



# 2012 PAY FOR PERFORMANCE PROGRAM New Construction • Partnership Agreement

## Overview

The NJ Clean Energy Program's Pay for Performance New Construction component (Program) comprehensively addresses the energy efficiency needs of the Commercial and Industrial (C&I) sector by working with building owners and their representatives ("Participants") to improve the energy efficiency of new commercial and industrial buildings with 50,000 square feet or more of planned gross heated space.

This Program relies on a network of contractors who have demonstrated their experience and expertise in commercial and industrial energy efficiency projects. These entities are identified as Pay for Performance Partners ("Partner"), and are afforded the privileges outlined in the Partnership Agreement and its Attachments. The Program will work to achieve the following goals:

1. Create a market-based network of energy efficiency professionals capable of delivering comprehensive services to developers, building owners and their representatives;
2. Facilitate access to capital for comprehensive energy and energy-related improvements;
3. Reach significant numbers of commercial and industrial customers with comprehensive, cost effective scopes of work;
4. Reduce the C&I sector's contribution to the system peak demand;
5. Package energy efficiency with other types of improvements, such as combined heat and power and renewable energy systems;
6. Improve the profitability of Participants by implementing cost effective energy improvement measures which lower energy consumption and costs.

Participants will be required to work with an approved Pay for Performance Partner to develop an Energy Reduction Plan (ERP) and facilitate the incorporation of the recommended energy efficient design features. In order to receive the full suite of incentives offered in the Program, the submitted ERP must include a package of energy efficiency measures that achieve the minimum performance requirement of energy costs 15% below the current energy code requirements. In addition, the ERP must include a comprehensive mix of measures; lighting cannot make up more than 50% of the total projected energy cost savings. Projects that cannot identify efficiency improvements that meet this minimum performance level will be referred to the appropriate NJ SmartStart Buildings Program(s). On behalf of the NJ Office of Clean Energy (OCE), the C&I Market Manager, TRC, manages the Program and will be the point of contact for Partners and Participants in the Program.

By executing this Agreement, the Partner agrees to play an active role in the Program by providing high-quality building performance services to Participants in the Program in compliance with the Program's terms and conditions. This Agreement identifies the terms and conditions required of the Partner when providing services under the Program. The Agreement can be terminated at any time, by either the C&I Market Manager, in consultation with OCE, or the Partner. Termination by the C&I Market Manager could include, but is not limited to the following reasons: failure to meet program guidelines and standards; failure to deliver satisfactory services; failure to cure a deficiency, error or omission; insolvency; fraud; failure to maintain good standing in the State of New Jersey. The specific types of services required of a Partner, along with the corresponding terms, conditions and incentives, are detailed in the Attachments to this Agreement.

**NOTE: If you have already been approved as a Partner in the Pay for Performance Program you do not need to reapply to become a Partner in the Pay for Performance New Construction Component. Simply fill out Page 2 of this Agreement, as well as sign Page 2, Page 6, and Page 8 and submit this Agreement to the C&I Market Manager.**

## Signature Form

By signing below, I, as a Partner, understand and agree to comply with all commitments described in this Pay for Performance New Construction Program Partnership Agreement, including all applicable attachments and supporting policies described or referenced therein. I certify that the qualifications, certifications and accreditations identified by the Partner in this Agreement, the Attachments, and the Partner's submissions are valid, and I agree to abide by the terms and conditions listed in each attachment. The provisions of this Agreement are effective from the date of execution through December 31, 2012. The C&I Market Manager, in consultation with OCE, reserves the right to modify, at any time during the term of this Agreement, the provisions of this Agreement. I certify, under the penalties of law, that the statements made in this Agreement have been examined by me and are true and complete. I understand that by signing this Agreement, I consent to any other inquiry to verify or confirm the information I have provided.

The Partner shall submit a newly executed Signature Form on an annual basis to extend the effective date by one (1) year.

Contact Name			Title		
Company Name				Tax ID#	
Address			Services Provided (check all that apply)		
			<input type="checkbox"/> Energy Services <input type="checkbox"/> Commercial Construction <input type="checkbox"/> Architecture/Engineering <input type="checkbox"/> Other		
City	State	Zip	Phone	Fax	
E-mail			Website		

By signing below I hereby accept and agree to the terms of this Pay for Performance New Construction component Partnership Agreement.

