



**NEW YORK STATE CLEAN AIR SCHOOL BUS PROGRAM,
ROUND 3
Program Opportunity Notice (PON) 1896
Approximately \$2.6 Million Available**

Applications accepted June 22, 2010 to May 31, 2011 by 5:00 PM Eastern Time, or Until all Funds are Exhausted*

The New York State Energy Research and Development Authority (NYSEERDA) is seeking applications for the **New York State Clean Air School Bus Program, Round 3** (the Program). Applicants can apply for a project grant to have their currently operating school buses retrofitted with US Environmental Protection Agency (EPA) or California Air Resource Board (CARB)-certified/verified, emission-reducing technology or New York State Department of Transportation-approved diesel fuel-fired coolant heaters that provide supplemental heat for preheating the engine coolant and passenger compartment. Included in these emission-reducing technologies would be oxidation catalysts, crank-case ventilation filters, flow-through filters, and particulate traps or filters and NO_x controls. Eligible applicants include municipalities, school districts, private contractors, and State agencies, departments, and public authorities.

This PON solicits applications for Projects that generate environmental and energy benefits by introducing emission-reducing technology and idling-reduction for diesel-fueled buses into school bus fleets and accelerating the introduction of these emission- and idling-reduction technologies into the market. Funds will be committed based on approved applications that meet the criteria described in Sections II and III of this document.

Approximately \$2.6 million of environmental settlement funds and 1996 Clean Water/Clean Air Bond Act funds are currently available on an open-enrollment basis for the Program. Through this Program, funds may be awarded for up to 100% of the equipment and installation costs of the eligible, emission-reducing technology for one or more school buses, up to the maximum per bus as described in Section II. No applicant may receive more than \$100,000 for Idling Reduction Equipment. Funds for the Program will not be used to fund federal, State or local mandated school bus emission reduction or anti-idling projects.

Applications must be approved by the applicant's governing body and will be considered in the order they are received, beginning June 22, 2010 and ending May 31, 2011 at 5:00 PM Eastern Time.

Application Submission: Send **one (1)** clearly labeled and completed applicant checklist (**Attachment A**) attached to the front of the disclosure of prior findings of non-responsibility (**Attachment B**) and project application (**Attachment C**), all containing an original signature, to:

**Adam Ruder, PON 1896
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399**

Program questions can be directed to **Adam Ruder** at **(866) NYSEERDA, ext. 3411** or **ar3@nyserda.org**. Contractual questions may be directed to **Venice Forbes** at **ext. 3507** or **vwf@nyserda.org**.

*Late, incomplete, or unsigned applications will be returned. Faxed or e-mailed applications will not be accepted. Applications will not be accepted at any other NYSEERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSEERDA's website at www.nyserda.org.

I. INTRODUCTION:

The New York State Clean Air School Bus Program, Round 3 (the Program) solicits applications for Projects that generate environmental and energy benefits by introducing emission-reducing technology and idling-reduction for diesel-fueled buses into school bus fleets and accelerating the introduction of these emission- and idling-reduction technologies into the market.

The funds available through this PON for State-assistance payments is to be awarded by NYSERDA through an open-enrollment solicitation on a first-come, first-served basis to eligible entities for Projects. **Eligible entities include: municipalities, school districts, private contractors, state agencies and departments, and state public authorities that own or operate public school buses.** Location dependent funds for this voluntary emission reduction program will not be used to fund Federal, State or Local mandated school bus retrofit projects.

Round 3 of the Program will retrofit school buses with Clean Air School Bus Equipment and Idling Reduction Equipment. Funding for Round 3 comes from several sources including: environmental settlement funds and 1996 Clean Water/Clean Air Bond Act (Bond Act) funds. The settlement funds are targeted at specific regions within the State; therefore, it is possible that funding may be available in one or more of those regions and not statewide if the statewide funds are exhausted before the settlement funds are.

DEFINITIONS:

Clean Air School Bus Equipment. Equipment must be EPA or CARB-verified. Eligible emission-reducing equipment and technologies include: diesel oxidation catalysts (DOCs), crank-case ventilation filters (CCVs), and diesel particulate traps or filters (DPFs) that decrease the emissions of particulate matter, hydrocarbons, oxides of nitrogen, carbon monoxide, and toxic air pollutants, and are not part of a standard/required engine configuration (i.e., if the equipment is required by law to be installed on the bus for the bus to be operated, then the equipment would not be eligible). Equipment must be sold under standard commercial terms from one or more EPA- or CARB-verified, emission-reducing technology manufacturers.

Governing Body. For a county outside the City of New York, the governing body is the board of supervisors or other elective governing body. For a city or village, the governing body is the local legislative body thereof, as the term is defined in Municipal Home Rule Law. For a town, the governing body is the town board. For a school district, the governing body is the board of education thereof. For a supervisory district, the governing body is the board of cooperative educational services thereof. For a public benefit corporation, the governing body is the board of directors, members or trustees thereof. For a public authority, the governing body is the board of directors, members, or trustees thereof. In the case of an Indian tribe, the governing body is that which is recognized as such by the United States or the State of New York. For the Program, the authorization may come from the Superintendent of the school district. For a private company this is any individual with the authority to enter into a contractual agreement on behalf of the company.

