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## Solicitation

**(E-Mail or Facsimile Bid Submissions Are NOT Acceptable)**

<b>BID OPENING:</b>		<b>Group 05302 – SOLAR POWER PURCHASE AGREEMENTS (Statewide)</b>	
<b>DATE:</b> <b>December 1, 2016</b>	<b>TIME:</b> 11:00 AM ET	<b>Classification Code : 26</b>	
<b>SOLICITATION NUMBER:</b> <b>23017</b>		<b>SPECIFICATION REFERENCE:</b> As Incorporated in the Solicitation documents	
<b>CONTRACT PERIOD:</b> Five Years upon issuance of award with the possibility of extensions up to five additional years			
<b>DESIGNATED CONTACTS</b>			
<b>PRIMARY CONTACT</b>		<b>SECONDARY CONTACTS</b>	
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The bid must be fully and properly executed by an authorized person. **By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this SOLICITATION, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).** Information may be accessed at:

Procurement Lobbying: [http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL\\_139j-k.asp](http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp)

<b>Bidder's Federal Tax Identification Number:</b> (Do Not Use Social Security Number)		<b>NYS Vendor Identification Number:</b> (See "New York State Vendor File Registration" clause)		
Legal Business Name of Company Bidding:				
D/B/A - Doing Business As (if applicable):				
Street	City	State	County	Zip Code
If applicable, place an "x" in the appropriate box (check all that apply):		<input type="checkbox"/> Small Business #Employees	<input type="checkbox"/> Minority Owned Business	<input type="checkbox"/> Women Owned Business
If applicable, place an "x" in the appropriate box (check all that apply):		<input type="checkbox"/> Manufactured Within New York State	<input type="checkbox"/> Manufactured Outside New York State	
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE:				
Bidder's Signature:		Printed or Typed Name:		
Title:		Date:		
Phone:	Extension	Toll Free Phone:	Extension	
Fax:	Extension	Toll Free Fax:	Extension	
E-mail Address:		Company Website:		

**Bidder Certification and Affirmation**

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 60 days from the date of submission to the New York State (“NYS”) Office of General Services (“OGS”), or for such longer period as is set forth in the Invitation for Bids.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Solicitation.
3. The Bidder has read and understands the provisions of the Solicitation, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS’s procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at [http://ogs.ny.gov/aboutOgs/regulations/defaultSFL\\_139j-k.asp](http://ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp).

The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Bidder referenced above and that he or she signed this Bidder Certification as the legally binding act of the Bidder.

\_\_\_\_\_  
Print Full Bidder Entity Name

By:

\_\_\_\_\_  
Signature of Person Authorized to  
Legally Bind the Bidder

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Print Title of Signatory

\_\_\_\_\_  
Date

**RETURN THIS PAGE AS PART OF BID**

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## APPENDICES AND ATTACHMENTS

### APPENDICES

- Appendix A - Standard Clauses for New York State Contracts (January 2014)
- Appendix B - General Specifications (April 2016)
- Appendix C - Contract Modification Procedure
- Appendix D – Model Power Purchase Agreement (PPA)
- Appendix E – Model Performance Guarantee Agreement (PGA)

### ATTACHMENTS

- Attachment 01 – Price Pages
- Attachment 02 – NYS Required Certifications
- Attachment 03 – Encouraging the Use of NYS Businesses
- Attachment 04 – Insurance Documents
- Attachment 05 – Bidder Information Questionnaire
- Attachment 06 – Use of SDVOBs in Contract Performance
- Attachment 07 – Bidder Submission Checklist
- Attachment 08 – Bidder Questions Form
- Attachment 09 – Report of Contract Purchases
- Attachment 10 – Minimum Qualification Submittal Form

## SECTION 1 OVERVIEW AND SCOPE

### 1.1 Overview

The intent of this RFP is to establish multiple Centralized Contracts, which will provide Authorized Users that have the structural and geographic potential with a streamlined process to have solar panels installed on the Authorized User's property at no upfront cost, and purchase only the solar generated electricity through a Power Purchase Agreement ("PPA").

To accomplish this goal, the Office of General Services ("OGS") is seeking proposals from qualified firms ("Bidder," "Firm," or "Developer") with the capability to offer turnkey solutions to Authorized Users, which shall include, but may not be limited to financing, designing, installing, owning, operating, and maintaining solar photovoltaic systems ("PV Systems") through the life of the PPA, and selling the electricity output to the Authorized User at competitive prices through a PPA.

It is OGS's intent to award Centralized Contracts to all responsive and responsible Bidders who meet the minimum qualifications established in Section 3.1, pass a reference check and pass a reasonableness of price evaluation. The Centralized Contracts will be multiple award backdrop Contracts, with a Mini-Bid process to follow (see Section 7, 'Mini-Bid Process and Additional Considerations' for more detail). When an Authorized User identifies a specific solar development project for a specific site, the Authorized User, or their third party consultant, will conduct a Mini-Bid Request for Proposal which will be issued to Contractors awarded the applicable Lot/items. The Authorized User will select and award the Mini-Bid project based on best value.

Authorized Users will purchase from the Contractor the electricity output generated by the PV Systems in accordance with the terms and conditions of the PPA. Authorized Users shall not be responsible for any costs related to the PV System during the term of the PPA, including, but not limited to, network upgrades, environmental costs, curtailment costs, fees, or similar items that might not yet be identified or may arise after PPA execution or commercial operation commences.

## 1.2 Estimated Quantities

The Contracts resulting from this Solicitation will be Indefinite Delivery, Indefinite Quantity (IDIQ). There is no known historical data for this Solicitation. In accordance with Appendix B, *Estimated/Specific Quantity Contracts*, the Contracts resulting from this Solicitation are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity or number of projects is implied or given.

## 1.3 Lots & Items

This Solicitation includes the following lots:

### Lot 1: On-Site Net Metered Ground System

This lot is for Photovoltaic Systems mounted onto a structural frame consisting of a combination of structural members including but not limited to aluminum or steel poles, rails and channels connected to multiple rows of individual footings, which is located on the same parcel as the facility for which it will be used to offset electricity.

- Item 1: On-Site Net Metered Ground System, less than 200 kW
- Item 2: On-Site Net Metered Ground System, 200 kW to 1000 kW
- Item 3: On-Site Net Metered Ground System, greater than 1000kW
- Item 4: Storage System with smart inverter for On-Site Net Metered Ground System

### Lot 2: Remote Net Metered Ground System

This lot is for Photovoltaic Systems mounted onto a structural frame consisting of a combination of structural members including but not limited to aluminum or steel poles, rails and channels connected to multiple rows of individual footings, which will not be located on the same parcel as the facility for which it will be used to offset electricity.

- Item 1: Remote Net Metered Ground System, less than 200 kW
- Item 2: Remote Net Metered Ground System, 200 kW to 1000 kW
- Item 3: Remote Net Metered Ground System, greater than 1000kW
- Item 4: Storage System with smart inverter for Remote Net Metered Ground System

### Lot 3: On-Site Net Metered Pole System

This lot is for Photovoltaic Systems mounted onto a single row of structural columns connected to individual footings which will be located on the same parcel as the facility for which it will be used to offset electricity. **Pole mounted systems are elevated PV racking systems. As opposed to traditional ground mounted systems, users may require to have systems elevated from the ground for clearance purposes. The final type and clearance will be determined by the specific customer at the time of a project and specified in the min-bid.**

- Item 1: On-Site Net Metered Pole System, less than 200 kW
- Item 2: On-Site Net Metered Pole System, 200 kW to 1000 kW
- Item 3: On-Site Net Metered Pole System, greater than 1000kW
- Item 4: Storage System with smart inverter for On-Site Net Metered Pole System

### Lot 4: Remote Net Metered Pole System

This lot is for Photovoltaic Systems mounted onto a single row of structural columns connected to individual footings, which will not be located on the same parcel as the facility for which it will be used to offset electricity.

- Item 1: Remote Net Metered Pole System, less than 200 kW
- Item 2: Remote Net Metered Pole System, 200 kW to 1000 kW
- Item 3: Remote Net Metered Pole System, greater than 1000kW
- Item 4: Storage System with smart inverter for Remote Net Metered Pole System

**Lot 5: On-Site Net Metered Parking Canopy System**

This lot is for Photovoltaic Systems located on the same parcel as the facility for which it will be used to offset electricity, and which will be attached to a structural frame mounted onto a parking canopy.

