



# Solicitation (Revised May 23, 2018)

<b>BID OPENING</b> <b>DATE: May 16, 2018</b> <b>TIME: 11:00 A.M. EST</b> <b>SOLICITATION NUMBER: 23085</b>		<b>TITLE: Group 05302 – Photovoltaic Systems and Installation Services (Statewide)</b>  <b>Classification Codes: 26, 30 and 72</b>		
<b>CONTRACT PERIOD:</b>		Shall commence upon mailing or electronic communication of the final executed documents to the Contractor for a Period of Five Years (Includes Periodic Recruitment)		
<b>DESIGNATED CONTACTS:</b> In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.				
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E-mail Address: <a href="mailto:MWBE@ogs.ny.gov">MWBE@ogs.ny.gov</a>		E-mail Address: <a href="mailto:VeteransDevelopment@ogs.ny.gov">VeteransDevelopment@ogs.ny.gov</a>		
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Leighann Brown				
<b>Bidder's Federal Tax Identification Number:</b> <i>(Do Not Use Social Security Number)</i>		<b>NYS Vendor Identification Number:</b> <i>(See New York State Vendor File Registration Clause)</i>		
Legal Business Name of Company Bidding:				
D/B/A – Doing Business As (if applicable):				
Street	City	State	County	Zip Code
E-mail Address:		Company Web Site:		
If applicable, place an "x" in the appropriate box(es) <i>(check all that apply)</i>				
<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business	
If you are not bidding, place an "x" in the box and return this page only.				
<input type="checkbox"/> WE ARE NOT BIDDING AT THIS TIME BECAUSE:				
<b>FOR PROCUREMENT SERVICES USE ONLY</b>				
LITERATURE <input type="checkbox"/>	LETTER <input type="checkbox"/>	FLASH DRIVE <input type="checkbox"/>	OTHER <input type="checkbox"/>	# of Binders/Packages: _____
PURC. MEMO <input type="checkbox"/>	CD/DVD <input type="checkbox"/>	SDHC CARD <input type="checkbox"/>	_____	Documented by: _____

### 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 Solicitation.
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 [https://ogs.ny.gov/aboutOgs/regulations/defaultSFL\\_139-j-k.asp](https://ogs.ny.gov/aboutOgs/regulations/defaultSFL_139-j-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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1. INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Photovoltaic Systems (PV) and Installation Services (Statewide) as specified herein for purchases by Authorized Users as defined in State Finance Law section 163(1)(k)..

This Solicitation is being conducted as a non-competitive periodic recruitment. Bids will be accepted from Manufacturers of and entities authorized to sell Photovoltaic Systems and Manufacturers and entities authorized to provide Installation Services (see Section 1.11 Definitions). Contract awards will be made to responsive and responsible Bidders who meet the minimum qualifications (see Section 2 Bidder Qualifications) and who are eligible for award (see Section 5 Method of Award).

The term of each Contract, including those awarded during any subsequent periodic recruitment shall be a maximum of five (5) years commencing on the date the first Contract is executed by OGS, and all Contracts shall be coterminous. The State reserves the right to extend these Contracts for one additional one (1) year term.

This Solicitation outlines the terms and conditions and all applicable information required for submitting a Bid. Bidders should pay strict attention to the Bid submission date and time to avoid disqualification for late Bid submission. Bidders are strongly encouraged to read the language of this Solicitation thoroughly and to precisely follow the instructions included in the Solicitation and all attachments.

1.2 Scope

The purpose of this Solicitation and resultant Contracts is to provide Authorized Users with a means of acquiring Photovoltaic Systems (Lot 1) and Installation Services (Lot 2). A Bidder may bid on both Lot 1 and Lot 2 or just Lot 1.

1.2.1 Lot 1 Photovoltaic Systems

Bidder may offer Photovoltaic Systems within the product categories shown in the table below:

Product Category	Examples
<p><b>Packaged Photovoltaic Systems</b></p>	<p>A complete pre-packaged system which contains all necessary components of the system including but not limited to:</p>
	<p>~Photovoltaics Panels</p>
	<p>~Mounting Racks</p>
	<p>~Inverter</p>
	<p>~Battery Pack</p>
	<p>~Charge Controllers</p>
	<p>~Meters</p>
	<p>~Array Disconnect</p>
	<p>~Breakers</p> <p>~Cables</p>

