

Solicitation 23017, Solar Power Purchase Agreements - Responses to Inquiries

Inquiry Number	Solicitation Document Name	Document Section (Number & Name)	Question	Procurement Services Response
1	Appendix B - General Specifications	30 Purchase Orders	Please confirm the Purchase Order concept does not apply and instead delivery of Product will occur pursuant to the terms of executed Power Purchase Agreements.	To the extent that Authorized Users issue Purchase Orders, this clause may be applicable.
2	Appendix B	31 Product Deliveries	Same; concept seems inapplicable.	This clause would not be applicable to this Solicitation. Section 8.3 'Appendix B' has been revised to delete this clause.
3	Appendix B	33 Shipping/Receipt of Product	Same; concept seems inapplicable.	This clause would not be applicable to this Solicitation. Section 8.3 'Appendix B' has been revised to delete this clause.
4	Appendix B	34, 35, 36	Same; concept inapplicable.	This clause would not be applicable to this Solicitation. Section 8.3 'Appendix B' has been revised to delete this clause.
5	Appendix B	42 Suspension of Work	Please confirm the ability of the Commissioner to suspend Work does not apply to executed Power Purchase Agreements. Please confirm the Authorized Users ability to suspend work is governed by the executed Power Purchase Agreement.	This clause has been revised to clarify that the Commissioner may suspend any new work under the Centralized Contract, however once a PPA has been executed with an Authorized User, the executed PPA would survive any subsequent suspension of the Centralized Contract. Please see revised Section 8.3 'Appendix B'
6	Appendix B	43 Termination	Please confirm the termination provisions in the relevant Power Purchase Agreement govern same, and not these provisions.	This clause has been revised to clarify that the Commissioner may terminate the Centralized Contract, however once a PPA has been executed with an Authorized User, the PPA would survive any subsequent termination of the Centralized Contract. Please see revised Section 8.3 'Appendix B'
7	Appendix B	44 Force Majeure	Please confirm the negotiated Force Majeure clause in the PPA governs, and the Commissioner is unable to change the price under the PPA unilaterally.	This clause has been revised to clarify that Force Majeure will be governed by the Power Purchase Agreement. Please see revised Section 8.3 'Appendix B'
8	Appendix B	46 Default - Authorized User	Please confirm default is governed by the Power Purchase Agreement. The Authorized User will have obligations in addition to payment obligations and failure to perform a material obligation should be considered a default under the PPA.	Yes, this clause has been revised to clarify that the Authorized User will be responsible for the requirements listed in both Appendix B and the Power Purchase Agreement. Please see revised Section 8.3 'Appendix B'
9	Appendix B	48 - Remedies for Breach	This section does not contain remedies for breach by the Authorized User. Please confirm PPA governs this.	Yes, this clause has been revised to clarify that the Authorized User will be responsible for the requirements listed in both Appendix B and the Power Purchase Agreement. Please see revised Section 8.3 'Appendix B'
10	Appendix B	54c - Product Warranty	The System warranty is governed by a Performance Guaranty.	Yes, the Performance Guarantee is in addition to the requirements contained in Appendix B.

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11	Appendix B	56 - Indemnification	Please limit to third party claims and confirm it is governed by the executed PPA as between the Authorized User and the Provider.	OGS declines to limit to third party claims. This clause has been revised to clarify that the indemnification provision in Appendix B would govern, unless otherwise agreed in the executed PPA. Please see revised Section 8.3 'Appendix B'
12	Appendix B	58a and b- Limitation of Liability	Please confirm the PPA controls here.	This clause has been revised to clarify that the limitation of liability provision in Appendix B would govern, unless otherwise agreed in the executed PPA. Please see revised Section 8.3 'Appendix B'
13	Appendix B	General	Please confirm an executed Power Purchase Agreement ("PPA") contains the complete agreement between the Authorized User and Contractor and various terms (termination, force majeure, etc.) are governed by the executed PPA and not Appendix B.	The entire agreement will consist of multiple documents, including Appendix A, the Centralized Contract, the executed PPA and any necessary Exhibits and/or Schedules. Please see revised Section 1.3, Entire Agreement and Order of Precedence of Appendix D - Model Power Purchase Agreement.