- Item 1: On-Site Net Metered Parking Canopy System, less than 200 kW
- Item 2: On-Site Net Metered Parking Canopy, 200 kW to 1000 kW
- Item 3: On-Site Net Metered Parking Canopy, greater than 1000kW
- Item 4: Storage System with smart inverter for On-Site Net Metered Parking Canopy System

**Lot 6: On-Site Net Metered Roof System**

This lot is for Photovoltaic Systems located on the same parcel as the facility for which it will be used to offset electricity, and which will be attached to a structural frame that is mounted onto a roof.

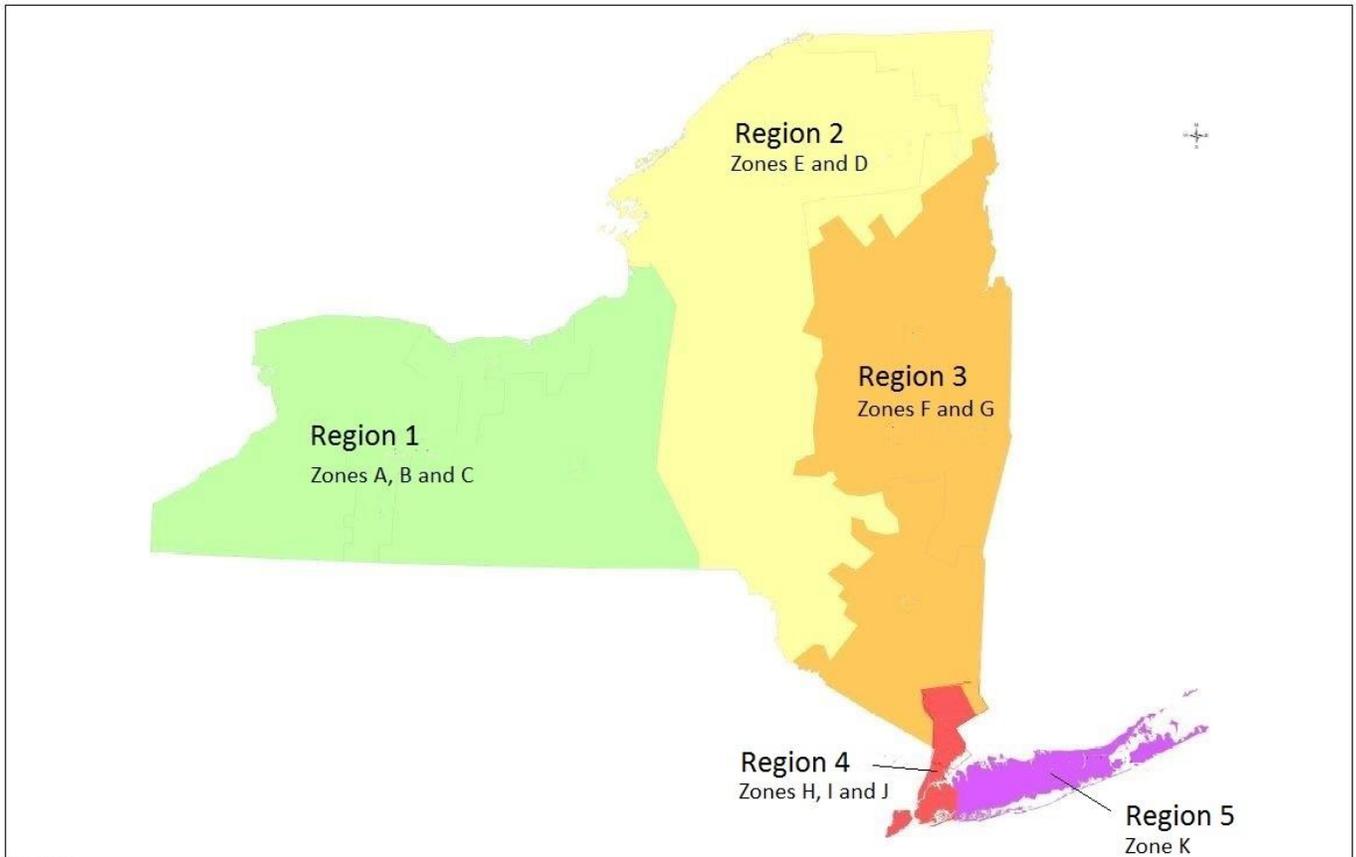
- Item 1: On-Site Net Metered Roof System, less than 200 kW
- Item 2: On-Site Net Metered Roof System, 200 kW to 1000 kW
- Item 3: On-Site Net Metered Roof System, greater than 1000kW
- Item 4: Storage System with smart inverter for On-Site Net Metered Roof System

**Item 4 (All Lots): Solar Power Storage System with Smart Inverter**

This item is for solar power storage systems and includes all equipment necessary to provide power storage, manage the use of the power and integrate the storage system into the Photovoltaic System including but not limited to batteries, other power storage devices, hybrid inverters, smart inverters, battery based grid tie inverters and safety disconnects.

**1.4 Regions**

This Solicitation includes five regions, with each region containing the counties listed below.



## Notes:

- Zones A-K plotted on map above are referenced below and broken down further by County.
- Counties may cross over borders of NYISO Zones and be a part of multiple NYISO Zones.

**NYS Counties by NYISO Zone:**

Region	NYISO Zone	Counties
1	Zone A	Niagara, Erie, Orleans, Monroe, Livingston, Genesee, Wyoming, Cattaraugus, Chautauqua
1	Zone B	Wayne, Monroe, Ontario, Allegany
1	Zone C	Oswego, Onondaga, Cayuga, Cortland, Broome, Tioga, Tompkins, Seneca, Yates, Ontario, Schuyler, Chemung
2	Zone D	Franklin, Clinton, Essex, Hamilton
2	Zone E	Franklin, St Lawrence, Jefferson, Lewis, Herkimer, Oneida, Madison, Otsego, Chenango, Delaware, Sullivan
3	Zone F	Essex, Hamilton, Warren, Washington, Fulton, Saratoga, Montgomery, Schenectady, Rensselaer, Otsego, Schoharie, Albany, Columbia, Greene
3	Zone G	Greene, Ulster, Dutchess, Putnam, Orange, Rockland
4	Zone H	Westchester
4	Zone I	Westchester
4	Zone J	Bronx, New York, Richmond, Kings, Queens
5	Zone K	Nassau, Suffolk

**1.5 Term for Resulting Centralized Contracts**

The Centralized Contracts awarded shall be in effect for a term of five (5) years. The Contracts shall commence as stated on page one of this Solicitation after all necessary approvals by both parties and shall become effective upon mailing or electronic communication of the final executed documents (see Appendix B, *Contract Creation/Execution*).

Contracts awarded under any additional periodic recruitment periods or those Contracts awarded in phases, will have a lesser initial Contract term so that the Contracts from all periodic recruitments and all phases of awards end on the same date, regardless of start date.

If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for a period of up to five additional years.

NOTE: Any PPA or PGA executed during the term of the Centralized Contract will survive the expiration of the Centralized Contract for the full term of the agreement. All services end at the conclusion of the signed agreement.

**1.6 Definitions**

In addition to the terms defined in Appendix B, *Definitions*, the following terms shall have the following meanings:

