and Responsibility**

#### Umbrella Agreement

All proposers qualified through this RFQ will enter into zero-dollar value Umbrella Agreements enabling

NYSERDA to retain their services for each Market Research and Evaluation Support Area in which they have been qualified. This Umbrella Agreement will not guarantee any specific amount of work. The amount of work and funding subsequently assigned to each contractor via separate Task Work Orders will depend on expertise, the amount of work required in the Market Research and Evaluation Support Area, past performance, current workload and deadline requirements.

The term of retention for each qualified consultant is up to three years with the option to renew for another two years at NYSERDA's discretion. However, NYSERDA reserves the right to re-evaluate each qualified contractor and the qualified contractor pools, as well as add new firms to the pools at any time, as needed, due to shifts in NYSERDA emphasis, consultant performance, expertise and other similar indicators. At a minimum, NYSERDA will re-evaluate and potentially reissue this RFQ to expand its qualified contractor pools on an annual basis.

Qualified contractors who, at any time, cease to provide value to NYSERDA due to poor performance and timeliness, inferior deliverable quality, lack of engagement with NYSERDA and its partners, or in any way fail to meet the objectives of NYSERDA's evaluation effort shall be issued a written warning. Should there be no improvement following this written warning, the contractor will be removed from the qualified contractor list.

### Task Work Orders

Projects will be assigned through separate written Task Work Orders (TWOs), which will become binding agreements between NYSERDA and the contractor qualified to perform the work. TWOs will either be assigned or competitively bid within the qualified pools of contractors. TWO requests issued by NYSERDA may be fully developed by NYSERDA or may require the qualified contractor(s) to develop a proposed workscope and other key components of the TWO.

Fully developed TWO requests issued by NYSERDA shall include components such as a detailed work scope, a description of the deliverables required, schedule and budget. Typically, these TWOs will be implemented according to these components as described in the TWO requests.

In other cases, TWO requests shall include a description of NYSERDA's research needs or questions, but will require a response from the qualified contractor(s) on the specific methods, deliverables, schedule and budget to implement the work. Contractor responses to these types of TWO requests may include, but not be limited to:

- Goals and objectives of the project
- Approach that will be taken outlined by tasks
- Identification of measures and ability to track project success
- Any relevant background information
- Defined deliverables
- Communication plan to facilitate information sharing with NYSERDA (e.g., weekly meetings, status reports, etc).
- Project schedule
- Names and titles of individuals to work on the project
- A detailed inventory of the measurement tools and equipment to be deployed\*
- Total not-to-exceed cost of the project, including a breakout by task and by title, hourly rate, hours, and non-labor costs

***\*Note: NYSERDA will not reimburse the purchase or rental of measurement tools and equipment.***

The details of these TWO responses will be consistent with the level of complexity of the proposed project or activity and determined in consultation with NYSERDA, but are anticipated to be 1-5 pages in

length. In limited circumstances, during the development of a work scope, NYSERDA may consider partnering and teaming arrangements between qualified consultants and other expert entities as necessary. Task Work Orders may include planning, data collection, analysis and reporting tasks but generally, NYSERDA will not reimburse consultants for the cost of preparing TWOs.

In all cases, hourly rates to implement any TWO shall be consistent with those in the general Umbrella Agreement. NYSERDA must review and approve all Task Work Orders before project implementation.

Any work that is estimated to cost \$300,000 or greater will require a mini-bid. Mini-bid requests will be issued to all qualified contractors in a specified Market Research and Evaluation Support Area. These requests will likely include a description of research questions/needs and require a detailed response on the approach by the qualified contractors. Mini-bids will be reviewed by NYSERDA and a contractor will be selected to implement the TWO. If, following proposal review, but before implementing the project, the selected contractor is unable to implement the work due to workload, expertise or other similar factor, NYSERDA will select the second-ranked consultant to implement the work.

#### Contractor Responsibility

Upon selection through this RFQ and upon agreement and approval of any Task Work Orders, qualified contractors shall be responsible for the following:

- Demonstrating value-added, timely completion of TWOs that align with the requirements and qualifications described in the **Services Requested and Qualifications** section of this RFQ
- Keeping NYSERDA informed regularly on the progress of the evaluation effort, including meeting with NYSERDA staff on a periodic basis, as needed
- Submitting deliverables to NYSERDA for review and approval in accordance with the timeline outlined in the TWO
- Providing required documentation of expenditures by task when seeking reimbursement from NYSERDA
- Ensuring the evaluation effort is based on the following principles:
  - Objectivity, fairness, and balance in terms of the types of data collected; only those data deemed necessary for evaluation purposes shall be collected and summarized in reports
  - Sound methodology, credible data and analysis, and adherence to the highest professional standards

#### NYSERDA's Responsibility

Designated NYSERDA project managers will be responsible for overseeing and managing TWOs undertaken by qualified contractors, including but not limited to reviewing, commenting and approving tasks and subsequent deliverables; coordinating with program staff and interested external stakeholders; promoting coordination among contractors qualified for each evaluation area, as appropriate; assisting in the presentation and dissemination of findings; and reviewing and approving invoices promptly.