Idling Reduction Equipment. Eligible idling-reducing equipment and technologies exclusively include: on-board diesel fuel-fired coolant heaters that are not part of a standard/required engine configuration (i.e., if the equipment is required by law to be installed on the bus for the bus to be operated, then the equipment would not be eligible). Equipment must be sold under standard commercial terms from one or more New York State Department of Transportation-qualified idling reduction technology vendors. Eligible coolant heaters must be for a supplemental heat application and must have an output of 40,000 BTU/hour or greater. The only New York State Department of Transportation-qualified vendors at this time are Espar Heater Systems, Teleflex Power Systems, and Webasto Products North America.

Municipality. A local public authority or public benefit corporation, a county, city, town, village, school district, supervisory district, district corporation, improvement district within a county, city, town or village, or Indian nation or tribe recognized by New York State or the United States with a reservation wholly or partly within the boundaries of New York State, or a combination thereof.

Private contractor. A private company or proprietorship which provides school bus service to a school district or non-public school.

Project. The installation of eligible Clean Air School Bus Equipment or Idling Reduction Equipment on a currently owned and operated diesel-fueled school bus in New York State. The Program will only pay for eligible equipment and the cost of installing the eligible equipment. The Program will not pay for datalogging or diagnostic testing to determine the suitability of Clean Air School Bus Equipment to a specific vehicle. The Program will only pay for Idling Reduction Equipment in the Southern Tier Counties, Western New York Counties, and Rochester Region Counties.

School Bus. Any motor vehicle that has a seating capacity of 15 or more passengers in addition to the driver and is used

exclusively for the transportation of New York State school children on public highways. A bus used exclusively for the transportation of disabled children that has a capacity of fewer than 15 students also meets this definition.

State-Assistance Payment. Payment of the New York State share of approved costs for Projects that preserve, enhance, restore and improve the quality of the State's environment.

Southern Tier Counties. Broome, Yates, and Seneca Counties.

Western New York Counties. Chautauqua, Erie, Niagara, Orleans, Genesee, Wyoming, Allegany, and Cattaraugus Counties.

Rochester Region Counties. Orleans, Monroe, Wayne, Ontario, and Livingston Counties

II. PROGRAM REQUIREMENTS

For Projects, State-assistance payments may be awarded for up to 100% of the equipment and installation costs of Clean Air School Bus Equipment or Idling Reduction Equipment on one or more currently operating diesel-powered School Buses, up to the per device per bus limits described below.

NYSERDA will reimburse applicants up to the following amount per device per bus. If the total cost of the equipment and installation exceeds the maximum reimbursable amount, the applicants will be responsible for any remaining costs. The amount for which reimbursement may be requested is the lesser of 1) the costs stated in the application, or 2) the actual eligible costs.

Clean Air School Bus Equipment

- CARB Level 1-verified devices and EPA-verified devices achieving 20% to 40% PM reductions, i.e. diesel oxidation catalysts (DOCs): **\$1,650**
- CARB Level 3-verified devices and EPA-verified devices achieving at least 85% PM reductions i.e. diesel particulate filters (DPFs): **\$9,000**
- Closed crankcase ventilation filters (CCVs): **\$700**

Idling Reduction Equipment

- Diesel fuel-fired coolant heaters (DFCHs): **\$3,400**

School Buses may be retrofitted with one CCV and one other type of Clean Air School Bus Equipment. School Buses that are retrofitted with Idling Reduction Equipment may also be retrofitted with one CCV and/or one other type of Clean Air School Bus Equipment.

School Buses retrofitted with Clean Air School Bus Equipment or Idling Reduction Equipment through the Program must be used on a regular daily route to and from a school and must be driven at least 3,000 miles per year. Recipients must retain ownership of any School Buses retrofitted as part of the Program for at least three (3) years after the Clean Air School Bus Equipment or Idling Reduction Equipment installation date and must operate the School Buses in the county where they are put into operation immediately following the retrofit installation for at least three (3) years after the installation date.

School Buses with engine model years of 2007 or newer are not eligible to receive funding for Clean Air School Bus Equipment.

This solicitation is funded through a variety of sources. NYS Clean Water/Clean Air Bond Act funding is available for Projects throughout New York State. Funding from the settlement of separate lawsuits by the New York State Office of the Attorney General (OAG) against the AES Company, the Niagara Mohawk, and Rochester Gas and Electric Company is available for Projects located in three target areas that were affected by power plants owned or operated by these companies in Southern Tier Counties, Western New York Counties, and Rochester Region Counties respectively. Bond Act funding may only be used for Clean Air School Bus Equipment. The available settlement funds may be used for either Clean Air School Bus Equipment or Idling Reduction Equipment. No applicant may receive more than \$100,000 in Idling Reduction Equipment.