Print Name \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

## Geographical Coverage

Please take a moment to indicate, by selecting the appropriate box(es), in which New Jersey counties your organization plans to offer services. You may choose to offer services:

### Statewide

#### Gateway Region

- Passaic
- Bergen
- Hudson
- Essex
- Union
- Middlesex

#### Delaware River Region

- Mercer
- Burlington
- Camden
- Gloucester
- Salem

#### Greater Atlantic City Region

- Atlantic

#### Skyland Region

- Sussex
- Warren
- Morris
- Hunterdon
- Somerset

#### Shore Region

- Monmouth
- Ocean

#### Southern Shore Region

- Cumberland
- Cape May

## Company Characteristics (attach additional pages as necessary)

Brief Description, History and Organizational Structure, including # of years in business (minimum one year to qualify for listing), affiliations with branch/parent offices, and current number of employees:

Three Most Recent Projects – provide date, location and customer references that the C&I Market Manager is authorized to contact (otherwise provide three manufacturers, supplier or dealer references) including contact name, phone number and (for customers) basic information on systems installed. In addition to this summary, attach details as described below in Submission Requirements – #2A:

Statement that the company has \$1 million of general liability insurance and statutory worker's compensation. For installers, this insurance must cover all employees and activities relating to the procurement and installation of the proposed systems. Proof of coverage (copy of policy) may be required.

Yes     No

## Certifications, Accreditations, and Licenses

Partner shall check the appropriate boxes below to indicate the certifications, accreditations and/or licenses held by Partner's staff and subcontractors. Please note that the purpose of this Attachment is to identify specific skills held by Partners in the Pay for Performance Program network. The listed certifications, accreditations and/or licenses are not required for becoming a Partner. The C&I Market Manager reserves the right to request documentation necessary to verify any and all information provided to the Program by the Partner. In addition, the Partner, at their option, may submit a brief written description of their firm to identify the nature of the firm, their general skills, their unique skills, and otherwise describe the Partner firm's capabilities. This information may be posted on New Jersey's Clean Energy website to aid a potential Participant's selection of a Partner to serve their project.

- Certified Energy Manager (CEM) as certified by the Association of Energy Engineers
- LEED® Accredited Professional (AP) through U.S. Green Building Council's Leadership in Energy and Environmental Design Program
- Photovoltaic (PV) Installer as identified through OCE's list of Eligible PV Installers who participated in the Renewable Energy Incentive Program (REIP)
- Wind Power Installer as identified through OCE's list of Wind Installers who participated in the REIP
- Combined Heat and Power Developer as identified through participation in OCE's Combined Heat and Power initiative
- Commercial Mortgage Broker Licensee
- New Jersey State Licensed Professional Engineer
- New Jersey State Licensed Professional Architect
- Multifamily Hydronic Heating System Design Professional as certified by the Building Performance Institute (BPI)
- Multifamily Advanced Heating Plant Technician as certified by the Building Performance Institute (BPI)
- Multifamily Building Analyst Professional as certified by the Building Performance Institute (BPI)
- Other \_\_\_\_\_

## Submission Requirements

As a condition of participating in the Program, Partners must submit the documentation described in this Attachment for review and acceptance by the C&I Market Manager.

1. The Partner shall demonstrate the capability to conduct business successfully by providing one of the following:
  - a) A satisfactory Dunn and Bradstreet Rating; OR
  - b) Membership in the Better Business Bureau; OR
  - c) Specific evidence of business capacity including all of the following:
    - i. A satisfactory banking reference; and,
    - ii. Confirmation that the firm has been in business for a minimum of one (1) year; and,
    - iii. Confirmation that the principals in the business have a satisfactory individual credit score.

2. The Partner shall demonstrate that they possess a thorough knowledge of energy efficiency and the comprehensive opportunities available to commercial and industrial projects, including potential energy efficiency measures and improvements, their performance criteria, cost, and availability.