### **IV. Proposal Requirements**

#### Proposal Format

Each proposal shall contain, at a minimum, the components listed below. **Consultant teaming arrangements are discouraged in proposals submitted under this RFQ since NYSERDA is**

**interested in direct and cost-effective access to individuals or firms most qualified to perform specific work tasks in a timely manner.**

Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal. Each page of the proposal should state the name of the proposer, RFQ 3183, and the page number. 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.

### **1. Cover Letter (1 page)**

Proposers shall submit a cover letter on company letterhead that:

- References RFQ 3183
- Specifies each specific Market Research and Evaluation Support Area(s) where services are being offered
- Summarizes the proposer's ability to perform such services
- Is signed by a person with authority to enter into a contract with NYSERDA

### **2. Table of Contents (1 page)**

Proposers should present a comprehensive table of contents that outlines the page number and section where each Market Research and Evaluation Support Area proposal can be found. Proposals will be evaluated independently for each Market Research and Evaluation Support Area, so proposals must be organized to provide a separate section for each Market Research and Evaluation Support Area where services are being offered.

Proposals for each Market Research and Evaluation Support Area must include the items listed below, **regardless** of whether they have been presented in another section:

- Overall experience and capabilities
- Personnel Qualifications and Qualifications Matrix<sup>10</sup>
- Cost Proposal – Project Personnel and Rates Form
- Relevant Attachments

### **3. Overall Experience and Capabilities (2-4 pages)**

For each proposed Market Research and Evaluation Support Area, proposers must describe their expertise and ability to deliver services. This should include the aggregate number of years working in this area and a summary of at least one and no more than three similar projects. Selected projects should demonstrate and describe the firm's capability to incorporate innovative methods to solve problems; identify challenges in data collection and methods used to mitigate those challenges while maintaining the integrity and credibility of the data; describe how the firm was a key contributor to the study; and describe how the firm was able to triangulate and analyze data to inform decision making.

These summaries must also include the cost of the study and description of the deliverables, along with access to the final study (through a link or hard copy). These summaries should be no more than one

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<sup>10</sup> A qualifications matrix is not required of Survey Data Collection proposers.



page in length for each selected project. Proposers must include references for each of the projects. Firms with NYSERDA experience must identify a NYSERDA staff reference for those projects.

Energy industry experience is not a requirement of this solicitation, and methodologies developed in other industries (e.g., health, finance) may be included within proposals.

Proposers should ensure the summaries prepared in this section represent the widest range of services the firm is offering within each Evaluation Services and Support Area.

#### **4. Personnel Qualifications and Qualifications Matrix (1-3 pages; résumés may be placed in an appendix and are not included in this page limit)**

For each proposed Market Research and Evaluation Support Area, proposers must identify key project personnel and relevant qualifications. Proposers must describe the accomplishments, experiences, and expertise of the individuals comprising the proposal. Proposers must identify the project manager within their firm who will serve as the single point of contact as well as all personnel that may be involved with providing services under this RFQ and their roles.

Proposers must include one-page résumés that highlight recent experiences of all individuals who will be directly involved in providing services. These may be compiled in an appendix to the proposal.

Proposers to the Market Research and Impact Evaluation/Field Verification Areas must complete a **Qualifications Matrix** for each area in which they are offering services to NYSERDA.<sup>11</sup> Proposers should indicate expertise with a checkmark. See Attachment C of this RFQ for the Market Research and Impact Evaluation/Field Verification matrices.

Each matrix is intended to provide NYSERDA with an understanding of proposer skills across approaches, technologies and sectors, as applicable. As discussed above, energy industry experience is not a requirement of this solicitation, and methodologies developed in other industries (e.g., health, finance) may be included within proposals and identified in each matrix. Information described within proposals should align and support the skills indicated in the matrix.

#### **5. Cost Proposal – Project Personnel and Rate Form (1 page)**

For each proposed Market Research and Evaluation Support Area, proposers must provide a Project Personnel and Rates form (Attachment D) and submit the name, title, and fully-burdened hourly salary range for each individual in the proposal who will perform the work in the **Services Requested and Qualifications** section under an agreement with NYSERDA. **Note: Any escalation rates must be identified for the full five-year contract term.**

NYSERDA is not requiring proposers to estimate travel or other direct costs as part of proposals, but reasonable costs for these may be part of TWOs on an as needed basis. NYSERDA will not reimburse the purchase or rental of measurement tools and equipment.