The available settlement funds are targeted at specific regions within New York State; therefore, accepted applications from those regions will receive funding from the appropriate settlement funds until they are exhausted, after which they would receive funding from the statewide funding pool. It is possible that funding may be available in one or more of

those regions and not statewide if the statewide funds are exhausted before the settlement funds are. Applications will be sorted into different categories, depending on the location of the school district.

Category A will use funds from a settlement between the Office of the Attorney General (OAG) and AES Corporation (AES) to serve Southern Tier counties impacted by power plants operated by AES (Broome, Yates, and Seneca Counties). Open to public and private School Bus operators.

Category B will use funds from a settlement between the OAG and the former Niagara Mohawk Power Corporation (Niagara Mohawk) to serve Western New York counties that were impacted by power plants owned at one time by Niagara Mohawk (Chautauqua, Erie, Niagara, Orleans, Genesee, Wyoming, Allegany, and Cattaraugus counties). Open to public and private School Bus operators.

Category C will use funds from a settlement between the OAG and Rochester Gas and Electric Corporation (RG&E) to serve Rochester Region counties that were impacted by power plants owned at one time by RG&E (Orleans, Monroe, Wayne, Ontario, and Livingston Counties). Open to public and private School Bus operators.

Category D will use Bond Act funds and EPA grant funds to serve all eligible applicants throughout New York State. Open to public fleets, but a school district may apply on behalf of a contractor as long as ownership of the equipment will remain with the district.

Caps on the amount of funds awarded to a single applicant may be imposed for this funding.

Funds cannot be used to supplant financial resources committed by the governing body for Projects prior to the date of application. Commitment of financial resources is deemed to commence with the execution of purchase orders or contracts for any of the equipment or other cost items for which funding is requested.

Funds awarded through the Program should be committed (purchase orders or contracts executed) within six (6) months of the date of award. Funds not committed by that date may be reallocated to other Projects which were not initially awarded funds, or may be added to funds available in subsequent rounds of the Program.

In cases where one governing body operates or controls more than one operating subsidiary, each subsidiary is considered a separate applicant.

Buses that are retrofitted with eligible equipment for which State-assistance payments are awarded may be operated by another entity through an operating license or operating agreement provided such agreement is consistent with Federal income tax regulations pertaining to the use of proceeds from tax-exempt bonds (i.e., a school district owns the buses but contracts for the operation of the publicly owned buses).

Businesses that contract to provide transportation services for a public entity, where the business retains ownership of the buses, **are not** eligible to apply directly for Category D but may apply directly for category A, B, and C funds.

All applications are subject to review for compliance with Federal income tax rules and regulations pertaining to the use of tax-exempt bond proceeds as determined by New York State Bond Counsel. Applicants receiving Category D funds will be required to certify compliance with Federal income tax rules and regulations.

The cost of fuel is not eligible under the Program.

The cost of datalogging or diagnostic testing to determine the suitability of Clean Air School Bus Equipment to a specific vehicle is not eligible under the Program.

Funds awarded through the Program may not be used for any administrative or operating expenses incurred by the recipient of funds. Funds will be reimbursed for eligible costs upon submission and approval of invoices.

State-assistance payments awarded through the Program may not be used for any administrative or operating expenses incurred by the recipient of funds. State-assistance payments will be reimbursed for eligible costs upon submission and approval of invoices.

Recipients will be required to provide milestone reports based on the proposed schedule of equipment procurement. Recipients will also be required to provide brief annual reports for three years following the introduction of the funded equipment. Such reports should include data on the operation of the bus(es) including: fuel usage, miles driven, hours spent idling (for buses retrofitted with Idling Reduction Equipment), maintenance events and costs, problems and

concerns, and emissions test results (if available).

III. APPLICATION REQUIREMENTS

Applications submitted in response to this PON must be approved by the applicant's governing body. Applications will be accepted on a first-come, first-served basis starting on **June 22, 2010**. Applicants must complete and submit **one (1)** copy of the completed application to the attention of Adam Ruder at the address on the front of this PON. The application will consist of:

- **Application Checklist (Attachment A)**, which must be signed by a person authorized to commit the organization;
- **Disclosure of Prior Findings of Non-Responsibility (Attachment B)**; and
- **Clean Air School Bus Program Application Form (Attachment C)**, which requires information and documentation related to the selection criteria.

Applications that do not meet Program requirements and applications lacking the appropriate completed and signed Application Checklist will be returned. Faxed or e-mailed copies will not be accepted.

An application for a Project requires a list of the applicant's diesel-fueled School Buses to be retrofitted, categorized by type of Clean Air School Bus Equipment or Idling Reduction Equipment with which the School Buses will be retrofitted, and by the bus manufacturer and engine manufacturer/model and model year.

All applications must include price quotes from at least 2 different vendors for comparable Clean Air School Bus Equipment or Idling Reduction Equipment. Applicants must comply with their own procurement procedures in selecting vendors for the Program.