Term	Definition
Authorized User's Representative	Shall mean the authorized representative of an Authorized User that is identified as such in a Mini-Bid Project Definition and/or in the contract(s) entered into under this Solicitation.
Billing Contact	The name, phone number, e-mail, and billing address a Contractor uses on a bill for contact information.
Best Value	Shall mean the basis for awarding contracts for services to the offerer which optimizes quality, cost, efficiency and environmental sustainability, among responsive and responsible offerers. Such basis shall reflect, wherever possible, objective and quantifiable analysis.
Consultant Disclosure Legislation	Chapter 10 of the Laws of 2006 amends State Finance Law § 8 and § 163 by requiring: that the Office of the State Comptroller (OSC) include in the Consulting Services Report it compiles annually on contracts issued by state agencies for consulting services during the previous fiscal year. <a href="http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/C.htm">http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/C.htm</a>
Centralized Contract Price or Price	Shall mean the maximum Not to Exceed prices awarded for the Centralized Contract.
Incentives	Financial incentives or rebates provided to the PV developer to encourage the development of solar power. Examples include but are not limited to tax credits, accelerated depreciation schedules, tax deductions, Solar Renewable Energy Credits, sales tax exemptions, direct rebates, direct incentives, grants, etc.
May	Denotes the permissive in a contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "Should".
Mini-Bid	A type of Bid document used by the Authorized User to conduct a competitive Request for Proposal from eligible Contractors and then make an award based on best value and obtain Services under the Centralized Contracts.
Not to Exceed Price (NTE)	The bid prices provided by the Bidder in response to this Solicitation and awarded for the Centralized Contract. Not to Exceed Pricing includes all costs associated with the implementation of the PPA including, but not limited to financing, designing, installing, owning, operating, and maintaining solar photovoltaic systems ("PV Systems") through the life of the PPA, but does not include Third Party Consulting Fees or government incentives or subsidies. Pricing submitted by the Contractor in response to Mini-Bids shall not exceed the Not to Exceed prices with the exception of Third Party Consulting Fees, which may be incorporated into the PPA rate at the discretion of the Authorized User. See Mini-Bid RFP Pricing, section 7. Also referred to as 'Not to Exceed PPA Price'.
NYISO	The New York Independent System Operator.
PGA	Shall refer to the Performance Guarantee Agreement entered into by the Authorized User and the Contractor.
PPA	Shall refer to the Solar Power Purchase Agreement entered into by the Authorized User and the Contractor.
Photovoltaic (PV) System	A device that generates electricity directly from sunlight via an electronic process.
Should	Denotes the permissive in a contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "May".
Solicitation	Refers to this document in its entirety, with all appendices and attachments.
Third Party Consulting Fees	Fees incurred by the Authorized User for assistance provided by the New York State Power Authority or other third party energy or engineering consultant in performing tasks including but not limited to developing, conducting and evaluating Mini-Bids and in negotiating and executing PPA and/or PGA's.
Vendor	An enterprise that sells goods or services.
Vendor Submission	The complete response to this Solicitation submitted by a Vendor to provide, as applicable, the Product and services described in the Solicitation. Also called "Bidder Submission."

## SECTION 2 PROCUREMENT SCHEDULE

### 2.1 Key Events/Dates

Event	Date	Time
MWBE & SDVOB Interest Deadline	9/27/16	5:00 PM ET
Closing Date for Bidder Inquiries, First Round	9/27/16	5:00 PM ET
Closing Date for Registration for Pre-Bid Webinar	10/4/16	1:00 PM ET
Pre-Bid Webinar	10/4/16	1:00 PM ET
Closing Date for Bidder Inquiries, Second Round	10/13/16	5:00 PM ET
Responses to Bidder Inquiries by OGS	10/20/16 <i>(tentative)</i>	
Bid Opening Date	12/1/16	11:00 AM ET

### 2.2 Pre-Bid Webinar

A Pre-Bid webinar will be held to review this Solicitation. Although attending the Pre-Bid webinar is not mandatory, it is highly encouraged. The Pre-Bid webinar will be held on the date and time listed in Section 2.1 *Key Events/Dates*.

To register for the webinar, Bidder must:

1. Go to <https://meetny.webex.com/meetny/j.php?RGID=r76c124e7c2ae069e69d36cf6b96ffb1d>
2. Register for the meeting.

After registration is completed, you will receive a confirmation email with instructions for joining the meeting.

To view in other time zones or languages, please click the link:

<https://meetny.webex.com/meetny/j.php?RGID=r1f7ea578672de0fef1bc2c934543fa2c>

For technical assistance:

1. Go to <https://meetny.webex.com/meetny/mc>
2. On the left navigation bar, click "Support".

**IMPORTANT NOTICE:** This WebEx service includes a feature that allows audio and any documents and other materials exchanged or viewed during the session to be recorded. By joining this session, you automatically consent to such recordings. If you do not consent to the recording, discuss your concerns with the meeting host prior to the start of the recording or do not join the session. Please note that any such recordings may be subject to discovery in the event of litigation.

To avoid technical difficulties during the webinar, it is highly recommended that Bidders test their webex connection prior to the webinar.

At the discretion of OGS, materials may be provided prior to the Pre-Bid Webinar to the email address(es) submitted with registration. At the discretion of OGS, inquiries submitted either at or prior to the Pre-Bid Webinar may be discussed by OGS at the Pre-Bid Webinar, however any responses to inquiries made at the Pre-Bid webinar are not binding; only the written responses in the official response to inquiries posted on the OGS website shall be binding.

### 2.3 MWBE & SDVOB Interest in Partnering with Bidders

If a New York State certified M/WBE or SDVOB vendor would like to indicate its interest in being a subcontractor or supplier with participating Bidders, please send an email entitled “*RFP 23017 M/WBE or SDVOB INTEREST\_COMPANY NAME*” to [todd.gardner@ogs.ny.gov](mailto:todd.gardner@ogs.ny.gov) on or before **9/27/2016**. The email content should include:

1. Company Name
2. Contact Name and Contact Information
3. A brief description of the company (for example “Company ABC manufactures pencils”)
4. A list of products and/or services that the company offers that are related to this Solicitation
5. The NYS Certification Type (Minority and/or Women-Owned or SDVOB)
6. Include what locations in NYS your company provides services in

A list of the NYS certified MWBE and SDVOB vendors who have expressed interest in this Solicitation through the timely submission of such e-mail, will be made available to prospective Bidders through the publishing of a Purchasing Memorandum posted through the New York State Contract Reporter.

### 2.4 New York State Contract Reporter

You must register with the New York State Contract Reporter (NYSCR) at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the “I want to find contracts to bid on” page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must choose the option “send me notification updates on this,” located in the lower right hand corner of the particular ad. Any updates to Solicitation documents will also be posted and released through the NYSCR. **If you do not opt-in to receive notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents.** Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information may result in your Proposal being deemed non-responsive to the Solicitation.

### 2.5 Inquiries and Solicitation Deviations

All inquiries concerning this Solicitation will be addressed to the OGS Procurement Services associates on page one of this document.

A Bidder must use *Attachment 8 - Bidder Questions Form* to submit questions, comments, proposed deviations and/or extraneous terms, and must cite the specific Solicitation document and section number related to the inquiry. Prospective Bidders should note that all clarifications and proposed deviations including those relating to the terms and conditions of the resulting Contract(s) are to be resolved prior to the submission of a Proposal. Answers to all questions of a substantive nature will be given to all prospective Bidders in the form of a question and answer document, which will be published in the NYS Contract Reporter and posted to the OGS website.

Any Bidder in doubt as to the true meaning of any part of any requirement of the Solicitation documents shall submit a written (e-mail is satisfactory) request for an interpretation thereof using *Attachment 8 - Bidder Questions Form* as part of the questions and answer process. If any change to the Solicitation results from the question and answer process, all Bidders shall be informed of such changes, which will be made available via the NYS Contract Reporter, to all Bidders by the date noted under Section 2.1 *Key Events/Dates*. Any clarification of the proposed documents will be made to the relevant document.

Any verbal information obtained from or statements made by representatives of OGS Procurement Services will not be construed as in any way amending Solicitation documents. Only such documents as are issued in writing to all potential Bidders shall become a part of the resulting Contract(s).

**2.6 Liability and Validity**

The State of New York will not be held liable for any cost incurred by the Bidder for work performed in the preparation and production of a proposal or for any work performed prior to the formal execution of a Contract. Proposals must be received by the Office of General Services, Procurement Services, as defined herein, on or before the Proposal due date and time identified in Section 2.1 *Key Events/Dates*. Bidder assumes all risks for timely properly submitted deliveries. A Bidder is strongly encouraged to arrange for delivery of bids to OGS prior to the date of the bid opening. E-mail or faxed bid submissions are not acceptable and shall not be considered. The received time of Proposals submitted in response to this Solicitation will be determined by OGS by the clock at the location specified in Section 4.3 *Bid Delivery*.

Any Bid received at the specified location after the designated date/time will be considered a late Bid. The status of late Bids with regards to consideration for award will be determined in accordance with Appendix B, *Late Bids*.

**2.7 Electronic Bid Opening Results**

OGS Procurement Services posts Bid information on the OGS Procurement Services web page. The web page makes available the list of Bidders that responded to the Solicitation. Such information is anticipated to be available online within two business days after the bid opening.

The Bid Opening Results Page is available at <http://nyspro.ogs.ny.gov/nyspro-bid-openings>

## SECTION 3 PROPOSAL REQUIREMENTS

### 3.1 Minimum Qualifications

A Bidder may be any entity that can provide the services outlined in this Solicitation and meets the minimum qualifications listed below. A prospective Bidder shall submit the information listed below to provide satisfactory evidence that it has adequate experience, resources, and the organizational capacity to perform the type, magnitude, and quality of the specified services. A prospective Bidder is advised that the State's intent in having these requirements is to ensure that only qualified and reliable Contractors perform the work of the resulting Contracts.