#### **6. Required Attachments**

Proposals must include the following as listed in **Section VII Attachments**:

- Attachment A - Proposal Checklist
- Attachment B - Disclosure of Prior Findings of Non- Responsibility

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<sup>11</sup> A qualifications matrix is not required of Survey Data Collection proposers.

- Attachment C – Qualifications Matrices (for the Market Research and Impact Evaluation/Field Verification Areas only)
- Attachment D – Project Personnel and Rates Form

## 7. Submittal

To be eligible for selection under this RFQ, proposers must submit a complete bid package and agree to the terms and requirements of this RFQ. Proposers may submit electronically per the requirements outlined on page 1 of this RFQ and described in Attachment E, Instructions for Electronic Proposal Submission, or must submit two paper copies of their proposal with a completed and signed Proposal Checklist (Attachment A), along with a CD or DVD containing both a PDF or MS Word digital copy of the proposal to the attention of Roseanne Viscusi at the address on the front of this RFQ. A completed and signed Proposal Checklist must be attached as the front cover of your proposal, one of which must contain an original signature.

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

In compliance with §139-j and §139-k of the State Finance Law (see Section V, General Conditions below for additional information), the following forms must be completed and filed with proposals: (1) a signed copy of the Proposal Checklist (Attachment A) including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form (Attachment B). Failure to include a signed copy of the Proposal Checklist referenced in this solicitation may disqualify your proposal.

## V. Proposal Evaluation

Proposals that meet the proposal requirements described in the **Services Requested and Qualifications** and **Proposal Requirements** sections of this RFQ will be reviewed by a Technical Evaluation Panel (TEP) consisting of NYSERDA staff and selected outside reviewers. A separate TEP will be held for each Market Research and Evaluation Support Area. Responses to this RFQ will be reviewed and assigned scores based on the criteria highlighted below:

### 1. Responsiveness to the RFQ

- Overall responsiveness to NYSERDA's request as specified in this RFQ
- Ability to satisfactorily accommodate quick cycle assignments to advance NYSERDA's test-measure-adjust approach

### 2. Relevant Experience and Qualifications

- a. Qualifications, experience and expertise of key personnel in relevant Market Research and Evaluation Support Area
- b. Clear description of selected project summaries
- c. Clear indication of key proposer qualifications per the Qualifications Matrix for the Market Research and Impact Evaluation/Field Verification Areas

### 3. Cost

- a. Reasonableness and relative competitiveness of fully-burdened labor rates and escalation rates

### 4. References and Other Items

- a. Information provided by references
- b. Other personnel, programmatic and management factors deemed appropriate by NYSERDA
- c. Is the proposal well-organized, well-written, and complete?

NYSERDA anticipates qualifying multiple proposers for each Market Research and Evaluation Support Area. The number of qualified contractors cannot be determined until all proposals are received and reviewed.

**Conflicts:** The firm and any personnel of the firm must be free from 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. Please describe all of your product, manufacturer or service-related affiliations. If any affiliations exist, you must provide a statement verifying that these affiliations do not conflict with or appear to conflict with the objectivity of providing services to NYSERDA and its customers. Non-disclosure of any affiliation can result in the termination of a contract, if awarded.

Qualified contractors shall not be precluded from bidding on the other evaluation areas described within this RFQ or on future evaluation solicitations. However, qualified contractors should describe within their proposals how conflicts of interest, both actual and perceived, will be resolved should qualified contractors choose to bid on other evaluation areas or on future evaluation solicitations.

## **VI. GENERAL CONDITIONS**

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

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

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

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

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

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

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

**Tax Law Section 5-a** - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. *See*, ST-220-TD (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)).

Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSERDA. *See*, ST-220-CA (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)). The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

**Contract Award** - NYSERDA anticipates qualifying multiple consultants within each Market Research and Evaluation Support Area. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications during the proposal review process. NYSERDA will use the Sample Agreement (Attachment F) to contract successful proposals. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement to those specifically identified in the submitted proposal (see Proposal Checklist). Proposers should keep in mind that acceptance of all standard terms and conditions will generally result in a more expedited contracting process. NYSERDA expects to notify proposers in approximately ten weeks from the proposal due date whether your proposal has been qualified. NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