For Clean Air School Bus Equipment that requires a specific duty cycle to guarantee operability (e.g. passive particulate traps or filters), an applicant may apply for funds with the intention of verifying the duty cycle once the award has been made. If the duty cycle is found to not be capable of supporting the proposed equipment or the projected emission benefit, the applicant may then request a change in project scope from NYSERDA for a different type of Clean Air School Bus Equipment (e.g. flow through filter). The change in scope will be evaluated based on the availability of funding.

In order to be considered for an award, each application must meet the following minimum qualifications:

- The application must be submitted by an eligible entity and be consistent with the eligibility criteria and Program Requirements described in this PON.
- The application must provide all information requested in **Attachment C**.
- The proposed Project must result in a reduction of environmental emissions.
- School Buses retrofitted with Clean Air School Bus Equipment or Idling Reduction Equipment must be used on a regular daily route to and from a school and must be driven at least 3,000 miles per year.
- School Buses retrofitted with Idling Reduction Equipment must not be stored indoors and must not be warmed by block heaters during the winter, both of which preempt the need for coolant heaters.
- School Buses with engine model years of 2007 or newer are not eligible to receive funding for Clean Air School Bus Equipment.

NYSERDA will enter into agreements with each entity awarded funds. A sample agreement is included with this PON as **Attachment D**.

Applications 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 application. Each page of the application should state the name of the applicant, the PON number, and the page number.

IV. APPLICATION EVALUATION

Applications will be reviewed by NYSERDA to determine whether the application meets the Program's qualifications. Applications that do not meet these qualifications will not be considered for funding. Reasons for removing the application from consideration for funding shall be provided to the applicant in writing.

Applications will be reviewed for compliance with Program rules and procedures, eligibility, and completeness. NYSERDA may reject the application or, if needed, contact the applicant for additional information regarding the fleet and/or vehicle(s). Partial awards are possible if NYSERDA does not have enough money to fully fund a Project. NYSERDA will continue funding approved applications until either the funds are exhausted or the Program expiration

date, whichever comes first. The settlement funds are targeted at specific regions within the State; therefore, it is possible that funding may be available in one or more of those regions and not statewide if the statewide funds are exhausted before the settlement funds are. In this case, applications will only be accepted for the regions where funding is still available.

Applicants may apply for installations of technology from one or more eligible vendors; they are not limited to purchasing from a single vendor.

Once NYSERDA confirms that an application complies with Program rules and procedures, it will issue a Contract Agreement. Applicants will have nine (9) months to complete their retrofits after the contract is executed. Applicants may apply for extensions, which may or may not be approved at NYSERDA's sole discretion.

In the event two applications are received at the same time and would exhaust available funds, funding decisions will be made based upon, in descending priority, Project cost, funding received in previous rounds of the program, commitment to operate Clean Air School Bus Equipment or School Bus Idling Reduction Equipment for longer than the three-year minimum, and equitable distribution of funds between counties and between school districts.

V. GENERAL CONDITIONS

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your application. Review should include whether it is critical for evaluating an application, 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 exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 www.nyserda.org/about/nyserda.regulations.pdf. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

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

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

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

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

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 new procurement lobbying requirements which can be found at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>

The attached Application 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 - NYSEDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSEDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at http://www.tax.state.ny.us/pdf/2007/fillin/st/st220td_507_fill_in.pdf). Prior to contracting with NYSEDA, the prospective contractor must also certify to NYSEDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a perspective contractor prior to contacting and filed with NYSEDA. See, ST-220-CA (available at http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf). The Department has developed guidance for contractors which is available at <http://www.tax.state.ny.us/pdf/publications/sales/pub223.pdf>

Contract Award - NYSEDA anticipates making multiple awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSEDA may request additional data or material to support applications. NYSEDA will use the Sample Agreement to contract successful applications. NYSEDA expects to notify applicants in approximately two (2) weeks from the receipt of an application whether or not their applications have been selected to receive an award.

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

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

VI. ATTACHMENTS

Attachment A: PON 1896 Application Checklist
Attachment B: Disclosure of Prior Findings of Non-Responsibility
Attachment C: Clean Air School Bus Program Application
Attachment D: Sample Agreement

ATTACHMENT A - PON 1896 APPLICATION CHECKLIST (MANDATORY)