14	Appendix D - Model Power Purchase Agreement	10 Force Majeure	Force Majeure should also include any Change in Law that makes it unlawful, impossible or materially impracticable for Seller to perform under this Agreement. "Change in Law" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation); or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder; provided, that a change in federal, state, county or any other tax law after the Effective Date shall not be a Change in Law pursuant to this Agreement.' Provider should only have the ability to terminate for Force Majeure Event that is a Change in Law.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
15	Appendix D	11.1(b) Purchaser's Remedies (for Provider Default)	Would OGS consider formulating the Termination Payment as follows: "equal to the sum of (i) the present value (using a discount rate of 9.5%) of the excess, if any, of the reasonably expected cost of electric energy from the utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term; (ii) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the utility; (iii) any removal costs incurred by Purchaser; and (iv) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
16	Appendix D	11.2 Purchaser Defaults and Provider Remedies	Please consider adding two additional market Purchaser defaults: (1) Purchaser loses its rights to occupy and enjoy the Premises; and (2) Purchaser prevents Provider from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
17	Appendix D	12 Limitations of Liability	Please consider a cap on damages for Provider: Provider's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.

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18	Appendix D	13.1 Assignment by Provider	Please confirm this is the prior written consent needed for assignment, consistent with New York State law. Please consider no notice of assignment (mentioned in a schedule) since the PPA will be assigned multiple times as it is financed.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
19	Appendix D	16.2 / 18.14	We understand regarding appropriations. Would you consider re-wording appropriations language to something that our investor has approved / can get comfortable with?	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
20	Appendix D	16.2 Purchaser's Indemnity	Please consider a market indemnity for Purchaser, not one limited only to "final judgment" of a court. We typically see this: Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 13 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section [](a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section [](c). [See comment that we should consider including environmental indemnity.]	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
21	Appendix D	17. Insurance	We must have a 10 days' notice of cancellation provision for nonpayment of premium. Would this be acceptable to OGS?	OGS declines to make the change.
22	Appendix D	18.13(b) Termination (for Non-Responsibility)	If we continue to perform and there is no default set forth in PPA, we are hard-pressed to see how this would occur. Please consider removing as an investor will be very reluctant to finance something that can be terminated (for reasons not set forth in default section) without payment of a termination payment.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
23	Appendix D	Section 1.3	Where does the Power Purchase Agreement lie in the Order of Precedence?	Please see revised Section 1.3, Entire Agreement and Order of Precedence of Appendix D - Model Power Purchase Agreement.
24	Appendix D	2.3 Determination of Fair Market Value	Because the investors expect to receive a return on their money in the case of a purchase, the Fair Market Value may not be lower than (i) the NPV (using a discount rate of 5%) of the project payments over the Term post-termination, had the Term remained effective for the full Initial Term and (ii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Provider.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
25	Appendix D	2.5 Conditions of the Agreement Prior to Installation	Would OGS consider adding several conditions, specifically: (a) receipt of all necessary zoning, land use and building permits; (b) execution of all necessary agreements with the utility for interconnection of the System to the utility's electric distribution system; and (c) prior to Provider commencing construction and installation of the System, Purchaser shall give Provider proof of insurance for all insurance required to be maintained by Purchaser under the PPA.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
26	Appendix D	3.3(b) definition of Commercial Operation Date	Would OGS consider a definition where the Contractor provides notice of the Commercial Operation Date? As background, to be eligible for tax benefits, the tax equity fund (Financing Party) must own the System on the date it is "placed into service" which is usually tied to the Commercial Operation Date. Thus, the Contractor must control the date on which Commercial Operation is declared to ensure the tax equity fund is the owner on that date.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.