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

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

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## **VII. Attachments**

- Attachment A - Proposal Checklist
- Attachment B - Disclosure of Prior Findings of Non- Responsibility
- Attachment C – Qualifications Matrices for Market Research and Impact Evaluation/Field Verification
- Attachment D – Project Personnel and Rates Form
- Attachment E – Instructions for Electronic Proposal Submission
- Attachment F - Sample Agreement



## ATTACHMENT A PROPOSAL CHECKLIST (MANDATORY)

Proposal Title		Due Date	
<b>Primary Contact</b> (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
<input type="checkbox"/> By checking this box I certify that the TIN number submitted is <b>not</b> a social security number. If your tax id number is your social security number please leave information blank and contact NYSERDA.		<b>Federal Tax Identification Number:</b>	
Address	City	State or Province	Zip
<b>Secondary Contact</b>		Title	
Company		Phone	Fax
		e-mail	
Address	City	State or Province	Zip
<b>THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:</b>			
Do you accept all Terms & Conditions in the Sample Agreement? (If no, explain on separate page) <b>(NYSERDA may or may not accept any of the listed exceptions; NYSERDA reserves the right to limit any negotiations to exceptions specifically identified herein.)</b> <span style="float: right;">___Yes ___No</span>			
Do you wish to have any information submitted in your proposal package treated as proprietary or confidential trade secret information? If yes, you must identify and label on each applicable page "confidential" or "proprietary" (For additional information regarding this, please refer to the section entitled "Proprietary Information" in the solicitation document). <span style="float: right;">___Yes ___No</span>			
Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) <span style="float: right;">___Yes ___No</span>			
Are you a Minority or Women-Owned Business Enterprise? <span style="float: right;">___Yes ___No</span>			
Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? <span style="float: right;">___Yes ___No</span>			
Are you submitting the required number of copies? (See proposal instructions.) <span style="float: right;">___Yes ___No</span>			
Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? (if yes, explain on separate page) <span style="float: right;">___Yes ___No</span>			
<b>ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?</b>			
Provide list of items consistent with Proposal Requirements section of solicitation:		Indictment/Conviction of Felony _____ (if applicable) NYSERDA Contracts Awarded _____ (if applicable) Prior and/or Competing Proposals _____ (if applicable) Exceptions to Terms & Conditions _____ (if applicable) Completed and Signed Contract Pricing Proposal Form(s) _____ Disclosure of Prior Findings of Non-responsibility Form _____	
<b>AUTHORIZED SIGNATURE &amp; CERTIFICATION</b>			
I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, that I have read and reviewed the Standard Terms and Conditions set forth in the attached Sample Agreement and that I accept all terms unless otherwise noted herein, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA's procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I, the undersigned, am authorized to commit my organization to this proposal.			
Signature		Name	
Title		Organization	
Phone			

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

**Attachment B**

**Disclosure of Prior Findings of Non-responsibility Form  
(Mandatory)**

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





Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information?		Yes
		No
If you answered yes, please provide details:		
Government Agency or Authority:		
Date of Termination or Withholding of Contract:		
Offerer certifies that all information provided to NYSERDA with respect to State Finance Law §139-k is complete, true, and accurate.		
Signature: _____		
Date: _____		
Print Name: _____		
Title: _____		

## **RFQ 3183 Attachment C. Qualifications Matrix for Market Research and Impact Evaluation/Field Verification**

### **Proposer Instructions:**

Review various services (i.e., columns) NYSERDA requests expertise in the Market Research and/or Impact Evaluation Areas

Based on your expertise, indicate, via checkmark, the service(s) (i.e., column) you offer to NYSERDA.

Incorporate appropriate context in the body of your proposal demonstrating this expertise.

Include this completed matrix in your proposal materials per Section IV. Proposal Requirements

Market Research Qualifications Matrix					
<b>Clean Energy Sectors</b> (Vertical-specific expertise should be noted in matrix and in proposal)	Market Research Approaches				
	<b>Longitudinal Market Actor and Customer Surveys</b> (Baseline, market characterization, retrospective and prospective modeling)	<b>Analysis of Secondary Data Sources</b> (Sales data, market share data, case studies, bibliometrics, historical tracing)	<b>Targeted Real-Time Surveys</b> (Assess participant decisionmaking and factors of influence at time of engagement)	<b>Other Focused Methods</b> (Delphi panels, in-depth interviews, segmentation, concept testing, voice of customer)	<b>Non-Traditional Research Methods</b> (Ethnography, community, social platforms)
	Commercial				
	Industrial				
	Residential				
	Multifamily				
	Transportation				
	Smart Grid				
	Energy Storage				
	Renewable Energy				
On-Site Energy					
Demand Management					
Financing					
Other (Specify)					