The Bidder must document that it meets the following minimum qualifications using Attachment 10 *Minimum Qualification Submittal Form*. Bidder must:

1. ~~Appear on the New York State Energy Research and Development Authority's (NYSERDA) list of Commercial/Industrial Solar Electric Installers located at: <https://www.nyserda.ny.gov/All-Programs/Programs/NY-Sun/Customers/Guide-to-Evaluate-and-Install-Solar/Commercial-Installer>.~~
2. Have at least three (3) years of continuous operation and experience developing, installing, and maintaining solar PV systems for the three (3) years prior to and including the date of the bid opening and must document it using Attachment 10 (See 3b below);
3. Provide a list of ten (10) completed (PPA executed and system installed) PV projects for Government and/or Commercial (not Residential) entities using the PPA model. All 10 must have been completed (PPA executed and system installed) in the last five years from the date of the Bid opening. For each project, Bidder must list the name of the project, size of the PV system, the year the PV system was installed, the date the PPA was executed, the customer name, customer contact name, customer's phone number and email address using Attachment 10.
  - a) At least one (1) reference (for the ten required) shall be provided for the largest sized item for which Bidder is bidding. For example, if Bidder bids on only <200 kW items, one reference must be for at least 200kW, if bidding on a 200-1000kW item, one reference must be at least 1000 kW, and if bidding on a >1000kW item, Bidder must provide at least one reference for at least 1000kW item.
  - b) In addition, at least one of the PV Projects must have a PPA that was executed three or more years prior to the Bid opening date of this Solicitation.

### 3.2 Cost Proposal

This section sets forth the Cost Proposal Requirements of this Solicitation, which includes the submittal of Not to Exceed Pricing for the items being bid on in each Lot and region. Contractors shall provide a Not to Exceed Price that includes the cost of the electricity but does not include the cost of Third Party Consultants or Incentives. A complete Cost Proposal consists of the completion of Attachment 1 *Price Pages*, in accordance with the following:

1. The Bidder may bid on any combination of Items 1, 2 and 3 within a Lot and Region provided the minimum qualifications of the Solicitation are met. Bidders are not required to provide a Bid for every Lot within a region or every Item within a Lot;
2. To be eligible for an award for Item 4, the Bidder must provide a Bid for either Items 1, 2 or 3 within that Lot and Region.
3. Pricing for Item 4, 'Storage System with Smart Inverter', is optional; however only Bidders awarded Item 4 will be eligible to participate in Mini-Bids that include that item.

No future price changes or adjustments will be allowed for the Not to Exceed Prices awarded for the Centralized Contracts for the life of the award. As a result, the Bidder must incorporate all factors that will affect future pricing in their Not to Exceed Prices submitted in response to this Solicitation.

### 3.3 Administrative Proposal Requirements

After the Bid opening, each Proposal will be reviewed to ensure that the Bidder meets the minimum qualifications of the Solicitation and will then be screened for completeness and conformance with the stated requirements for Bid submission as detailed in Section 4.1 *Bid Submission*.

In addition, five of the bidder's references listed in Attachment 10 will be contacted to obtain an overall performance rating for each project, and the ratings will be evaluated on a Pass/Fail basis.

### 3.4 Documentation

Please ensure the Bidder submission contains no extraneous documentation, sales literature or other unsolicited paperwork.

### 3.5 Deviations and Extraneous Terms

Bids must conform to the terms set forth in the Solicitation. As set forth in Section 2.5 *Inquiries and Solicitation Deviations*, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Bidder Inquiries period so that they may be given due consideration prior to the submission of Bids. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

Bidder is advised that OGS will not entertain any exceptions to Appendix A (Standard Clauses for *New York State Contracts*). OGS will also not entertain exceptions to the Solicitation or Appendix B (*General Specifications*) that are of a material and substantive nature.

Extraneous terms submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

### 3.6 Responsiveness

To be considered responsive, a Bidder must submit a complete Proposal that satisfies and addresses all requirements stated in this Solicitation. Except as otherwise provided in this Solicitation, a proposal that fails to conform to all requirements may be considered non-responsive and may be rejected.

### 3.7 Bidder Responsibility on Accuracy

A Bidder is responsible for the accuracy of its Proposal. A Bidder is directed to take extreme care in developing their Proposal and to carefully review their Proposal prior to submittal, as requests for withdrawals of any type are not likely to be granted.

## SECTION 4      FORMAT OF PROPOSAL

### 4.1 Bid Submission

A complete Proposal package must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be rejected, except as provided by Appendix B, *Late Bids*. Any Bid pricing or portions thereof submitted on CD or flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder.

E-mail or facsimile Bid submissions are not acceptable.

It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up location. Only completed files (in the specified format) should be saved to a CD or flash drive for submittal.

### A complete Proposal consists of ONE copy of each of the following:

1.      **Electronic (CD or flash drive) containing:**
  - a.      Pages 1 and 2 of the Solicitation (signed and scanned) (PDF);
  - b.      Completed Attachment 1 – Pricing Pages (Excel);
  - c.      Completed Attachment 2 – NYS Required Certifications with original ink signatures (PDF);
  - d.      Completed Attachment 3 – Encouraging Use of NYS Businesses (PDF);
  - e.      Proof of compliance with Attachment 4 – Insurance Requirements (PDF);
  - f.      Completed Attachment 5 – Bidder Information Questionnaire (Excel);
  - g.      Completed Attachment 6 – Use of SDVOBs in Contract Performance (PDF);
  - h.      Completed Attachment 7 – Bidder Submission Checklist (Excel);
  - i.      Completed Attachment 10 – Minimum Qualification Submittal Form
  - j.      Completed ST-220CA, Contractor Certification, notarized with original ink signatures (PDF);
  - k.      Completed MWBE 100, MWBE Utilization Plan (PDF);
  - l.      Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF);
  - m.      Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF).
  
2.      **Original** paper version of each of the following (to be placed in a loose leaf binder and tabbed):
  - a.      Pages 1 and 2 of the Solicitation with original ink signatures;
  - b.      Completed Attachment 2 – NYS Required Certifications with original ink signatures;
  - c.      Completed Attachment 3 – Encouraging Use of NYS Businesses;
  - d.      Proof of compliance with Attachment 4 – Insurance Requirements;
  - e.      Completed Attachment 5 – Bidder Information Questionnaire;
  - f.      Completed Attachment 6 – Use of SDVOBs in Contract Performance;
  - g.      Completed Attachment 7 – Bidder Submission Checklist;
  - h.      Completed Attachment 10 – Minimum Qualification Submittal Form
  - i.      Completed ST-220CA, Contractor Certification, notarized with original ink signatures;
  - j.      Completed MWBE 100, MWBE Utilization Plan;
  - k.      Completed Form EEO100, Equal Employment Opportunity Staffing Plan;
  - l.      Standard Vendor Responsibility Questionnaire or Certification that Questionnaire has been completed online.

Please note that in the case of discrepancies between paper copies and CD or flash drive submissions of the documents required in both formats, the electronic (CD or flash drive) copy shall take precedence over the paper copy.

A Bidder should note that any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.

#### 4.2 Bid Envelopes and Packages

All Bids should have a label on the outside of the envelope or package itemizing the following information:

1. **BID ENCLOSED** (preferably bold, large print, all capital letters)
2. Solicitation number (RFP #**23017**)
3. Bid Opening Date: **11/3/2016 at 11:00 a.m. ET**
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

Failure to complete all information on the Bid envelope and/or package may necessitate the opening of the Proposal prior to the scheduled Bid opening date.

#### 4.3 Bid Delivery

Bids shall be delivered to the following address on or before 11:00 a.m. ET, on or before the Bid opening date:

State of New York Executive Department  
Office of General Services  
Procurement Services  
Corning Tower - 38th Floor Reception Desk  
Empire State Plaza  
Albany, NY 12242

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the clock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid opening. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

#### 4.4 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the information desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services receptionist at (518) 474-6262 at least 24 hours prior to the visit. Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services receptionist. The receptionist will register the visitor at that time but delays may occur. Building access procedures may change or be modified at any time.

## SECTION 5 METHOD OF AWARD/EVALUATION PROCESS

### 5.1 Method of Award for Centralized Contract

In accordance with New York State Finance Law Article 11-A, it is the intent of OGS to award Centralized Contracts for Solar Power Purchase Agreements to all responsive and responsible Bidders meeting the minimum requirements established in the Solicitation who pass a reference check and offer a reasonable Not to Exceed Prices as determined by OGS. The Contract awards made under this Solicitation will be made by item for each Lot and Region.