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27	Appendix D	4.1/5.4/Definition of Financing Party	Our preference is to simply say that Provider will own the System, delete the definition of "Financing Party" and allow the assignment clause in the PPA to govern who owns the System / is party to the PPA.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
28	Appendix D	4.3(a) Substitution of Premises	Reasons for relocation should also include if Provider is prevented from operating the System at the Premises (through no fault of Provider) or if System is otherwise prevented from delivering electricity (through no fault of Provider). Would OGS consider adding these?	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
29	Appendix D	7.2(b) Liens	Would you consider rephrasing so that no liens, etc. whatsoever are allowed on the System from Purchaser? There should be no carve-outs to this exception. In addition, please consider adding this language: "Purchaser shall immediately notify Provider in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Provider, and shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim." This is the investor's collateral.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
30	Appendix D	Definition of Environmental Attributes	The definition contains operative language that belongs in the body of the PPA. Would OGS consider moving the sentence?	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
31	Appendix D	Environmental Indemnification [no section]	<p>Please consider adding a section re Environmental Indemnification: "Environmental Indemnification. Provider shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 16(c)(i)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees. Purchaser shall indemnify, defend and hold harmless all of Provider's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance.</p> <p>i. "Hazardous Substance" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.</p>	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.

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32	Appendix D	General	Appendix D notes that it is intended to be a model PPA only. Our preference is to use our investor pre-approved PPA for the transaction. Using this form as the basis of negotiation would still afford the Authorized User the opportunity to include project specific terms that it feels are necessary, so long as those terms are not inconsistent with, and do no conflict with, the Contractor's form or render the project unfinanceable.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
33	Appendix D	Insurance [no section]	Please add a provision regarding Purchaser's insurance: Purchaser shall maintain commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
34	Appendix D	Page 1, paragraph 5	We would like a copy and/or sample of a New York Centralized Contract - as stated in paragraph 5 that it is attached and part of exhibit C. Will that be possible?	The Centralized Contract will be developed and awarded as a result of this Solicitation. Therefore, the Centralized Contract is not available yet. However, it will be based upon the same terms and conditions of the Solicitation.
35	Appendix D	Representation re No Pool Use [no section]	Please consider adding rep that electricity from the System will not be used to heat a swimming pool, which is necessary to obtain the tax credit.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
36	Appendix D	Representation re Premises [no section]	Please consider adding rep that Purchaser has title to or a leasehold interest in the Premises.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
37	Appendix D	Schedule 3	Clause (ii) does not indicate a discount rate. Please consider 5%.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
38	Appendix D	Taxes [no section]	Please address taxes. We typically see a provision along these lines: Purchaser shall either pay or reimburse Provider for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the utility's electric distribution system, including property taxes on the System; provided, however, Purchaser will not be required to pay or reimburse Provider for any taxes during periods when Provider fails to deliver electric energy to Purchaser due to the action or omission of Provider. For purposes of this Section, "Taxes" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Provider's responsibility.	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
39	Appendix D	Page 1	What centralized contract is being referenced in appendix D?	The centralized contract being referenced is the contract awarded as a result of this Solicitation.

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40	Appendix D	Appendix D: Model Power Purchase Agreement	In the solar market, standard PPA's for onsite projects and standard PPA's for remote net metered projects require different types of terms and conditions including different types of site lease/license requirements. Would NY OGS be open to reviewing our standard forms (PPA for onsite systems and PPA for remote net metered systems) rather than requiring the sample PPA attached to this RFP?	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
41	Appendix D	Appendix D: Model Power Purchase Agreement	Will NY OGS be open to negotiation of terms in the sample PPA supplied within the RFP?	Appendix D has been provided as a sample Power Purchase Agreement. Authorized Users will develop and negotiate a project specific Power Purchase Agreement as part of the Mini-Bid process.
42	Attachment 1 - Price Pages	Attachment 1: Price Pages	Will NY OGS be able to provide production yield (kWh/kW) that we should use for purposes of modeling the \$/kWh PPA bids in each region, by project lot, item, and region? Otherwise PPA pricing between bidders will not be comparable given the large regional areas.	Bidders should use a production yield that they are comfortable with for each region in which they provide 'Not to Exceed Price'. Bidders should provide a 'Not to Exceed Price' for these systems that is conservative, and will be able to refine the pricing during Mini-Bids to provide a competitive price.