Application Title		Due Date JUNE 22, 2010 to MAY 31, 2011	
Primary Contact (Prime Contractor)		Title	
Company	Phone	Fax	
	e-mail		
Federal Tax Identification #/Social Security			
Address	City	State or Province	Zip
Secondary Contact		Title	
Company	Phone	Fax	
	e-mail		
Address	City	State or Province	Zip
THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:			
Do you accept all Terms & Conditions in the Sample Agreement? (if no, explain on separate pg) (NYSERDA anticipates considering only specifically listed exceptions in negotiations.)		___ Yes ___ No	
Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg)		___ Yes ___ No	
Are you a Minority or Women-Owned Business Enterprise?		___ Yes ___ No	
Does your application contain Minority or Women-Owned Business enterprises as subcontractors?		___ Yes ___ No	
Are you submitting the required number of copies? (See application instructions.)		___ Yes ___ No	
Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing applications)? (if yes, explain on separate page)		___ Yes ___ No	
ON WHAT PAGE IN YOUR APPLICATION CAN THESE ITEMS BE FOUND?			
Section A: Location	___	Disclosure of Prior Finds of Non-Responsibility	___
Section B: General Information	___	NYSERDA Contracts Awarded (if applicable)	___
Section C: Schedule	___	Exceptions to Terms & Conditions (if applicable)	___
Section D: Retrofit Technology and Installation Specs	___	Indictment/Conviction of Felony (if applicable)	___
Manufacturer quotes (cost verification)	___	Prior and/or Competing Applications (if applicable)	___
Section E: Vehicle Information	___		
AUTHORIZED SIGNATURE & CERTIFICATION			
I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, and that the application 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 application may be disqualified if the solicitation requirements are not met. I the undersigned am authorized to commit my organization to this application.			
Signature		Name	
Title		Organization	
Phone		Email	

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

ATTACHMENT B: DISCLOSURE OF PRIOR FINDINGS OF NON-RESPONSIBILITY

(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? (Please indicate with an "X")	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
Was the basis for the finding of non-responsibility due to due to a violation of §139-j of the State Finance Law? (Please indicate with an "X")	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please indicate with an "X")	<input type="checkbox"/>	Yes
	<input type="checkbox"/>	No
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.		
Government Agency or Authority:		
Date of Finding of Non-responsibility:		
Basis of Finding of Non-responsibility: (Add additional pages as necessary)		

Has any 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? (Please indicate with an "X")		Yes
		No

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

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

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

By: _____ Date: _____
Signature

Name: _____ Title: _____

**ATTACHMENT C: CLEAN AIR SCHOOL BUS
PROGRAM APPLICATION**

INSTRUCTIONS

The following is a set of steps that are recommended to completing a satisfactory application. Remember, applications will be approved only if all criteria listed previously in the PON are met. Consider the criteria when filling out the application.

1. Research emission reduction retrofit and coolant heater options and choose which will be requested through this program. See below for manufacturer contact information.
2. Contact distributors with verified technology and obtain quotes.
3. Complete sections A through E of the application, regarding information about the fleet, the coolant heaters to be installed, the schedule of improvements, and the vehicles to be retrofitted.
4. Fill out Application Checklist, labeling where sections of the application can be located and obtain the authorized signature.
5. Review the complete sample agreement.
6. Assemble all required paperwork and send to NYSERDA by the due date for consideration. Each page should state the name of the applicant, the PON number and the page number. Submit one copy of the application with a completed and signed Application Checklist attached to the front.

COOLANT HEATER MANUFACTURER CONTACT INFORMATION

Below is the complete list of manufacturers of NYS Department of Transportation-approved diesel fuel-fired coolant heaters and the manufacturers' contact information. Companies may have one or more local dealers in your area.

Company Name	Contact Name	Number	Email
Espar Heater Systems	Allan Webb	443-253-1808	awebb@espar.com
Teleflex Power Systems	Phil Chatlosh	512-250-8838	pchatlosh@teleflex.com
Webasto Products North America	Paul Baczewski	866-889-0477	paul.baczewski@webasto-us.com

NYSERDA does not endorse any particular manufacturer. Applicants may choose any NYS Department of Transportation-approved coolant heater made by any of these vendors.

EMISSION RETROFIT MANUFACTURER CONTACT INFORMATION

Below is a collection of manufacturers of diesel retrofit technologies and the manufacturers contact information. Companies may have one or more local dealers in your area.

Company Name	Contact Name	Number	Email
Caterpillar	Jeff Jacobs	(860) 658-3438	jacobs_jeffrey_a@cat.com
Cleaire	Tom Swenson	(916) 689-0248	tom.swenson@cleaire.com
Cummins	John Taylor	(508) 485-1253	john.l.taylor@cummins.com
Donaldson	Barry Bambo	(973) 461-6091	barry.bambo@donaldson.com
Econix	Jason Rain	(909) 466-1602 x139	jason@econixusa.com
Engine Control Systems	Darrell Trueman	(905) 762-5182	dltn@enginecontrolsystems.com
ESW Canada	John Macaluso	(386) 334-4863	jmacaluso@eswgroup.com
HUSS	Phil Surma	(760) 322-5692 x301	phil.surma@hussfilters.com
Johnson Matthey	Melanie Pastore	(484) 320-2240	pastore@jmus.com
Lubrizol	Kevin Snape	(440) 347-6798	kesna@lubrizol.com

NYSERDA does not endorse any particular manufacturer. Applicants may choose any EPA- or CARB-verified diesel retrofit technology that is considered Clean Air School Bus Equipment under PON 1896 and is made by any of these vendors or any other vendor that has such technology that may not be included on this list by error or other accidental omission.