Clean Energy Measures	Impact Evaluation/Field Verification Approaches					
	Engineering Reviews and Analysis	Development and Application of Deemed Savings Values	Site Verification and Metering (e.g., IPMVP Options A and B)	Pre-Post Energy Consumption Analysis (e.g., IPMVP Option C)	Energy Modeling or Other Whole Building Approaches (e.g., IPMVP Option D)	Surveys/ Interviews with Site Personnel on Behavioral Aspects of Energy Use/Savings
Energy efficiency retrofit or replacement measures						
Renewables (e.g., renewable heating & cooling, large scale, distributed energy resource integration, generation)						
On-site power production (e.g., distributed generation technologies-combined heat and power)						
On-site energy management practices (e.g., real time energy management)						
Demand management/reduction						
Emerging technologies (e.g., LEDs and OLEDs)						
Zero net energy buildings						
Energy code in buildings (compliance)						
Clean transportation (e.g., public transit and freight, electric rail, electric vehicles, smart mobility, demand management)						
Smart grid systems (e.g., distribution and transmission systems, microgrids and community grids)						
Energy storage (e.g., standardized products/process, enabling storage technologies)						
Building Innovation (e.g., HVAC, smart buildings)						
Non-energy impacts						
Other (Specify)						

Shaded cells indicate that the methodology is not applicable or widely used for the clean energy measure category. If proposers feel otherwise and would like to qualify for one of these methodologies, please check the box and provide a brief explanation of the proposed use below under "Notes."

Notes (if applicable):

RFQ 3183. ATTACHMENT D

PROJECT PERSONNEL & RATES FORM

DIRECT PERSONNEL COSTS:

TITLE	NAME*	FULLY-LOADED NOT TO EXCEED RATE RANGE									
		Year 1		Year 2		Year 3		Year 4		Year 5	
		Min	Max	Min	Max	Min	Max	Min	Max	Min	Max

\*Provide a non-exhaustive list of staff available to work on this project.

As applicable, list any escalation rates used to develop the rate ranges presented in the table above:

## **RFQ 3183. Attachment E**

### **NYSERDA - INSTRUCTIONS FOR SUBMITTING ELECTRONIC PROPOSALS (January 2014)**

Please read the following instructions before submitting a proposal.

1. Locate the Funding Opportunity (PON, RFP, RFQ) on the “**Current Funding Opportunities**” page of NYSERDA’s website at:  
<http://www.nysenda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>
2. While on the “**Current Funding Opportunities**” page, click the link/title of the individual Funding Opportunity.
3. While on the individual Funding Opportunity page, click the “**Submit Proposal Online**” button.
4. Enter your e-mail address and click the “Validate Email” button.
5. You will receive an automatic email containing a link to validate your email address. Click the link to be taken back to the Funding Opportunity to begin the online submission process.
6. Upload as many files as needed, one at a time. The electronic file names should include the proposing entity’s name in the title of the document.
7. After clicking the “Upload File” button, a list of your files will appear on the web page. You can delete files from this list if needed.
8. After all necessary files have been uploaded; review the list of documents to ensure that your proposal is complete and accurate.
9. Click the “Submit Proposal button.”
10. You will then be brought to a confirmation page listing the files received. Please print and save the confirmation page.
11. An auto-generated confirmation e-mail will be sent to the e-mail address you entered. Please save this e-mail.
12. When choosing to submit files electronically, the award/non-award notification letter will be sent to the e-mail address used to submit the proposal.

#### **Important Reminders:**

1. Submit only one proposal for each session
2. You may submit Word, Excel, Zip, or PDF files. PDF files must be searchable and therefore should be converted directly from an electronic document to PDF, rather than scanned.
3. E-mail or facsimile submittals will not be accepted.

#### **If you make an error:**

If after you click “Submit Proposals” you discover that the document(s) you submitted are incomplete or inaccurate follow these instructions:

1. Start the process over again and **resubmit the entire proposal**. You will receive another confirmation e-mail.
2. Immediately forward both confirmation e-mails (original and resubmission) to [proposals@nysenda.ny.gov](mailto:proposals@nysenda.ny.gov) with the subject line of “**Resubmittal**” and the PON/RFP/RFQ number.
3. NYSERDA will accept the second submission as your proposal. The first submission will be disregarded.

#### **If you need help:**

If you need help with this electronic proposal submission process, please contact Roseanne Viscusi at [roseanne.viscusi@nyserda.ny.gov](mailto:roseanne.viscusi@nyserda.ny.gov) or 518-862-1090 ext. 3418.