43	Attachment 1	Price Page Tab	Are we to include any interconnection costs on >200 kW systems?	There is no assumption provided as to specific interconnection costs, the bidder must incorporate interconnection costs into the Not to Exceed pricing that they are comfortable with. The Not to Exceed Price must include all costs associated with the installation, with the exception of Third Party Consulting Fees. See Section 7.6 <i>Mini-Bid RFP Pricing</i> for the relationship between the Not to Exceed Pricing and Mini-Bid RFP Pricing.
44	Attachment 1	Price Page Tab	Will the bidder be responsible for grubbing or land grading?	Yes, the bidder will be responsible for grubbing and land grading if applicable. The Not to Exceed Price must include all costs associated with the installation, with the exception of Third Party Consulting Fees. See Section 7.6 <i>Mini-Bid RFP Pricing</i> for the relationship between the Not to Exceed Pricing and Mini-Bid RFP Pricing.
45	Attachment 1	Price Page Tab	Should the bidder include possible service upgrades, roof replacement or other potential costs for roof mounted systems?	The 'Not to Exceed Pricing' for the centralized contract must include 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. Should a Mini-Bid require extensive upgrades not typically included in PPA projects that render the project uneconomical, then the Contractor would have the option of not responding to that Mini-Bid.

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46	Attachment 1	Price Page Tab	Is there a specific wiring length that we should assume for the "Not to Exceed PPA price"?	No, there is no assumption provided as to specific wiring length, the bidders must incorporate wiring length costs into the Not to Exceed pricing that they are comfortable with. The Not to Exceed Price must include all costs associated with the installation, with the exception of Third Party Consulting Fees. See Section 7.6 <i>Mini-Bid RFP Pricing</i> for the relationship between the Not to Exceed Pricing and Mini-Bid RFP Pricing.
47	Attachment 1	Price Page Tab	What should the escalator be for the "Not to Exceed PPA price"?	As per RFP Section 3.2 <i>Cost Proposal</i> , no future price changes or adjustments will be allowed for the Not to Exceed Prices awarded for the Centralized Contract for the life of the award. OGS has revised the definition of 'Not to Exceed Price' so that the definition also refers to 'Not to Exceed PPA Price'.
48	Attachment 4 - Insurance Requirements	A.3	We prefer not to share copies of our policies as they contain confidential information, such as revenue and payroll estimates. Would it be ok to just provide certificates of insurance and applicable endorsements being required?	Attachment 4-Insurance, under A.3., the last paragraph states that OGS requests that you refrain from sending entire policies.
49	Attachment 4	A.3 and A.6	We will disclose any applicable deductibles, self-insured retentions, self-insurance, and aggregate limits. However, would it be acceptable to OGS for us to have an unconditional ability to retain such deductibles, self-insured retentions, self-insurance, and aggregate limits without limitation and not requiring OGS's approval?	OGS does not limit your deductibles, self-insurance, self-retention or aggregate limits. OGS only requires that OGS find your deductibles, self-insurance, or self-retention to be reasonable when above the \$100,000 and to approve that OGS will accept those limits. OGS is not concerned with aggregate limits above the minimum requirement.
50	Attachment 4	A.3, A.8, B.3	We are willing to provide waivers of subrogation, but can we codify that it will not apply to the negligence and willful misconduct of OGS?	We do not typically require coverage to apply to the negligence and willful misconduct of OGS.
51	Attachment 4	A.7	We are willing to agree to require subcontractors to procure certain insurance coverages, but the coverages and limits should be based on their scope of work as opposed to mirroring what is required of us. At the end of the day, this shouldn't be an issue since we are liable for the acts of our subcontractors, and in the event their insurance is limited, our insurance would respond. Would this be acceptable to OGS?	OGS does not review Subcontractor's evidence of insurance; this is the responsibility of the Contractor. Subcontractors can serve a number of scopes of work on the contract, thus we cannot provide limits that break out the scope for the purpose of Subcontractors. Therefore, the existing language must stay.