For more information, go to: <http://www.epa.gov/otaq/retrofit/contacts.htm>
<http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm>

APPLICATION

Provide the following information for the school buses that will be retrofitted with the idling reduction technology.

Section A. Location	
In what county or counties is the school district your fleet serves located: _____	
<input type="checkbox"/>	Category A (Broome, Yates, and Seneca counties)
<input type="checkbox"/>	Category B (Chautauqua, Erie, Niagara, Orleans*, Genesee, Wyoming, Allegany, and Cattaraugus counties)
<input type="checkbox"/>	Category C (Orleans*, Monroe, Wayne, Ontario or Livingston counties)
<input type="checkbox"/>	Category D (Other)
* If the fleet is located in Orleans County, mark both Category B and Category C	

Section B. General Information	
Total number of buses operated	Number of buses to receive eligible equipment
Number of years the fleet commits to keep the buses with installed equipment in service (min. 3 years)	Description of bus storage facility where buses are kept <div style="display: flex; justify-content: space-around;"> Indoor Outdoor </div>
<i>If installing Idling Reduction Technology:</i> Estimated number of idling hours per bus per school day	<i>If installing Idling Reduction Technology:</i> Do the buses being retrofitted have electric engine block heaters or similar heating devices? <div style="display: flex; justify-content: space-around;"> Yes No </div>

Section C. Schedule	
Provide approximate dates for the following objectives.	
Date of issuance of Purchase Orders/Contracts for emission reduction or idling reduction technology	Date:
Installation of technology on vehicles	Start Date:
	Completion Date:

Make & Model	VIN Number	License/ Vehicle Number	# of Pass- engers	Engine Manufacturer & Model	Engine Model Year	Engine Horse- power	Est. Miles Driven Per Year	Retrofit Techno- logy	Retrofit Manufacturer	Total Amount Requested (\$)
<p>Under "Retrofit Technology," please list each retrofit technology separately, by acronym: diesel oxidation catalyst (DOC), crank-case ventilation filter (CCV), diesel particulate filter (DPF), diesel fuel-fired coolant heater (DFCH). There is room provided to include each type of retrofit on a different line if a bus will receive more than one technology.</p>									TOTAL FUNDS:	

Attachment D Sample Agreement

**New York State Energy Research and Development Authority
AGREEMENT**

1. Agreement Number:
2. Contractor:
3. Contact:
4. Award Date:
5. Project Period:
6. Federal ID:
7. Total Amount of Contract:
8. TERMS AND CONDITIONS:

The Agreement consists of this page plus the following documents which are incorporated herein by reference:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Terms and Conditions;
- Exhibit C, Standard Terms and Conditions; and
- Exhibit D, Prompt Payment Policy Statement.

9. ACCEPTANCE

[CONTRACTOR] NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By: _____

By: _____

Jeffrey J. Pitkin

Name: _____

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 individual(s), or the person upon behalf of which the individual(s) acted, executed the document.

Notary Public

EXHIBIT A

[Work scope to be developed by the Recipient.]

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

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

Budget: The Budget set forth in Exhibit A hereto.

EPA-certified/verified. Eligible emission-reducing equipment and technologies include, but are not limited to, particulate traps or filters and catalytic converters that decrease emissions of particulate matter, hydrocarbons, oxides of nitrogen, carbon monoxide, greenhouse gases and/or toxic air pollutants, and are not part of a standard/required engine configuration (i.e., if the equipment is required by law to be installed on the bus for the bus to be sold, then the equipment would not be eligible). Equipment must be sold under standard commercial terms from one or more EPA - certified/verified, emission-reducing technology manufacturers.

Clean Air School Bus Retrofit Project. Any currently owned and operated diesel-fueled School Bus in New York State that is to be retrofitted with Clean Air School Bus Equipment. The Program can only pay for eligible equipment and the cost of installing the eligible equipment.

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

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

Effective Date: The effective date of this agreement shall be the date appearing in Item 4, "Award Date," on page one of the Agreement.

Governing Body: For a county outside the City of New York, the governing body is the board of supervisors or other elective governing body. For a city or village, the governing body is the local legislative body thereof, as the term is defined in Municipal Home Rule Law. For a town, the governing body is the town board. For a school district, the governing body is the board of education thereof. For a supervisory district, the governing body is the board of cooperative educational services thereof. For a public benefit corporation, the governing body is the board of directors, members or trustees thereof. For a public authority, the governing body is the board of directors, members, or trustees thereof. In the case of an Indian tribe, the governing body is that which is recognized as such by the United States or the State of New York. (For this program, the authorization may come from the Superintendent of the school district.)

Municipality. A local public authority or public benefit corporation, a county, city, town, village, school district, supervisory district, district corporation, improvement district within a county, city, town or village, or Indian nation or tribe recognized by New York State or the United States with a reservation wholly or partly within the boundaries of New York State, or a combination thereof.

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

instrumentality.

Project or Projects. Includes a Clean Air School Bus Project or Projects and Clean Air School Bus Retrofit Project or Projects.