### 5.2 Reference Check

For the PV Projects listed in Attachment 10, Procurement Services will contact five of the customers to perform a reference check which will be evaluated on a Pass/Fail basis. The references will be evaluated as follows:

- Five references will be contacted to obtain either an “Excellent”, “Good” or “Poor” rating for the Contractor’s performance;
- If one of the references cannot be reached or cannot provide a rating, then the remaining references will be contacted until five ratings are obtained;
- If an attempt has been made to contact all ten of the references and there are still reference(s) that cannot be reached or cannot provide a rating, then a ‘No Rating’ will be assigned to those references which could not be reached or could not provide a rating(s).
- The performance ratings will then be assigned the following scores for the purposes of evaluating whether the ratings are a pass/fail:
  - Excellent = 20 points
  - Good = 10 points
  - Poor = 0 points
  - No Rating = 0 points
- The performance ratings will then be averaged together to create an overall score which will be evaluated as follows:
  - If a Bidder’s average performance rating is 10.0 or greater, the bids for all items will be considered a “pass”.
  - If a Bidder’s average performance rating is less than 10.0, the bids for all items will be considered a “fail” and will not be evaluated further.

### 5.3 Reasonableness of Price

The Bidder is required to submit Not to Exceed Pricing. In accordance with State Finance Law, the Cost Proposal will be evaluated to determine the reasonableness of the maximum Not to Exceed prices proposed.

The reasonableness of price shall be assessed in the following manner:

Step 1: For each item within a region and Lot, all Bidders’ “*Not to Exceed PPA Price*” will be averaged to create an “*Average Not to Exceed PPA Price*”. OGS reserves the right to remove an inordinately low or high bid from the calculation of the “*Average Not to Exceed PPA Price*” if, in the judgement of OGS, the bid would skew the results.

Step 2: Each Bidder's "Not to Exceed PPA Price" will be compared to the "Average Not to Exceed PPA Price" for the item. If a Bidder's "Not to Exceed PPA Price" is at or less than 150% of the "Average Not to Exceed PPA Price", the Bid shall be deemed to have passed for that item. If a Bidder's "Not to Exceed PPA Price" is greater than 150% of the "Average Not to Exceed PPA Price", the bid for that item shall be deemed to have failed and will not be considered for an award.

#### 5.4 Notification of Award

Notification of Contract Award will be made to all responsive and responsible Bidders who meet all minimum requirements established in the RFP. Successful Bidders shall be advised by OGS in accordance with Appendix B, *Contract Creation/Execution*. Tentative award of the Contract shall consist of written notice to that effect by OGS to successful Bidders, who shall thereupon be obligated to execute a formal Contract.

#### 5.5 Incorporation

Portions of the successful Bidder's proposal and the Solicitation shall be incorporated into a final Contract, with a separate document executed by the Contractor and OGS. Therefore, the Proposal must be signed by a partner, corporate officer, or other person authorized to commit its company to all provisions of the Solicitation and its proposal as submitted. Once the Contract(s) resulting from this Solicitation is executed and approved, it will be posted on the OGS website.

#### 5.6 Periodic Recruitment

The State reserves the right to add new Contractors during the term of the OGS Centralized Contract via Periodic Recruitment. OGS will formally announce when the Periodic Recruitment Solicitation is issued. It is at the discretion of OGS when a future Periodic Recruitment shall commence. A Periodic Recruitment will be publicly announced through all standard means including, but not limited to the NYS Contract Reporter and OGS website.

Proposals received during Periodic Recruitments shall be evaluated under the same terms and conditions as the original bids as outlined in Section 5 and the following:

- For the evaluation of the Administrative Proposal, the same process set forth in this Solicitation shall be followed;
- For reference checks, the same process set forth in this Solicitation shall be followed; and
- For the reasonableness of price evaluation of the Cost Proposal, bids received under the subsequent Periodic Recruitments will be evaluated as follows:

Step 1: Each Bidder's 'Not to Exceed PPA Price' will be compared to the "Average Not to Exceed PPA Price" for the item calculated for the initial award. If a Bidder's 'Not to Exceed PPA Price' is greater than 150% of the 'Average Not to Exceed PPA Price', the bid for that item will be considered a "Fail" and will not be considered for an award. If no awards were made for the item in the initial award, the 'Average Not to Exceed PPA Price' will be calculated from the bids received during the periodic recruitment using the methodology in Section 5.3.

All OGS Centralized Contracts awarded under the Periodic Recruitment will commence upon OGS approval. All Contracts will co-terminate on the then current end date of the Centralized Contract or at the end of any approved extension period.

These periodic recruitments are open to either new Contractors or Contractors who already hold a Centralized Contract and wish to bid on items not awarded. No Bids will be accepted from current Contractors who submit a Bid for a currently awarded item within a Lot and Region. Once the proposal is evaluated, contracts shall be awarded to all Contractors who are deemed qualified. After award, only those Contractors who hold a Contract from this Solicitation for a particular item within a Lot and region shall be allowed to bid specific Mini-Bids projects for that item.

## SECTION 6 NEW YORK STATE PROCUREMENT RIGHTS

New York State reserves the right to:

1. Reject any or all Proposals or separable portions of Proposals received in response to the Solicitation;
2. Withdraw the Solicitation at any time, at the sole discretion of OGS;
3. Make an award under the Solicitation in whole or in part;
4. Disqualify any Bidder whose conduct and/or Proposal fails to conform to the requirements of the Solicitation;
5. Seek clarifications and revisions of Proposals;
6. Prior to the bid opening, amend the Solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available;
7. Prior to the bid opening, direct Bidders to submit Proposal modifications addressing subsequent Solicitation amendments;
8. Change any of the schedule dates with notification through the NYS Contract Reporter;
9. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
10. Waive any requirements that are not material;
11. Reject illegible, incomplete or vague Proposals;
12. Utilize any and all ideas submitted in the Proposals received;
13. Adopt all or any part of a Bidder's Proposal in selecting the optimum configuration;
14. Negotiate with the Bidder(s) responding to this Solicitation within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidders' Proposals;
15. Request any information deemed necessary for proper evaluation of Proposals from all Bidders deemed to be eligible for Contract award. Failure to provide requested information may result in rejection of the Proposal;
16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Proposal and/or to determine a Bidder's compliance with the requirements of the Solicitation;
17. Select and award the Contract to other than the selected Bidder in the event that the State is unsuccessful in negotiating a Contract with the selected Vendor within 30 days of Contract award notification or, optionally, in other specified circumstances as detailed in the Solicitation requirements;
18. Use Proposal information obtained through the State's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to OGS Procurement Services' request for clarifying information in the course of evaluation and/or selection under the Solicitation;
19. Request current Bidder financial statement(s) that demonstrate Bidder's ability to service a Contract of similar size and scope as this Solicitation;
20. Request additional documentation from the Bidder or request reports on financial stability from independent financial rating services;
21. Reject any Proposal or portion(s) thereof determined to have been altered or modified from the original format by the Bidder. Such alterations or modifications include but are not limited to: any changes to document headers, footers and/or cells, unprotecting worksheets or workbooks, hiding or un-hiding cells, columns, rows, or worksheets, and locking or unlocking cells;

22. Reject an unbalanced Proposal, or a Proposal containing incomplete, unreasonable or unrealistic pricing, as determined by the State;
23. Offer a Bidder the opportunity to provide supplemental information or clarify its Proposal, including the opportunity to explain or justify the balance, realism and/or reasonableness of its pricing;
24. Accept or reject a conditional or revocable Proposal which clearly communicates the terms or limitations of acceptance;
25. Consider and utilize the proper alternative or corrected reference/parameter/component/product/etc. in instances where an incorrect reference/parameter/component/product/etc. is stated by the State or by the Bidder.
26. These reserved rights are also applicable to an Authorized User's individual Mini-Bid Agreements and associated Contractor responses.

## SECTION 7 MINI-BID PROCESS AND ADDITIONAL CONSIDERATIONS

### 7.1 General Considerations

After Centralized Contracts are awarded under this Solicitation, Authorized Users must create and conduct a Best Value Mini-Bid Request for Proposals (Mini-Bid RFP) among all Contractors awarded the applicable item, lot and region on the Centralized Contract. This process includes, but is not limited to, studying the feasibility of implementing a Solar Power Purchase Agreement, obtaining all necessary stakeholder approvals, gathering site and billing data, developing the Mini-Bid Request for Proposals document, developing evaluation criteria and tools for the technical and cost proposals, distributing the Mini-Bid RFP, evaluating responses, choosing the winning proposal, making an award, executing all necessary agreements and overseeing the construction of the system.