52	Attachment 4	p1: 2nd to last paragraph; and A.3	We prefer not to have language where evidence of insurance is satisfactory to OGS. Instead, would it be acceptable for OGS for us to have language where the evidence of insurance must clearly show the Contractor is in compliance with the requirements?	OGS declines to change the language. OGS determines if the evidence of insurance clearly shows the Contractor is in compliance with Attachment 4 (i.e. satisfactory to OGS).
53	Attachment 4 and Appendix D	Att 4, B.2; and App D 17	We prefer to change the professional liability limits to \$2M per claim and \$2M aggregate. Would this be acceptable?	OGS declines to make the requested changes.

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54	Attachment 4. Insurance Requirements	Section A10	As long as the exclusions are no broader than the language in the underlying policy, can our company use the Excess Liability Policy in lieu of a "following form" policy?	You must provide evidence that the primary or underlying policy coverages are met in the Excess or Umbrella Policy if you are utilizing Excess or Umbrella to meet the required insurance limits.
55	Attachment 4. Insurance Requirements	Section A2 and A10	For the excess/umbrella liability policy requirement, would an AEGIS claims made policy be accepted in lieu of occurrence basis?	OGS has revised Attachment 4, Insurance Requirements to accept claims made policies.
56	Attachment 4. Insurance Requirements	Section A3 bullet 5 (and various other places)	Please define "agents" in order to clarify who receives coverage.	Agent- an individual or entity that is authorized to act on its behalf.
57	Attachment 4. Insurance Requirements	Section A3 final paragraph	State requests Proof of Insurance, we are able to provide detailed summaries of insurance but not the policies themselves due to confidentiality. Is that acceptable?	That same paragraph states that "Contractors are requested to refrain from submitting entire insurance policies...". It is not common practice for OGS to request an entire policy, but to request the specific evidence as stated in Attachment 4.
58	Attachment 4. Insurance Requirements	Section A3, bullet 5	We are unable to issue the endorsements CG 20, 10, 11 85, in their stead we are prepared to issue a form CG 20 10 07 04 and CG 20 37 07 04. Is that acceptable?	Yes.
59	Attachment 4. Insurance Requirements	Section A4	Please confirm acceptability of insurance policies being primary "by their nature, by policy wording or by endorsement."	You must be able to provide evidence that your liability policies provide coverage that is primary and non-contributory to other insurance available: policy wording or endorsement.
60	Attachment 4. Insurance Requirements	Section A6	Would a \$2,000,000 deductible with a fronted policy and significant reserves for the self-insurance program be acceptable?	OGS will request additional information to review. Approval shall not be unreasonably withheld, conditioned, or delayed.
61	Attachment 4. Insurance Requirements	Section A7	In lieu of the current commercial general liability and excess liability requirements noted in the RFP, would it be acceptable for certain low-risk contractors to maintain a total of \$2,000,000 of per-occurrence commercial general liability and/or excess liability coverage?	Attachment 4-Insurance, under A.10., Excess/Umbrella Liability Policies. Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.
62	Attachment 4. Insurance Requirements	Section B	We do not maintain a Professional Liability Insurance policy, but would it be acceptable for a subcontractor to carry the Professional Liability Insurance if the specific scope of work requires such a policy?	OGS declines to accept subcontractors' insurance in lieu of the contractor's insurance.
63	General question	n/a	What MW Block assumption should we use?	MW Block incentives are to be <u>excluded</u> from the 'Not to Exceed Price', along with all other government incentives and subsidies. All state incentives and values for solar should be incorporated into the final PPA pricing at the time of the Mini-Bid.

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64	General question	n/a	In region 5, can we use the small non-residential MW Block for Long Island for up to 200 kW?	No, all incentives should be <u>excluded</u> from the 'Not to Exceed Price'.
65	RFP Main Document	Appendix B: General Specifications	What are the technical specifications for the Pole System, for the ground mounted remote net metered system, and for onsite systems? Otherwise bid pricing will not be comparable across bidders unless there are specific technical specifications provided.	Technical specifications will be provided at the time of the Mini-Bid. Bidders should provide a 'Not to Exceed Price' for these systems that is conservative, and will be able to refine the pricing during Mini-Bids to provide a competitive price.