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

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

Rochester Region Counties: Orleans, Monroe, Wayne, Ontario or Livingston Counties.

School Bus. Any motor vehicle that has a seating capacity of fifteen or more passengers in addition to the driver and is used exclusively for the transportation of New York State school children on public highways.

State-Assistance Payment. Payment of the New York State share of approved costs for Projects that preserve, enhance, restore and improve the quality of the State's environment.

Southern Tier Counties: Broome, Yates, and Seneca Counties.

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

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

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

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

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

Western New York Counties: Chautauqua, Erie, Niagara, Orleans, Genesee, Wyoming, Allegany, and Cattaraugus Counties.

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

Performance of Work

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

Section 2.02. Project Personnel. It is understood and agreed that the "Contact Person" identified in Item 3 of page one of the Agreement shall serve as Project Director and as such shall have the responsibility of the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. NYSERDA shall be notified in writing of any change of Project Director by the Contractor.

Section 2.03 in italics shall be used for Category D projects utilizing New York State Clean Water/Clean Air Bond Act Funds:

Section 2.03. Contractor Certification. The Contractor certifies that:

(a) NYSERDA payments will be used for the Work and consists of capital projects that have or will have a period of probable usefulness of at least ten (10) years pursuant to Section 61(21) of the State Finance Law and shall have an actual useful life of at least ten (10) years; and

(b) None of the Work, and no portion of any of the Work, is or will be used (directly or indirectly) in a trade or business carried on by any persons or entities other than a governmental unit on any basis other than the same basis that such Work or portion thereof is available for use and used by the general public and (ii) other than user fees charged to all members of the general public (including businesses) on the same basis, the Contractor will not receive any payments from any private person or United States agency of any monetary compensation for the use of the facilities financed with such disbursements and have no agreement for such payment; and

(c) The Contractor expects to expend the moneys received for the Work by _____;

(d) It qualifies as a State agency or department, public authority, or municipality of the State as defined by the Clean Water/Clean Air Bond Act of 1996 (Chapter 412 of the Laws of 1996) ("Municipality") and the disbursements made to the Contractor will be used for capital projects.(i.e. a Clean Air School Bus Project or a Clean Air School Bus Retrofit Project) owned and operated by the municipality; and

(e) No payments have been or will be made directly or indirectly, on behalf of the State by any private user of any facility. No portion of the award will be used (directly or indirectly) to finance loans to any persons or entities.

Article III

Deliverables

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

Article IV

Payment

Section 4.01. For Clean Air School Bus Retrofit Projects, it is understood and agreed that, in consideration for this Agreement and as full compensation for the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Recipient the actual costs incurred up to the maximum amount of not to exceed the amount set forth in Item 7, "Total Amount of Contract," shown on page one of the Agreement, subject to the provisions and restrictions contained herein. Such amount will be paid only to the extent that costs are incurred by the Recipient in performance of the Work in accordance with the provisions of this Award and the Budget.

Section 4.02. Award Payment. Such amount shall be paid only to the extent that costs are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement and the Budget. Funds awarded under the Clean-Fueled Bus Program must be committed, and applicable purchase orders and contracts executed, within nine (9) months of the date of award set forth in Item 4, "Award Date" shown on page one of the Agreement, subject to the provisions and restrictions contained herein. The payment request shall be addressed to: "NYSERDA, 17 Columbia Circle, Albany, New York 12203, Attention: Accounts Payable." Payment will be made in accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, if applicable. Furthermore, NYSERDA shall have no liability under this Agreement to the Contractor or to anyone else beyond funds paid to NYSERDA by third parties for the purposes of this Agreement.

Section 4.03. Administrative Expenses: No funds received pursuant to this Agreement shall be used for administrative or operating expenses of the Contractor.

Section 4.04. Title to Equipment. Title shall vest in the Contractor to all equipment purchased hereunder.

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

Section 4.06. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of this Agreement and for a period of ten years after acceptance of the Work, full and detailed books, accounts, and records pertaining to the performance of this Agreement, including without limitation, all bills, invoices, payrolls and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and such period thereafter to inspect and audit any and all such books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to this Section.

Section 4.07. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor hereunder is the amount shown in Item 7, "Total Amount of Contract" on page one of the Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.08. Audit Adjustment. Any payment made hereunder shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and Purchase Orders

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

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a Subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any Subcontract or order for equipment, supplies or materials from a single Subcontractor or supplier totaling under \$25,000, the Contractor shall select all Subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a Subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a Subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the Subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a Subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a Subcontractor or supplier, and those set forth in Exhibit B to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any Subcontract(s) specified in the Statement of Work as requiring NYSERDA approval.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action which would impair its rights thereunder. The Contractor shall not assign, cancel or terminate any Subcontract without prior written notification to the Contract Administrator as long as this Agreement remains in effect.

Article VI

Schedule

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

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

Article VII

Force Majeure

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

Article VIII

Technical Data

Section 8.01. Rights in Technical Data.