- a) The Partner must provide the following:
  - i. Evidence that at least one (1) individual named in the Partner's submission has acted in a lead capacity on at least three new construction, commercial and industrial projects for which building energy modeling, using an ASHRAE 90.1-2004 Appendix G compliant software tool, was used to develop a comprehensive energy efficiency scope of work. The Partner shall provide at least three (3) case studies or synopses of those previous projects which satisfy this criterion, including a succinct description of the project which summarizes the completed energy efficiency work scope, how it was funded, and a description of the proposer's direct involvement in the project from inception to completion. Full references shall be submitted for each project, from the owner, developer, A&E firms identified as providing technical support, and from trade contractors, as appropriate, to support the proposer's role and performance for each specific project; and,
  - ii. Resumes of all staff and named subcontractor(s)\* which the Partner anticipates will serve commercial and industrial projects in the Program.
- b) The Partner shall provide an outline of its plan for serving commercial and industrial projects under this Program. In addition to submission of resumes as requested above, this plan shall identify the primary individuals who would serve these projects and their expected roles, whether those individuals are employees or subcontractors. The Partner shall also describe the management structure, the existing internal quality control processes, and other information relevant to the delivery of quality services to Participants.
- c) The Partner may, at their option, confirm any one of the following as demonstration of experience serving the commercial and industrial market. This past service will be considered as support to the proposer's capability to serve the commercial and industrial market.
  - i. Participation as an Energy Consultant in CEP's Local Government Energy Audit Program;
  - ii. Participation as a contractor under CEP's Combined Heat & Power (CHP) initiative; and,
  - iii. Participation as an Energy Consultant in CEP's NJ SmartStart Buildings Comprehensive Design Support Program.

\* A letter of interest/support executed by the subcontractor must be submitted for all subcontractors identified in the Partner's submission. If a subcontractor is also a Partner to this Program in their own right, it should be indicated in this submission.

All program documentation should be submitted to the address below. Please include three (3) hard copies OR one (1) hard copy and one (1) full electronic version, either on CD or sent via e-mail to P4P@trcsolutions.com.

New Jersey's Pay for Performance Program  
c/o TRC Energy Services  
900 Route 9 North, Suite 404  
Woodbridge, NJ 07095

## Program Rules

As part of the Pay for Performance New Construction Partnership Agreement, all Partners hereby agree to the following conditions:

1. The Partner shall properly respond to leads referred by the Program. If the Partner chooses to accept referrals from the Program, services shall be provided expediently to these referrals, and in accordance with the program guidelines and this Agreement.
2. The Partner shall be active in the Program.
  - a) The Partner shall execute a signed contract with each Participant that, at a minimum, includes the responsibilities and tasks detailed in this Agreement and its Attachments.
  - b) The Partner shall strive to ensure that all Participants served by the Partner under the Program make a bona fide attempt to achieve the Program's performance target.
  - c) To maintain an active status as a Partner in this Program, the Partner must contract with at least one (1) participating in the Program within each one (1) year period beginning from the execution date of this Agreement.

3. The Partner shall abide by the following business practices.
  - a) The Partner shall treat Participants fairly and deliver promised services in a timely and responsible manner.
  - b) The Partner shall properly represent the relationship of the Partner to the State of New Jersey, the C&I Market Manager and Applied Energy Group (the Program Coordinator), this relationship being that the Partner is an independent contractor, qualified to provide services to Participants within the Program. The Partner shall not represent itself as working for, approved by, endorsed, or certified by the State of New Jersey, the C&I Market Manager and/or the Program Coordinator.
  - c) The Partner shall maintain any relevant licenses required by federal, state, county, or municipal governments or any other agencies with jurisdiction over work performed with Program support.
  - d) The Partner shall maintain, at its own cost, general liability insurance coverage of at least \$1 million and produce evidence of such upon request by the C&I Market Manager.
  - e) The Partner shall provide all Participants, or potential Participants, with the Program information and materials made available through the C&I Market Manager.
  - f) If the Partner becomes involved in a dispute with a Participant, the Partner shall work with the C&I Market Manager to resolve the dispute amicably. In any event, the Partner shall hold the NJBPU/OCE, the C&I Market Manager and/or the Program Coordinator harmless from any suit arising from services provided with Program support.
  - g) The Partner shall allow random inspections by C&I Market Manager, or its designated agents, of the work it performs under the Program. The Partner shall, upon request from C&I Market Manager, and at no additional cost to the Participant, make reasonable corrections to work that the Partner has performed to bring such work up to Program standards.
  