66	RFP Main Document	General	Is there a list of state agencies / authorized users that have expressed interest in participating in subsequent mini-bids?	No, there is no known historical data for this Solicitation. See RFP Section 1.2 <i>Estimated Quantities</i> .
67	RFP Main Document	General	Are authorized users allowed to select PPA providers outside of this process?	State Agencies must use the centralized contract resulting from this Solicitation if it meets their form, function and utility as required by State Finance Law. Other Authorized Users may use this contract. See RFP Section 8.8 <i>Non-State Agencies Participation in Centralized Contracts</i> .
68	Attachment 1	Pricing	Can bidders exclude property tax and sales tax?	The Not to Exceed Price provided by the bidder should be <u>exclusive of all government incentives or subsidies</u> , this would include the property tax and sale tax incentives. The Not to Exceed Price provided should take into account that this is a 5 year contract. A bidder can propose a lower price for particular projects once the project specifics are known and articulated as part of the Mini-Bid process and the current incentives are applied.
69	Attachment 1	Pricing	Is the price (\$/kWh) a flat price? Or price with a set escalator? What is the PPA term?	The Total PPA Price per kWh may be either a flat or escalating rate. See Section 7.6 <i>Mini-Bid RFP Pricing</i> for the relationship between the Not to Exceed Price and the Mini-Bid RFP Pricing. The term of the PPA is not specified in this Solicitation, and will be specified by the Authorized User at the time of the Mini-Bid. It is expected that most Authorized Users will use a 20 year PPA term.
70	RFP Main Document	Section 1.3 Lots & Items	Please differentiate between Ground System and Pole Systems, preferably with pictures and/or drawings. From our perspective, the systems would essentially be the same.	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 Mini-Bid. Lot 3 in RFP Section 1.3 'Lots & Items' has been revised to clarify this distinction.
71	RFP Main Document	Section 1.3 Lots & Items	For parking canopies, can you elaborate on some of the features you expect? Ex: powder coating, under-module sheeting, rain water management, etc.	Installations must meet the requirements contained in the Mini-Bid Project Definition, building codes and industry practices. The Not to Exceed Price must include all costs associated with the installation, with the exception of Third Party Consulting Fees. See Section 7.6 <i>Mini-Bid RFP Pricing</i> for the relationship between the Not to Exceed Price and Mini-Bid RFP Pricing.

Inquiry Number	Solicitation Document Name	Document Section (Number & Name)	Question	Procurement Services Response
72	RFP Main	1.6 Definitions	Can OGS supply a list or examples of 3rd Party Consulting Fees which should be excluded in a NTE PPA Price Offer?	An Example of Third Party Consulting fees would be the cost to the Authorized User for assistance provided by NYPA. See Section 7.2 <i>New York Power Authority/Third Party Consultant Assistance</i> . Please also see Section 1.6 <i>Definitions</i> and Section 3.2 <i>Cost Proposal</i> of the Solicitation.
73	RFP Main	1.6 Definitions	Can OGS confirm that exclusion of taxes in a NTE PPA Price Offer includes exclusion of Federal ITC and NY-SUN Incentives any and all government incentives?	Yes, all government incentives and subsidies are <u>excluded</u> from the Not to Exceed PPA price, this includes the Federal ITC and the NY-Sun incentives. Please see Section 1.6 <i>Definitions</i> and Section 3.2 <i>Cost Proposal</i> of the Solicitation.
74	RFP Main Document	Section 2, 2.1	May we have an extension for the bid opening date? As the response at the earliest of 10/20/16 of questions to the opening of the bids on 11/3/16 doesn't provide for the needed time to adjust or work on potential additional work that may come from responses to questions.	OGS has moved the bid opening date to December 1, 2016 at 11:00 AM in order to give bidders adequate time to review the responses to inquiries.