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

(1) NYSERDA shall have:

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

(2) The Contractor shall have:

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

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

Article IX

Warranties and Guarantees

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

- (a) it is financially and technically qualified to perform the Work;
- (b) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any that may in any way affect the performance of this Agreement;
- (c) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted construction and design standards and best engineering practices;
- (d) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted construction and design standards and best engineering practices;
- (e) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that

the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

(f) there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or the NYSERDA's rights hereunder;

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

(h) Contractor certifies that all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate.

Article X

Indemnification

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

Article XI

Insurance

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

(a) name or be endorsed to cover NYSERDA, the State of New York and the Contractor as insureds, as their respective interests may appear;

(b) provide that such policy may not be canceled 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. Type of Insurance. The types and amounts of insurance required to be maintained under this Article are as follows:

(a) Comprehensive 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.

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, evidencing the insurance required by this Article and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such

payment satisfactory to NYSERDA. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to final payment, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

Article XII

Stop Work Order; Termination

Section 12.01. Stop Work Order.

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

- (i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or
- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

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

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

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

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

Section 12.02. Termination.

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon 30 days prior written notice to the Contractor. In such event, compensation shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Payment and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the

Contractor shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor).

(b) NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

(c) NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Tax Law Section 5-a was intentionally false when made. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

Article XIII

Independent Contractor

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

Article XIV

Compliance with Certain Laws

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

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

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

Article XV

Publicity, Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Publicity. The Contractor shall collaborate with NYSERDA's Director of Technical Communications to prepare any press release and to plan for any news conference concerning the Work. In addition the Contractor shall notify NYSERDA's Director of Technical Communications regarding any media interview in which the Work is referred to or discussed.

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.

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. 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.

Section 15.02. Notices. All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be deemed to have been sufficiently given for all purposes hereunder when delivered or mailed by registered or certified mail, postage prepaid, return receipt requested, (i) if to NYSERDA, at 17 Columbia Circle, Albany, New York 12203 or at such other address as NYSERDA shall have furnished to the Contractor in writing, and (ii) if to the Contractor, at _____, or such other address as the Contractor shall have furnished to NYSERDA in writing.

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

EXHIBIT C

REVISED 9/06

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

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

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

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

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other

appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

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

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

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

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

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

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

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

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

13. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to

Contractors that have entered into agreements in an amount exceeding \$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.
- d. Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part of hereof and incorporated herein by reference.
- e. NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

EXHIBIT D

PROMPT PAYMENT POLICY STATEMENT

Section 504.1 Purpose and applicability.

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

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

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

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

- (a) "NYSERDA" means the New York State Energy Research and Development Authority.
- (b) "Contract" means an enforceable agreement entered into between NYSERDA and a contractor.
- (c) "Contractor" means any person, partnership, private corporation, or association:
 - (1) selling materials, equipment or supplies or leasing property or equipment to NYSERDA pursuant to a contract;
 - (2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, NYSERDA pursuant to a contract; or
 - (3) rendering or providing services to NYSERDA pursuant to a contract.
- (d) "Date of payment" means the date on which NYSERDA requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a payment.
- (e) "Designated payment office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203-6399.
- (f) "Payment" means provision by NYSERDA of funds in an amount sufficient to satisfy a debt properly due and owing to a contractor and payable under all applicable provisions of a contract to which this Part applies and of law,

including but not limited to provisions for retained amounts or provisions which may limit NYSERDA's power to pay, such as claims, liens, attachments or judgments against the contractor which have not been properly discharged, waived or released.

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

(h) "Payment due date" means the date by which the date of payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Part, in order for NYSERDA not to be liable for interest pursuant to Section 506.

(i) "Proper invoice" means a written request for a contract payment that is submitted by a contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the designated payment office.

(j) (1) "Receipt of an invoice" means:

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

(a) the date on which a proper invoice is actually received in the designated payment office during normal business hours; or

(b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a proper invoice previously received in the designated payment office.

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

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

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

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

Section 504.4 Payment procedures.

(a) Unless otherwise specified by a contract provision, a proper invoice submitted by the contractor to the designated payment office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the designated payment office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.

(b) NYSERDA shall notify the contractor within 15 calendar days after receipt of an invoice of:

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

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

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

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

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

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

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

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

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

Section 504.6 Interest eligibility and computation. If NYSERDA fails to make prompt payment, NYSERDA shall pay interest to a contractor on the payment when such interest computed as provided herein is equal to or more than ten dollars. Interest shall be computed and accrue at the daily rate in effect on the date of payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a payment shall be computed for the period beginning on the day after the payment due date and ending on the date of payment.

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

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

Section 504.9 Notice of objection. Unless a different procedure is specifically prescribed in a contract, a contractor may object to any action taken by NYSERDA pursuant to this Part which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, 17 Columbia Circle, Albany, New York 12203-6399. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within 15 working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the contractor either that NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed 30 working days.

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

Section 504.11 Court action or other legal processes.

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

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

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