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

**AGREEMENT**

1. Agreement Number:
2. Contractor:
3. Project Director:
4. Effective Date:
5. Total Amount of Award:
6. Project Period:
7. 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;
- Exhibit E, NYSERDA Report Format and Style Guide;
- Exhibit F, Rate Schedule.

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

**[CONTRACTOR]**

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

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Jeffrey J. Pitkin  
Treasurer

Title \_\_\_\_\_

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

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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.

(a) General Definitions:

Agreement: This Agreement shall consist of Page One and Exhibits A, B, C, D, and E hereto, all of which are made a part hereof as if set forth here in full.

Budget: Collectively, the budgets set forth in individual Task Work Orders consistent with the rates set forth in Exhibit F hereto.

Cash-based Expenses: Those obligations of Contractor that shall be settled in cash.

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

Contract Information: Recorded information regardless of form or characteristic first produced in the performance of this Agreement, that is specified to be compiled under this Agreement, specified to be delivered under this Agreement, or that is actually delivered in connection with this Agreement, and including the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable.

Proprietary Information: Recorded information regardless of form or characteristic, produced or developed outside the scope of this Agreement and without NYSERDA financial support, provided that such information is not generally known or available from other sources without obligation concerning their confidentiality; has not been made available by the owner to others without obligation concerning its confidentiality; and is not already available to NYSERDA without obligation concerning its confidentiality. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable, be considered Proprietary Information.

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.

Responsible: Responsible or Responsibility means the financial ability, legal capacity, integrity and past performance of Contractor and as such terms have been interpreted relative to public procurements. See NYS Finance Law § 163(1)(c).

Statement of Work: The Statement of Work attached hereto as Exhibit A and the individual Task Work Orders issued pursuant to this Agreement.

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.

Task Work Order: A Task Work Order issued by NYSERDA pursuant to Exhibit A of this Agreement, specifically a Task Work Order Plan approved by NYSERDA.

Task Work Order Plan: The statement of work and budget for a project proposed by the Contractor.

Work: The Work described in the Exhibit A and in individual Task Work Orders issued pursuant to this Agreement (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 Project Director identified at Item 3, Page One of this Agreement shall be responsible for the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA. Any changes of Project Director or in persons described

in Task Work Orders shall be subject to the prior written approval of NYSERDA. Annexed as Exhibit F is a list of personnel who will be available to perform Work under this Agreement, along with the rates that will apply for each such person during the term of this Agreement. If the Contractor wishes to employ personnel not listed on Exhibit F to complete any Task Work Order hereunder, the Contractor must obtain the written approval of NYSERDA. The approvals set forth in this Section shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, the requested change in Project Director or personnel shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days.

Section 2.03. Title to Equipment. Title shall vest in the Contractor to all equipment purchased hereunder.

### Article III

#### Deliverables

Section 3.01. Deliverables. All deliverables shall be provided in accordance with the Exhibit A and the Task Work Orders issued pursuant to this Agreement.

### Article IV

#### Payment

Section 4.01. Payment Terms. In consideration for this Agreement and as NYSERDA's full payment for the costs of 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 amounts not to exceed the maximum amount set forth in Item 5, Page One of this Agreement for the cost elements identified in the Budget to be funded with NYSERDA funds, subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D. NYSERDA's payments shall be on a reimbursement basis, and shall be paid only to the extent that Cash-based Expenses are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement, and the following:

(a) Staff Charges: To the extent Cash-based Expenses are incurred by the Contractor, Contractor shall be reimbursed for amounts paid to its employees for the services performed by its employees under the terms of this Agreement at the lesser of the employee's wage rate as shown in Exhibit F or the actual wages paid to the employee and applicable at the time the Task Work Order is performed.

(b) Direct Charges: To the extent Cash-based Expenses are incurred by the Contractor, 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 and to the extent such costs are anticipated in the budget for each Task Work Order. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs shall 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 in effect at the time the expense was incurred.

(c) Indirect Costs: The Contractor shall be reimbursed for fringe benefits, overhead, general and administrative (G&A), and other indirect costs, all at the fixed rate as shown in the budget for each Task Work Order. Contractor hereby warrants and guarantees, in accordance with Section 9.01(k) hereto, that its rates for the foregoing indirect costs charged herein have been determined based on the Contractor's reasonably anticipated indirect costs during the term of the Agreement and calculated consistent with generally accepted accounting principles.

(d) Profit: The Contractor shall be paid a profit at a fixed rate, as shown in the Budget. The percentage for profit shall be applied only to Staff Charges incurred in the performance of the Statement of Work.

(e) Task Work Order Cost Cap: The Task Work Order budget must state a not-to-exceed cost cap or ceiling amount for each Task Work Order assignment. The Contractor shall not accrue billable costs beyond the not-to-exceed cost cap in the Task Work Order without approval in writing by NYSERDA.