75	RFP Main Document	Section 3.1 Minimum Qualifications	Will NY OGS allow a PPA provider to bid into the RFP if we are not listed on the NYSERDA C&I Installer list but we are a PPA provider that meets all other criteria?	Yes, RFP Section 3.1 has been revised to move the requirement that bidders be on the NYSERDA List of Commercial/Industrial Solar Electric Installers to Section 7.9. This requirement will now apply to contractors or subcontractors performing installation at the time of the Mini-Bid instead of at the Centralized Contract level.
76	RFP Main Document	Section 3.1 Minimum Qualifications	Will NY OGS allow a joint-submission between a PPA provider with an EPC provider to submit together where the EPC partner is listed on the NYSERDA list of C&I Installers? If so would the PPA provider be the lead RFP bid responder as the owner/operator of the systems? Or would the EPC partner need to be the lead RFP bid responder?	No, the company signing the bid must meet the minimum qualifications. Please note that RFP Section 3.1 has been revised to move the requirement that bidders be on the NYSERDA List of Commercial/Industrial Solar Electric Installers to Section 7.9. This requirement will now apply to contractors or subcontractors performing installation at the time of the Mini-Bid instead of at the Centralized Contract level. In the example provided, the EPC partner would be considered a subcontractor.
77	RFP Main Document	3.1 Minimum Qualifications	If a partnership is formed between bidders, will collective experience count towards minimum requirements?	No, the company signing the bid must meet the minimum qualifications. Please note that RFP Section 3.1 has been revised to move the requirement that bidders be on the NYSERDA List of Commercial/Industrial Solar Electric Installers to Section 7.9. This requirement will now apply to contractors or subcontractors performing installation at the time of the Mini-Bid instead of at the Centralized Contract level.
78	RFP Main Document	3.2 Cost Proposal	Are we to include the NYSERDA incentive in the "Not to Exceed Price"? Should we include the 30% FITC or Accelerated Depreciation?	The Not to Exceed Price provided by the bidder is <u>exclusive of all government incentives or subsidies</u> , including the NYSERDA incentive and the FITC. The Not to Exceed Price provided must take into account that this is a 5 year contract. A bidder can propose a lower price for particular projects once the project specifics are known and articulated as part of the Mini-Bid process and the current incentives are applied.

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79	RFP Main Document	3.2 Cost Proposal	This section indicates that no PPA rates above the "Not to Exceed" price will be allowed for mini-bids. Will OGS allow some amount of pricing flexibility based on requirements such as bonds, weed abatement, and other cost inputs?	The 'Not to Exceed Price' must include all costs associated with the installation, with the exception of Third Party Consulting Fees. During Mini-Bids, the PPA pricing must meet the requirements of RFP Section 7.6 'Mini-Bid RFP Pricing'.
80	RFP Main Document	3.2 Cost Proposal	This section indicates that the Not to Exceed price should not include incentives. Can you confirm that for the purposes of this RFP, our pricing should not include NYSEDA incentives, but that subsequent mini-bids will require pricing that does include incentives?	The 'Not to Exceed Price' provided by the bidder must be <u>exclusive of all government incentives or subsidies</u> . A bidder can propose a lower price in response to a Mini-Bid once the project specifics are known and articulated as part of the Mini-Bid process and the current incentives are applied.
81	RFP Main Document	Section 3.2 Cost Proposal, 7.6 Mini-Bid RFP Pricing	All large scale remote solar projects that are in the early stages of development will be subject to the new paradigm of net-metering and the value of Distributed Energy Resources – sometimes referred to as NEM 2.0. The discussion on NEM 2.0 has many stakeholders, many elements, and will likely be in flux past the due date of this RFP. The proposal thus far is fairly complete. How is OGS planning on addressing or accounting for this in RFP bids?	Bidders must provide a 'Not to Exceed Price' for the Centralized Contract that is conservative enough to account for future uncertainties in rate structures. When responding to specific Mini-Bids, Contractors can then refine the pricing to provide a competitive bid. Should a bidder's 'Not to Exceed Pricing' become unworkable due to regulatory changes, OGS reserves the right to negotiate a contract amendment to address the issue or to issue a new Solicitation.