4. The Partner recognizes that this Partnership is a privilege.
  - a) The Partner acknowledges that serving as a Partner to this Program is a privilege and C&I Market Manager may suspend or terminate this Agreement. Termination by the C&I Market Manager could include, but not be limited to the following reasons: failure to meet program guidelines; failure to deliver satisfactory services; failure to cure a deficiency, error or omission; insolvency; fraud; failure to maintain good standing in the State of New Jersey. In all cases involving a termination of this Agreement, or denial of Program incentives, the Partner has a right to submit an appeal, as outlined in the CEP Dispute Resolution Process found on the website. The C&I Market Manager will review the appeal and forward to the Program Coordinator with a recommendation. The Program Coordinator, in consultation with OCE staff if required, will rule on the appeal and advise the Participant on the ruling in writing. The C&I Market Manager will work to make sure that disputes are handled in a timely matter.
  - b) The Partner shall not employ a subcontractor that has been suspended or terminated from this Program or any other OCE program to serve this Program, without C&I Market Manager's prior written permission. Likewise, the Partner shall not allow a direct employee to serve one of their Pay for Performance projects if that employee served a principal function or in a significant capacity on a project which resulted in another firm's suspension or termination from this Program or any other NJOCE program, without C&I Market Manager's prior written permission.
  - c) The C&I Market Manager reserves the right to make changes to the Program upon notice to the Partner, through notifications by e-mail and posting on NJCleanEnergy.com/P4P.
  - d) It is expressly understood that the C&I Market Manager will not process or approve any incentive payment request submitted by a potential Participant until a fully executed contract between the Partner and Participant is received. The Partner acknowledges that failure to follow Program requirements and procedures, including processing of required documents, will result in a loss of applicable incentives and possible disciplinary action, including termination of this Agreement.
  
5. The Partner shall complete the Pay for Performance New Construction orientation on the Program's requirements and protocols. The Partner must fulfill this requirement prior to providing service to a Participant.

Becoming a Partner and maintaining an active status in the Program affords the Partner access to Program support and incentive opportunities identified in the appropriate Attachment(s) to this Agreement. The C&I Market Manager reserves the right to change any or all of the Attachments to this Agreement at any time upon notice to the Partner. Such notification shall be by e-mail and posting on NJCleanEnergy.com/ssb

**By signing below I hereby accept and agree to the terms of this Pay for Performance New Construction Partnership Agreement.**

Print Name \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

## Terms and Conditions

The terms and conditions in this Agreement are effective upon the Partner's submission of the Participation Agreement for a building on behalf of a Participant. In addition to meeting the qualification requirements and satisfying all terms and conditions identified in the main body of this Agreement, the Partner also agrees to ensure the terms and conditions delineated in this Agreement are met for any project involving buildings that the Partner serves under the Program.

The Participant may, at their option, contract separately for any of the required services. However, the Partner is responsible to the C&I Market Manager to ensure all Program requirements, terms and conditions are satisfied. These services can be provided directly by the Partner's employee(s), or by other individual(s) or firm(s) subcontracted to the Partner and having the required qualifications, certifications, licenses, and/or experience. Although the C&I Market Manager does not require the Partner to submit documentation to affirm that the qualifications and/or experience required within this Agreement are met, the C&I Market Manager reserves the right to request such verification from the Partner at any time.

As part of the Participation Agreement, all Partners hereby agree to the following terms and conditions:

1. The Partner shall be responsive to the Participant and design team. Upon receipt of a submission from the design team, the Partner should prepare and submit a response within three (3) business days.
2. The Partner shall facilitate participation in the Program on behalf of the Participant. These facilitation efforts will, at minimum, include the following:
  - a) Lead an initial information session with the Participant. The Partner shall identify Program goals, and present the various approaches and benefits of participating in the Program, including the potential for obtaining an ENERGY STAR® label. The Partner shall explain the purpose of the Energy Reduction Plan, and discuss potential areas for energy savings available to the Participant.
  - b) The Partner shall prepare and submit requests for incentive payments on behalf of the Participant, in accordance with the trigger events outlined in the Participation Agreement between the Participant and the Program, using the appropriate Program Incentive Request Form.
3. Develop the Proposed Energy Reduction Plan. The Partner shall ensure this task is completed by a qualified professional as defined by a professional certification such as Professional Engineer or Certified Energy Manager or demonstrated through experience in identifying energy savings opportunities in commercial buildings. The Partner shall also ensure that this individual or firm has the necessary experience in modeling such projects in an approved software tool. The Partner shall have or obtain at least three (3) relevant case studies, including references from developers indicating previous energy efficiency consultation on new construction, commercial and industrial projects. In addition, the Partner shall have or obtain at least three (3) energy models of commercial or industrial projects developed using an approved software tool. The following tasks, at minimum, shall be completed to achieve this goal:
  - a) Conduct a comprehensive review of available design development building plans and determine what energy-efficiency improvements can be made to the existing design.
  - b) Acquire and use Program-approved software for all project models under this Program. Develop a simulation baseline from the design team's existing plans (initial design plans, construction documents etc.) using the Appendix G of the current ASHRAE 90.1 energy code and the latest version of the Program's Simulation Guidelines to determine the initial simulation baseline consumption.
  - c) Engage in a series of consultations with the design team to revise or further develop the initial design to incorporate energy-efficient design, practices, and equipment in order to achieve a performance requirement of energy costs 15% below the current energy code.
  - d) Create a proposed design model using the latest version of the Program's Simulation Guidelines that projects the energy consumption of the proposed building design and compares it to the projected consumption of the simulation baseline.
  - e) Adjust the proposed design model as necessary while maintaining the minimum performance requirement of energy costs 15% below the current energy code.
  - f) Determine the incremental costs of each of the recommended measures using R. S. Means or equivalent construction estimating procedure.
  - g) Adjust the incremental costs of each of the recommended measures as necessary using R. S. Means or equivalent construction estimating procedure.
  - h) Prepare a report based on the Energy Reduction Plan Template, which summarizes the original design, the energy efficiency recommendations and their projected costs, financial savings, and reductions in energy consumption per the program guidelines, and submit it to the C&I Market Manager for review and approval.
  - i) The Partner shall directly provide or ensure provision of the necessary financial assistance to develop the Energy Reduction Plan. At the Participant's option, the Partner shall assist the Participant in identifying