The Technical Proposal requirements for the Mini-Bid RFP may include items such as the submission of a site plan, technical description of the proposed photovoltaic system, pricing data, billing plan, a customer service/system support plan, a project implementation plan, management plan, references, monitoring and data acquisition system, data presentation/educational display, operations and maintenance plan, decommissioning plan, solar energy price savings guarantee, PV system performance guarantee, equipment warranties, environmental considerations, any other documentation necessary for the Authorized User to conduct a full and complete evaluation of the plan. The Developer(s) will provide a proper analysis of electrical rates; compare actual utility rate schedules with expected/derived hourly solar production and determine cost effectiveness of the project in accordance with applicable laws and regulations. The information submitted in the plans shall be consistent with the information submitted to this Solicitation. The Authorized User may determine, at its discretion, whether or not to enter into a PPA after review and evaluation of Mini-Bid responses.

Contractors may respond to Mini-Bids by submitting a proposal to the Authorized User and fulfilling the Mini-Bid requirements established in the Mini-Bid RFP. Only Contractors awarded the item, lot and region included in the Mini-Bid RFP are eligible to respond. Please note that Contractors are not required to respond to a Mini-Bid RFP request.

### 7.2 New York Power Authority/Third Party Consultant Assistance

The New York Power Authority (NYPA) has worked closely, in partnership with OGS, to assist in the production of this Solicitation. NYPA has been tasked with executing Governor Cuomo's Executive Order 88, requiring all State Agencies to reduce their energy usage by 20% by 2020. NYPA has had extensive experience in developing and administering Mini-Bid processes for public entities implementing solar installations and has delivered significant value to those projects. NYPA has established streamlined processes, created precedential Mini-Bid documents including industry acceptable PPAs and PGAs that protect customers, developed relationships with the solar industry, and established an understanding of the practical nuances of developing solar projects. Under the authority granted by Executive Order 88, Section III.A(1), NYPA will require all Affected State Entities, as defined in the Order, to utilize NYPA when conducting the Mini-Bid process. For all other Authorized Users, it is highly recommended that NYPA be utilized for the Mini-Bid process, given NYPA's level of expertise and experience in the solar industry.

To request assistance from NYPA, please use the following contact:

Evan Kolkos

914-681-6431

[Solar@NYPA.gov](mailto:Solar@NYPA.gov)

The Authorized User, at its discretion, may include the cost of NYPA or other Third Party Consultants in the PPA's kW-hour rate provided that the costs are fully disclosed to Contractors in the Mini-Bid RFP.

**7.3 Feasibility Studies/Stakeholder Considerations**

The Authorized User is responsible for performing feasibility studies and obtaining all necessary stakeholder approvals prior to conducting the Mini-Bid RFP. Considerations may include, but are not limited to, those listed in the following tables.

Considerations for State Agency Authorized Users:

<p><b>New York State Division of Budget</b></p>	<p>Inform their Budget Examiner of the proposed projects; include location and type of Solar project (roof, ground, etc.). It is recommended that Authorized users review the costs associated with the project. Consider the present worth of the lower cost electricity over the term of the agreement.</p>
<p><b>Office of General Services Design &amp; Construction</b></p>	<ul style="list-style-type: none"> <li>➤ Inform Design &amp; Construction of their proposed projects; include location and type of Solar project (roof, ground, etc.).</li> <li>➤ Upon final OK to move forward with projects, obtain a permit from OGS Design and Construction, or other Construction-Permitting Agency. Although the contractor is responsible for obtaining all required permits and licenses, the final development plans must be reviewed, approved, and stamped by the Office of General Services Design and Construction, or other Construction-Permitting Agency.</li> <li>➤ If Purchaser is a New York State Agency, OGS Design &amp; Construction division, or other State construction-permitting agency as defined in 19 NYCRR 1204.3(e), shall provide all Uniform Code services which shall include (i) the issuances of all permits and certificates, (ii) inspections, and (iii) reporting.”</li> </ul>
<p><b>Office of General Services Real Estate</b></p>	<ul style="list-style-type: none"> <li>➤ Inform, for inventory purposes and lease considerations, the OGS Real Estate Center of intent to install Solar Panel System on property owned by the state and include the address, and specific proposed location of the panels (i.e., rooftop, or ground mount).</li> <li>➤ Post installation: provide a copy of the signed PPA, and approved design plans to Real Property Management to keep on record.</li> </ul>

Considerations for other Authorized Users:

<b>Budget</b>	Inform their budget office of the proposed projects; include location and type of Solar project (roof, ground, etc.). It is recommended that Authorized users review the costs associated with the project. Consider the present worth of the lower cost electricity over the term of the agreement.
<b>Local Zoning Enforcement Officer and Planning Board</b>	Authorized Users should review and abide by local zoning and land use laws. Although the contractor is responsible for obtaining all required permits and licenses, the final development plans should be reviewed by a licensed engineer or architect representing the Authorized User.
<b>Municipal Assessor</b>	Authorized users should take into consideration the current cost of the land and the future assessment value when considering a Solar project. (Note: the assessment is typically exempt from upward adjustment due to the installation of solar, however local taxing authorities can opt out of the exemption but must do so proactively).
<b>Energy Review</b>	Authorized users should review projected grid electricity cost for the proposed term of the PPA.
<b>Legal Review</b>	Authorized users should have the final PPA reviewed by their counsel.

#### 7.4 Development of the Mini-Bid RFP

After Centralized Contracts are awarded under this Solicitation, Authorized Users must create and conduct a Best Value Mini-Bid Request for Proposals (Mini-Bid RFP) among all Contractors awarded the applicable item, lot and region on the Centralized Contract.

It is the Authorized User's responsibility to develop the Mini-Bid RFP, evaluate the proposals and make an award using Best Value. As part of the Best Value analysis Authorized Users are responsible for developing proposal requirements, identifying the relative weights for the administrative, technical and cost proposals, developing evaluation criteria, developing scoring methodologies and developing evaluation tools.

Authorized Users may have distinct requirements or unique needs, which may be established in the Mini-Bid RFP at the Authorized User's option. Such additional requirements that Authorized Users may consider establishing as requirements in the Mini-Bid RFP include, but are not limited to, the following:

**a. Project Organization Chart**

As part of the Mini-Bid, the Authorized User may require the Bidder to develop and submit a proposed project organization chart. The project organization chart should identify all the proposed key personnel of each team component and how the team will be managed. If required, the project organization chart must include both Bidder and State staff roles if identified in the Mini-Bid.

**b. Licensing**

The Authorized User may require Bidders to provide a list of all relevant State-Specific Contracting Licenses held by the firm to perform work in New York State, including classification and number (attach list and copies of such documents), or to list any Electrical, Structural and/or Professional Engineering Licenses held by firm members, including classification and number.

**c. Proposed Equipment Warranties**

The Authorized User may require Bidders to provide warranties for all major system components including modules, inverters, monitoring systems, tracking systems and mounting structures. Documentation must describe the duration of the warranty, and the nature of the performance guarantee(s). For all equipment, include the manufacturer and/or model information, the equipment, labor and roof penetration warranties, and details on insurance to protect Authorized Users from installation failures and whether the Bidder is bonded.

**d. References**

The Authorized User may require Bidders to provide three (3) customer references from customers who worked with the firm during the installation phase. References should clearly indicate size of system, date of completion, and the role played by your firm. The Authorized User may also require Bidders to provide three (3) references from customers who are currently receiving operations and maintenance service from the firm.

**e. Operations and Maintenance Plan**

The Authorized User may require Bidders to describe the proposed Operations & Maintenance procedures for the system, detailing duties performed and if the contract will be maintained with the Bidder or a third-party provider.

**f. Decommissioning Plan**

The Authorized User may require Bidders to provide information regarding the proposed approach to system decommissioning. This decommissioning plan should include a description of Bidder's approach to provide financial assurance that funding will be available to decommission the system at the end of the contract term.

**g. PV System Performance Guarantee Agreement**

As part of the PPA, the Authorized User may require a system performance guarantee agreement with a true-up mechanism at least once every five years for the life of the PPA term. The PPA template includes a PV System Performance Guarantee Agreement, though other performance guarantee agreements may be considered. Additional information is found in the Performance Guarantee Agreement template.