#### Section 4.02. Progress Payments.

(a) Invoicing: The Contractor may submit invoices for progress payments no more than once each month and no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable," or submitted electronically to [invoices@nyserda.ny.gov](mailto:invoices@nyserda.ny.gov). Such invoices shall make reference to the Agreement number shown at Item 1 on page 1 of this Agreement. Invoices shall be inclusive of the total project costs incurred, delineated into NYSERDA's Funding share and the Cost-Share and Other Co-funding share, if applicable, and they shall be in a format consistent with the cost categories set forth in the Budget. Invoices shall be itemized and provide reasonable documentation for the above to provide evidence of costs incurred. If a wage rate or billing rate is used, Contractor must certify on its invoice that such rate represents the lesser of: (i) the actual rate at the time the Work was performed, and (ii) the rate listed for each such employee listed in the Budget. NYSERDA may adjust amounts payable to correlate the proportion of NYSERDA's funding share paid to the proportion of the Work completed.

Section 4.03. 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. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six (6) months following Acceptance of Work pursuant to Section 6.02 hereof. 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/milestone payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Section 4.06 hereof.

Section 4.04. Release by the Contractor. The acceptance by the Contractor of final payment from NYSERDA under each Task Work Order issued pursuant to this Agreement shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to the Task Work Order. 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 4.05. 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 this Agreement, including without limitation, all bills, invoices, payrolls, time records, expense reports, 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 its performance under this Agreement.

Section 4.06. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor shall be the amount appearing at Item 5 of page one of this 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 4.07. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.05 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.05 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 NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

### 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 less than \$50,000, 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 C to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. Each Subcontract shall make express reference to this Agreement, and shall state that in the event of any conflict or inconsistency between any Subcontract and this Agreement, the terms and conditions of this Agreement shall control as between Subcontractor and Contractor. If this Agreement includes a provision requiring Contractor to make Payments to NYSERDA for the Sale or Licensing of a Product, each Subcontract shall include the provisions of Section 8.02, suitably modified to identify the parties. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any subcontract(s) specified in the Statement of Work as requiring NYSERDA approval, including any replacements thereof.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action that would impair its rights thereunder. The Contractor shall take no action, and shall take all reasonable steps



to prevent its Subcontractors from taking any action, that would impair NYSERDA's rights under this Agreement. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of NYSERDA's Contract Administrator as long as this Agreement remains in effect. Such approval shall not be unreasonably withheld and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the requested assignment, cancellation, or termination of the Subcontract shall be considered approved by NYSERDA. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to sixty (60) days.

## Article VI

### Schedule; Acceptance of Work

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

Section 6.02. Acceptance of Work. The completion of each Task Work Order shall be subject to acceptance by NYSERDA in writing of all deliverables as defined in the Task Work Order.

## 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

### Rights in Information; Confidentiality

Section 8.01. Rights in Contract and Proprietary Information.

(a) All Contract Information shall be the property of NYSERDA. The Contractor shall not use Contract Information for any purpose other than to implement its obligations under this Agreement.

(b) All Proprietary Information shall be the property of Contractor.

(c) The use, public performance, reproduction, distribution, or modification of any materials used by Contractor in the performance of this Agreement does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trademarks, service marks, publicity, or privacy. The Contractor shall be responsible for obtaining and paying for any necessary licenses to use any third-party content.

(d) The Contractor agrees that to the extent it receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager. Contractor acknowledges that in the performance of the Work under this Agreement, Contractor may come into possession of personal information as that term is defined in Section 92 of the New York State Public Officers Law. Contractor agrees not to disclose any such information without the consent of NYSERDA.

## Article IX

### Warranties and Guarantees

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

(a) all information provided and all representations made by Contractor as a part of the proposal, if any, submitted to NYSERDA in order to obtain or in application for this Agreement were, to the best of Contractor's knowledge, complete, true and accurate when provided or made;

(b) as of the Effective Date, it is financially and technically qualified to perform the Work, and is qualified to do business and is in good standing in all jurisdictions necessary for Contractor to perform its obligations under this Agreement;

(c) 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;

(d) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted scientific standards and engineering practices;

(e) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted scientific standards and engineering practices;

(f) 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;

(g) to the best of Contractor's knowledge, there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or NYSERDA's rights hereunder;

(h) 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;

(i) all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate;

(j) Contractor is familiar with and will comply with NYSERDA's Code of Conduct for Contractors, Consultants, and Vendors with respect to the performance of this Agreement;<sup>1</sup> and

(k) its rates for the indirect costs charged herein have been determined based on the Contractor's reasonably anticipated indirect costs during the term of the Agreement and calculated consistent with generally accepted accounting principles.