the sources of funding necessary to fully implement the Energy Reduction Plan. The Partner shall ensure financial assistance is provided by individual(s) holding the requisite knowledge and experience, establishing compliance with this condition by obtaining references from the individual(s) confirming previous success as a financial consultant on either commercial or industrial construction projects.

- j) Assist the Participant in developing a preliminary construction schedule that includes all energy efficiency measures included in the scope of the project.

4. The Partner shall ensure that recommended measures that make up the proposed project are reflected in the bid process and construction documents. The following tasks shall be completed to achieve this goal:
  - a) Review the bid package(s), as appropriate, to ensure that sufficient detail is included to characterize the energy-related measures such that the appropriate construction and installation of the recommended measures can be assured.
  - b) Partner shall ensure that, when appropriate, designers and installers of specific systems will hold applicable certifications, accreditations, and/or licenses.
  - c) Ensure that the Performance Specification Criteria from the program guidelines are reflected in the bid package.
  - d) Attend pre-bid meeting(s), as necessary, to explain program goals and procedures to bidding contractors. Explain energy-efficiency work scope in detail, including air sealing, insulation methods, controls, commissioning, etc. to ensure that contractors understand program requirements sufficiently for bidding purposes.
  - e) Review selected bids and final contracts to ensure that they accurately reflect the final, approved design and specifications.
  - f) Review the construction schedule and offer suggestions regarding timing and installation of the energy efficiency elements of the project as needed.
5. The Partner shall develop the As-Built Energy Reduction Plan, per the program guidelines, the following tasks shall be completed to achieve this goal:
  - a) Upon construction completion of the facility the Partner shall identify any changes that occurred during construction and issues discovered through commissioning.
  - b) The As-Built ERP will include a verification of energy savings for each energy efficiency measure to show that current system performance matches the As-Built ERP projection, and highlight any significant changes to equipment or assumed operating conditions.
  - c) The Partner shall update the proposed model, as appropriate, to incorporate any changes and obtain revised energy savings estimates.
  - d) Prepare a final report based on the Energy Reduction Plan Template and submit it to the C&I Market Manager for review and approval.
6. The Partner shall submit a Final Commissioning Report to affirm that all energy efficiency measures are installed and functioning properly.
  - a) The Partner shall engage the services of a qualified Commissioning Authority ("CxA") The CxA shall be involved at the beginning of the design process to ensure commissioning components, specifications and responsibilities are defined and in place prior to bid and construction.
  - b) The CxA is responsible for checking periodically during the equipment procurement and construction phases that building materials and equipment are installed as designed and building control systems have been properly tested and function as intended in the design documents.
7. The Partner shall provide general administrative services as per the program guidelines, including:
  - a) Submission of project Applications, Incentive Request Forms, Installation Agreement, and all other project related documents.
  - b) Maintaining regular contact with Market Manager relative to the project.
  - c) Resolving project related issues with Participant, Market Manager, and any members of the design team.
8. Indemnification: The Partner shall indemnify, defend and hold the OCE, the C&I Market Manager and their directors, officers, employees and agents (including, but not limited to, affiliates, contractors and their employees), harmless from and against all liabilities, damages, losses, penalties, claims, demands, suits and proceedings of any nature whatsoever that arise out of this in any manner connected with the negligent or reckless performance work performed under this Agreement.

**By signing below I hereby accept and agree to the terms of this Pay for Performance New Construction Partnership Agreement.**

Print Name \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_