82	RFP Main Document	4. Format of Proposal	Are digital signatures, which still hold the signatory accountable, acceptable for this proposal? Our company uses digital signatures for many of its binding proposals.	No, original ink signatures are required. See RFP Section 4.1 <i>Bid Submission</i> for a list of the documents that require original ink signatures.
83	RFP Main Document	5.2 Reference Check	If references cannot be reached will NY OGS contact the bidder first to try and get the reference to respond before giving that reference 0pts out of 20pts?	No. OGS will follow the procedure outlined in RFP Section 5.2 <i>Reference Check</i> .
84	RFP Main Document	Section 7.1 - Mini-Bid Process and Additional Considerations	What information will be shown to Authorized Users? Will customers see the rates provided by individual bidders, or the average Not to Exceed price?	If awarded a centralized contract, the bidders 'Not to Exceed Price' for the Regions, Lots and Items awarded will be published on the contract landing page located on the OGS website.
85	RFP Main Document	7.4 Development of the Mini-Bid RFP	Authorized Users are responsible to develop the Mini-Bid RFP. Would it be acceptable for contractors to initiate contact and encourage Authorized Users to initiate the Mini-Bid RFP process?	Contractors are not prohibited from marketing their contracts, however the prior written approval of the Commissioner is required in order for results of the Solicitation to be used by the Contractor as part of any commercial advertising. The Contractor shall also obtain the prior written approval of the Commissioner relative to the Solicitation or Contract for press or other media releases. In addition, Contractors are strictly prohibited from using the OGS Logo, trademarked New York State (NYS) brand, NYS Coat of Arms or Great Seal of NYS for any purpose. See Appendix B, Section 21 ' <i>Contract Publicity</i> '.

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86	RFP Main Document	7.5 MWBE Participation Goals	The stated 30% MWBE requirement is difficult and, at time, impossible in some regions of New York. Would OGS consider reducing this number on a case-by-case basis? Alternatively, will OGS provide a list of qualified MWBE vendors in addition to what has already been provided?	OGS declines to change the MWBE requirements. The MWBE goal is an overall goal for the centralized contract and is not for each individual Mini-Bid. See RFP Section 8.13 <i>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> for a complete listing of the MWBE requirements including good faith efforts and requests for waivers. Please also see the NYS MWBE Directory located at https://ny.newnycontracts.com/ for additional companies that may be able to provide services and/or products related to this solicitation.
87	RFP Main Document	Section 7.6	Is an escalating PPA price allowed for Mini-Bids?	PPA's awarded as part of the Mini-Bid process may have either a flat or escalating rate. See RFP Section 7.6 <i>Mini-Bid RFP Pricing</i> for the relationship between the 'Not to Exceed Price' awarded for the centralized contract and the Mini-Bid PPA pricing.
88	RFP Main Document	Section 7.6 Mini-Bid RFP Pricing	"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." Please confirm if this means that the Not to Exceed price must be less than the average over the course of the PPA, OR if you mean the Not to Exceed price must be less than the average PPA rate in Year 1 and separately less than the average PPA rate in the last year of the PPA? (Average across the PPA term, or both Averages in Year 1 and Last Year must meet the requirement separately?)	For a Mini-Bid PPA with an escalating rate, the average of the Mini-Bid PPA rate in the first year and last year must meet the requirement contained in RFP Section 7.6 <i>Mini-Bid RFP Pricing</i> . As an example, if a 20 year Mini-Bid PPA had a rate of \$0.10 per kWh in year 1 and \$0.20 per kWh in year 20, then the average would be \$0.15 per kWh.
89	RFP Main Document	Section 8.11	For Vendor Responsibility, what questionnaire form do I use and when do I need to certify it? Also, if I've previously certified a questionnaire, do I need to recertify it for this bid?	Bidders must complete a 'For Profit Questionnaire' for non-construction contracts, and the questionnaire must be certified no more than six months prior to the bid opening date. See RFP Section 8.11 <i>New York State Vendor Responsibility</i> . If a questionnaire was previously certified more than six months prior to the Bid opening date, it would need to be recertified for this bid.