## 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,

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<sup>1</sup>[http://www.nyserda.ny.gov/~media/Files/About/Board%20Governance/CodeConduct.ashx?sc\\_database=web](http://www.nyserda.ny.gov/~media/Files/About/Board%20Governance/CodeConduct.ashx?sc_database=web)

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 Contractor's or its Subcontractors' 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 direct 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) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

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 Article XI hereof. 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 ninety (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 ninety (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 ten (10) days prior written notice to the Contractor. In such event, payment 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). Articles VIII, IX, and X shall survive any termination of this Agreement, and Article XVI shall survive until the payment obligations pursuant to Article VIII have been met.

(b) NYSERDA specifically reserves the right to terminate this agreement in the event that the certification filed by the Contractor in accordance with State Finance Law Sections 139-j and 139-k is found to have been intentionally false or intentionally incomplete, or that the certification filed by the Contractor in accordance with New York State Tax Law Section 5-a is found to have been intentionally false when made. Terminations under this subsection (b) will be effective upon Notice.

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

#### 12.03 Suspension or Termination for Non-Responsibility.

(a) Suspension. NYSERDA, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it discovers information that calls into question the Responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the

suspension order. Contract activity may resume at such time as NYSERDA issues a written notice authorizing a resumption of performance under the Contract.

(b) Termination. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate NYSERDA officials or staff, this Agreement may be terminated by NYSERDA at the Contractor's expense where the Contractor is determined by NYSERDA to be non-Responsible. In such event, NYSERDA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

### Article XIII

#### Independent Contractor

Section 13.01. Independent Contractor. (a) 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, including the Project Director, 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, vicarious liability, professional liability coverage or indemnification, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. It is understood and agreed that the personnel furnished by Contractor to perform the Work shall be Contractor's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Contractor, except to the extent required by section 414(n) of the Internal Revenue Code.

(b) Contractor expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, Contractor and/or Contractor's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Contractor expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon contractor's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

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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

Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

(a) 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 in writing and shall be transmitted either:

- (i) via certified or registered United States mail, return receipt requested;
- (ii) by facsimile transmission;
- (iii) by personal delivery;
- (iv) by expedited delivery service; or
- (v) by e-mail, return receipt requested.

Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:



**NYSERDA**

Name: Cheryl M. Glanton

Title: Director of Contract Management

Address: 17 Columbia Circle, Albany, New York 12203

Facsimile Number: (518) 862-1091

E-Mail Address: [Cheryl.Glanton@nyserda.ny.gov](mailto:Cheryl.Glanton@nyserda.ny.gov)

Personal Delivery: Reception desk at the above address

**[Contractor Name]**

Name:

Title:

Address:

Facsimile Number:

E-Mail Address:

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

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

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

**Article XVI**

**Publicity**

Section 16.01. Publicity.

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

(c) Commercial promotional materials or advertisements produced by the Contractor shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Contractor do not agree on the wording of such credit in connection with such materials, the Contractor may use such materials, but agrees not to include such credit.

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EXHIBIT C

REVISED 5/12

STANDARD TERMS AND CONDITIONS  
FOR ALL NYSERDA AGREEMENTS

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

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

1. EXECUTORY CLAUSE. NYSERDA shall have no liability under this Agreement to the Contractor or to anyone else beyond funds appropriated or otherwise available for this Agreement.

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

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

provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

4. 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.

5. 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).

6. 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.

7. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is

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

**8. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** As a condition to NYSERDA’s obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.

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

9. 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.

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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

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

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

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7th Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.esd.ny.gov>

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

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

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

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective

bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

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

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

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

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

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



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

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

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

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EXHIBIT D

NYSERDA PROMPT PAYMENT POLICY STATEMENT

**504.1. Purpose and Applicability.** (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.<sup>2</sup>

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

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

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

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

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

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

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

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any

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<sup>2</sup> This is only a summary; the full text of Part 504 can be accessed at:  
<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.ashx>

requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

(g)(1) "Receipt of an Invoice" means:

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

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

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

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

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

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

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

**504.4. Payment Procedures.**

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

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

- (1) any defects in the delivered goods, property or services;
- (2) any defects in the invoice; or
- (3) suspected improprieties of any kind.

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

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

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

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

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

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice

to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

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

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

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

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

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

**504.9. Notice of Objection.** Contractor may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Exhibit B to this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to

conduct the review; provided, however, in no event shall the extended review period exceed thirty (30) working days.

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

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

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

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