#### h. Environmental Considerations

State entities subject to Executive Order No. 4 are advised to become familiar with the specification for [Photovoltaic \(PV\) Systems](http://ogs.ny.gov/EO/4/docs/Finals/PV_Systems.pdf) -[http://ogs.ny.gov/EO/4/docs/Finals/PV\\_Systems.pdf](http://ogs.ny.gov/EO/4/docs/Finals/PV_Systems.pdf) that was developed in accordance with the Order, and to incorporate the specification, to the extent applicable, when making purchases under this Contract.

This specification includes the following requirements:

**Affected entities shall** provide PV Systems that are designed and specified on a case by case basis and which include PV panels or modules with the following minimum requirements:

- Compliance with these standards and listings as applicable.
  - IEC Standard 61215 (testing of crystalline silicon modules)
  - IEC Standard 61646 (testing of thin film modules)
  - IEC Standard 61730 (safety testing for PV Modules)
  - UL 1703 (flat plate)
  - IEEE 1262 (flat plate)
- Systems should be installed by a qualified contractor certified as an installer by NABCEP.
- 25 year 80% minimum rated power performance guarantee.
- Minimum efficiency ratings.
  - 12% for all crystalline silicon
  - 6% for all thin film (often part of BIPV units)
- Minimum 5 year product warranty.

**Affected entities are encouraged to:**

- Purchase higher efficiency units when available.
- Provide routine inspection (recommended yearly at a minimum) as well as cleaning and servicing per manufacturer's recommendations.
- Install performance monitoring equipment that will allow quantification of savings.
- Investigate available government and private funding sources, many of which will be in the form of loans repaid with savings realized by converting to a renewable energy source.
- Reduce the State's carbon footprint by procuring local or regional products.
  - For projects registered with a LEED rating system, some contribution to achievement of credits may be realized in purchasing units that are manufactured within 500 miles of the project site.

Authorized Users may also consider incorporating additional environmental criteria as technical requirements, which may include but is not limited to the following:

- The Authorized User may require that the Bidder use solar panels, equipment and supplies that meet the RoHS2 (Restrictions of Hazardous Substances) criteria adopted by the European Union in 2011. Specifically, RoHS restricts the amount of lead; mercury; cadmium; hexavalent chromium; polybrominated biphenyls; polybrominated diphenyl ether; bis(2-ethylhexyl) phthalate; butyl benzyl phthalate; dibutyl phthalate; and diisobutyl contained in electrical and electronic products. Thus, solar panels, equipment and supplies must not contain more than 0.01% (by weight) cadmium and 0.1% (by weight) of any of the other listed substance.
- The Authorized User may require that the Bidder commit, and subsequently certify, as part of the Power Purchase Agreement, to take-back, collect and recycle or redirect for reuse Photovoltaic Systems, equipment and supplies at the end of their life and/or at the end of the PPA term unless the end user takes possession.

- The Authorized User may require that the Bidder utilize photovoltaic panels that have earned a total score of 50 points or more on the Solar Scorecard created by the Silicon Valley Toxics Coalition for the most recent year in which such scores are available.
- The Authorized User may require that the Bidder use installers and service technicians that are based within 500 miles of the installation site.
- The Authorized User may require that the Bidder use solar panels, equipment and supplies that are manufactured in a facility that is certified to the International Organization for Standardization (ISO) 14001 standard for environmental management systems; or by a company that has signed on to the Solar Energy Industries Association Commitment to Environmental and Social Responsibility, finalized in 2013 by the Solar Industries Association Environment, Health and Safety Committee; or by a company that has adopted a corporate sustainability program certified by an independent, third party certification program.
- The Authorized User may require a minimum inverter efficiency rating or a minimum overall system efficiency rating.

### 7.5 Authorized User Compliance With MWBE Participation Goals

OGS has determined that the overall minority and women owned business enterprise (“MWBE”) participation rate for MWBEs on the Contracts resulting from this solicitation shall be equal to or greater than 30% of the State Agency and Authority (as defined in New York State Executive Law §310 and hereinafter referred to as “State Agency”) spend. These goals have been applied at the Centralized Contract level, as a result State Agency Authorized Users do not need to collect MWBE Utilization Plans for the Mini-bids.

Other Authorized Users may have their own internal policies and procedures regarding MWBE participation goals to which they should adhere.

### 7.6 Mini-Bid RFP Pricing

PPA’s may have a flat or escalating kWh rate at the discretion of the Authorized User.

Contractors shall provide a total price per kWh in the PPA by item that includes the cost of the electricity, cost of Third Party Consultants and cost of all Incentives, and shall also provide a breakdown showing the kWh cost of the electricity, Third Party Consultants and incentives as separate line items. The kWh pricing awarded for the Mini-Bid RFP must be less than the Not to Exceed Price awarded for the Contractor’s centralized contract for that item in accordance with the following formula and notes:

(Total PPA price per kWh) <= (Not to Exceed Price) + (Third Party Consulting Fees) - (Incentives)

- For PPA’s with a flat kWh rate, the PPA kWh rate shall meet this requirement for the entire term of the PPA;
- For PPA’s with an escalating kWh rate, the average of the kWh rate in the first year and the last year shall meet this requirement.

### 7.7 Protests

All Mini-Bid protests will be decided by the Authorized User. It is the Authorized User’s responsibility to include instructions for the filing of protests, including the submittal address, in the Mini-Bid RFP.

### **7.8 Mini-Bid Contract Numbers**

A Mini-Bid Contract Number must be issued to the selected Contractor for each PPA and PGA executed as part of a Mini-Bid RFP. Mini-Bid Contract Numbers are issued in accordance with the following:

Each Contractor who was awarded a “Master” contract under this Solicitation was issued a unique “PS” Master Contract Number for the life of their contract. This “Master” contract number is comprised of “PS” followed by a three digit number and then the letters “AA” (For example PS970AA). For PPA’s and PGA’s executed as a result of a Mini-Bid award, the “Master” Contract Number is modified by replacing the last “A” with the letter “B” for the first PPA or PGA executed with a Contractor as part of a Mini-Bid award and then following with “C”, “D”, “E”, etc. for subsequent awards.

For example, if a Contractor was assigned a Master Contract Number PS970AA, then the first PPA executed with the Contractor would be assigned the number PS970AB, the second PS970AC and the third PS970AD and so on. PGA’s would be issued Mini-Bid contract numbers using the same process.

For Authorized Users who are not State agencies, contract numbers shall be issued following the Authorized User’s internal policies and procedures.

### **7.9 NYSERDA List of Commercial/Industrial Solar Electric Installers**

All contractors or subcontractors performing installation of Photovoltaic Systems shall appear on the New York State Energy Research and Development Authority’s (NYSERDA) list of Commercial/Industrial Solar Electric Installers located at: <https://www.nyserda.ny.gov/All-Programs/Programs/NY-Sun/Customers/Guide-to-Evaluate-and-Install-Solar/Commercial-Installer>.

## SECTION 8 TERMS AND CONDITIONS

### 8.1 Short Term Extension

In the event a replacement contract has not been issued, any contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to three (3) months upon notice to the Contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such extension), prices, and delivery requirements. Any extension terminates upon Award of a replacement contract.

### 8.2 Appendix A

Appendix A, *Standard Clauses For New York State Contracts*, dated January 2014, attached hereto, is hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

### 8.3 Appendix B

Appendix B, *Office of General Services General Specifications*, dated April 2016, attached hereto, is hereby expressly made a part of this Solicitation as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A.

#### 8.3.1 Appendix B Amendments

Appendix B is hereby amended as follows:

- a. Section 31, Product Deliveries, is hereby deleted in its entirety.
- b. Section 33, Shipping/Receipt of Product, is hereby deleted in its entirety.
- c. Section 34, Title and Risk of Loss for Products Other than Technology Products, is hereby deleted in its entirety.
- d. Section 35, Product Substitution, is hereby deleted in its entirety.
- e. Section 36, Rejected Product, is hereby deleted in its entirety.
- f. Section 42, Suspension of Work, is hereby amended as follows:

The first sentence is amended as follows: "The Commissioner, in his or her sole discretion, reserves the right to suspend any or all activities under the Centralized Contract, at any time, provided however that any validly executed Power Purchase Agreements entered into between an Authorized User and a Contractor prior to such suspension shall survive the suspension of activities under the Centralized Contract."

The last paragraph is amended as follows: "Any rights of an Authorized User to suspend work shall be governed by the Power Purchase Agreement."

- g. Section 43, Termination is hereby amended as follows:

The following sentence is added to the beginning of this Section and shall apply to subsections (a) – (f): "The following termination rights shall apply to the Centralized Contract only. Any termination rights for individual Authorized Users shall be governed by the Power Purchase Agreement."

The first sentence of subsection (a) For Cause, is hereby amended to delete "or Authorized User respectively."

- h. Section 44, Savings/Force Majeure is hereby deleted and replaced with the following:
- “The occurrence of any Force Majeure event and any results thereof on the rights, obligations or liabilities of the Authorized User and the Contractor shall be governed by the Power Purchase Agreement.”
- i. Section 46, Default – Authorized User is hereby amended as follows:
- The following sentence is added to the beginning of this section: “The following obligations and procedures governing breaches are in addition to any obligations and breach procedures in the Power Purchase Agreement.”
- j. Section 48, Remedies for Breach is hereby amended as follows:
- The following sentence is added to the beginning of this section: “The following remedies for breach are in addition to any remedies for breach in the Power Purchase Agreement.”
- k. Section 54, Warranties is hereby amended as follows:
- The following sentence is added to the beginning of this section: “The following warranties are in addition to any warranties set forth in the Power Purchase Agreement or Performance Guarantee, as applicable.”
- l. Section 56, Indemnification is hereby amended as follows:
- The following sentence is added to the beginning of this section: “Unless otherwise provided by mutual agreement of the Authorized User and the Contractor in the Power Purchase Agreement, the following provisions shall apply:”
- m. Section 58, Limitation of Liability is hereby amended as follows:
- The following sentence is added to the beginning of this section: “Unless otherwise provided by mutual agreement of the Authorized User and the Contractor in the Power Purchase Agreement, the following provisions shall apply:”

#### 8.4 Appendix C

Appendix C, *Contract Modification Procedure*, attached hereto, is hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

#### 8.5 Conflict of Terms and Conditions:

SOLICITATION: Conflict of Terms and Conditions. Conflicts among the documents in the Solicitation shall be resolved in the following order of precedence:

- A. Appendix A, Standard Clauses for New York State Contracts;
- B. This Solicitation, including all attachments
- C. Appendix B, General Specifications
- D. The Bidder's Bid

#### 8.6 Mercury-Added Consumer Products:

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

**8.7 New York State Vendor File Registration**

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder(s) and any designated authorized resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit Vendor Identification Number (Vendor ID) will be assigned to your company and Vendor IDs will be assigned to each of your authorized resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York. If Bidder is already registered in the Vendor File, the Bidder must enter its ten-digit Vendor ID number on the first page of this Proposal document. Authorized resellers already registered should list the ten-digit Vendor ID number along with the authorized reseller information.

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form ([http://www.osc.state.ny.us/vendors/forms/ac3237\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf)) and submit the form to OGS in advance of Bid submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if authorized resellers are to be used that do not have Vendor ID's, an OSC Substitute W-9 form should be completed by each of the designated authorized resellers and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized resellers. Once the process is initiated, registrants will receive an email identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the Vendor File please visit the following website:  
[http://www.osc.state.ny.us/vendor\\_management/](http://www.osc.state.ny.us/vendor_management/).

### **8.8 Non-State Agencies Participation in Centralized Contracts**

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, *Participation in Centralized Contracts*.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services Customer Services at 518-474-6717.

### **8.9 Performance/Bid Bonds**

There are no bonds required for the Centralized Contracts resulting from this Solicitation. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Centralized Contract shall be required at any time during the Term. However, a bond or other form of security may be required by an Authorized User on a per project basis for agreements entered into under the Centralized Contract, and Authorized Users reserve the right to require a bond at the time of a Mini-Bid. Any such requirement would be contained in the Mini-Bid document.

### **8.10 Summary of Policy and Prohibitions on Procurement Lobbying**

Pursuant to State Finance Law § 139-j and § 139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter of intent to solicit offers/Bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page of this Solicitation and in the *MWBE Designated Contacts* and *Insurance Designated Contacts* sections. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for Contract award and, in the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at: <http://www.ogs.ny.gov/acpl/>

### 8.11 New York State Vendor Responsibility

OGS conducts a review of prospective Contractors (“Bidders”) to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter “Questionnaire”) is used for non-construction Contracts and is designed to provide information to assess a Bidder’s responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State’s execution of the Contract will be contingent upon the State’s determination that the Bidder is responsible, and that the State will be relying upon the Bidder’s responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller’s (OSC) website at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the *NYS Vendor File Registration* section. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

In order to assist the State in determining the responsibility of the Bidder prior to Contract award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the Bid due date. A Bidder’s Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the Bid opening to provide sufficient time to complete the Questionnaire.

The Bidder agrees that if it is awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that Contractor’s responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

#### **8.12 New York State Tax Law §5-a**

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The ST-220-TD can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors. Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <http://www.tax.ny.gov/> for additional information.

#### **8.13 Contractor Requirements And Procedures For Equal Employment And Business Participation Opportunities For Minority Group Members And New York State Certified Minority- And Women-Owned Business Enterprises**

##### **I. Policy Statement**

The New York State Office of General Services ("OGS"), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority- and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the Statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

## **II. General Provisions**

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State Certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section and/or enforcement proceedings as allowed by the Contract.

## **III. Equal Employment Opportunity (EEO)**

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses and Community Relations. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

**V. MWBE Utilization Plan**

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE, and performance dates of each component of the Contract that the Bidder intends to be performed by a MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt.
- D. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. OGS may disqualify a Bidder’s bid/proposal as being non-responsive under the following circumstances:
- (a) If a Bidder fails to submit a MWBE Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If OGS determines that the Bidder has failed to document good faith efforts.

- F. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- G. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

## VI. Request for Waiver

- A. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Businesses and Community Relations for guidance.**
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

## VII. Required Good Faith Efforts

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

#### **VIII. Monthly MWBE Contractor Compliance Report**

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency or Authorized User following a purchase from an OGS Procurement Services contract, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System for Vendors**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>

- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on “**Account Lookup**” to identify the Contractor’s account by company name. Contact information should be reviewed and updated if necessary by choosing “**Change Info.**” It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through “**Request New User.**” When identifying the person responsible, please add “- **MWBE Contact**” after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for “Contact Us & Support” then “Technical Support” on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month’s activity to: OGS MWBE Office, 29<sup>th</sup> floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor’s responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

**IX. Breach of Contract and Liquidated Damages**

- A. In accordance with Executive Law Section 316-a and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. If, after Contractor has been afforded due process to respond to the allegation that it willfully or intentionally failed to comply with the MWBE participation goals, OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by the OGS, Contractor shall pay such liquidated damages to the OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law, in which event the liquidated damages shall be payable if the Director renders a decision in favor of the OGS.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

#### 8.14 NYS Department Of Labor Prevailing Wage Rates

Prevailing wage rate as part of the requirements of Article 8 and Article 9 of the New York State Labor Law, requires public work Contractors and subcontractors to pay laborers, workers or mechanics employed in the performance of a public work contract not less than the prevailing rate of wage and to provide supplements (fringe benefits) in accordance with prevailing practices in the locality where the work is performed.

Work being bid is subject to the prevailing wage rate provisions of New York State Labor Law Article 8. The applicable Prevailing Wage Rate Schedule for this project is **PRC# 2016003284**

For access to the Department of Labor (DOL) Prevailing Wage Schedule, use the following link: <https://wpp.labor.state.ny.us/wpp/publicViewProject.do?method=showIt&id=1271361>

For Prevailing Wage Updates, use the following DOL link:

<http://wpp.labor.state.ny.us/wpp/publicViewPWChanges.do?method=showIt>

Links to schedule updates appear in the table at the bottom of the web page.

**IMPORTANT NOTE: The above PRC number MUST be noted on all purchase orders issued for purchases from this contract.**

Bidders may also refer to Appendix B, *Prevailing Wage Rates - Public Works and Building Services Contracts* - Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility and rejection of bid.

#### 8.15 Appendix C, Centralized Contract Modification Process

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. All modifications proposed by Contractor shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.

E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of Contract Terms*.

**8.16 Report of Contract Usage**

Contractor shall submit Attachment 9 - *Report of Contract Usage* including total solar Power Purchase Agreements (PPA's) for Photovoltaic Systems awarded by State agency and other Authorized Users no later than the fifteenth of the month following the end of each six month period of the Contract start date.

The report is to be submitted electronically via e-mail in Microsoft Excel to the Office of General Services, Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contractor's name, Contract Group Number, Award Number, Contract Number and Sales Period.

The State reserves the right to seek alternate data and reporting elements. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.