	A packaged Photovoltaic System may be grid tied; grid tied with battery storage; off-grid or off-grid with battery storage.
<b>Solar Modules (Solar Panels)</b>	~Monocrystalline Silicon PV (mono-silicon or single silicon)
	~Polycrystalline Silicon PV (multi-crystalline, multi-silicon, ribbon)
	~Thin film solar panels
	~Building Integrated
<b>Racking Systems</b>	~Roof Mounting Frames & Hardware
	~Ground Mounting Frames & Hardware
	~Pole Mounts
	~Tracking hardware
<b>Inverters</b>	~String Inverters
	~Micro-Inverters
	~Power Optimizers
	~Inverter Communication Units
<b>Charge Controllers</b>	~Maximum power point tracking (MPPT)
<b>Battery Packs</b>	~High Cycle-Life Batteries
	~Deep Cycle Emergency/Stand By
	~Lithium Ion
	~Battery Racks
<b>Ancillary Products</b>	~Wiring
	~Cables
	~Adaptors
	~Combiner Boxes
	~Safety Disconnects
	~Surge Suppressors
	~Breaker Panels
~Meters	
<b>Miscellaneous Photovoltaic Products</b>	~Solar Powered Area Lights
	~Solar Powered Street Lights
	~Portable Solar Generators

Authorized Users may purchase Photovoltaic Systems with internet or Cloud-based capabilities, but must carefully review any associated terms and conditions prior to purchase, and such terms and conditions have not been reviewed or approved by OGS.

1.2.2 Lot 2 Installation Services

A Bidder that is bidding on Lot 1 Photovoltaic Systems may also bid on Lot 2 Installation Services. To be awarded Lot 2, the Bidder must also be awarded Lot 1 in the applicable Region.

All Installation Services must be related to and ordered in conjunction with Products offered under the Bidder’s award for Lot 1 – Products. Installation Services shall not be performed for Products not purchased through this Solicitation or offered by another Contractor’s Lot 1 award.

Bidder may bid one or more of the following three system size installations provided they meet the minimum size requirement in Section 2.2, III(a) ‘Installation Services Mandatory Requirements’:

- Item 1: 0 to 100 kW systems
- Item 2: 101 to 500 kW systems
- Item 3: >500 kW systems

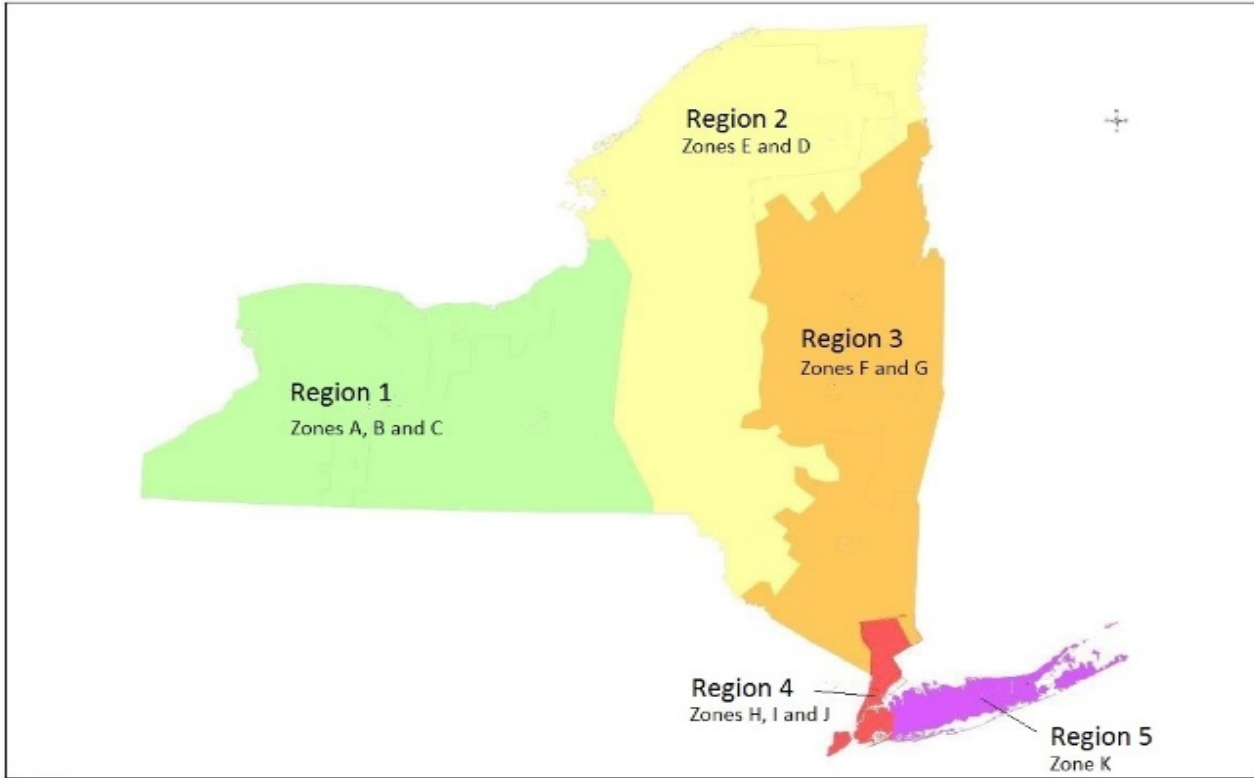
Bidder may offer Installation Services as shown in the following table

<b>Installation Services</b>	<p>Installation Services may include but are not limited to:</p> <ul style="list-style-type: none"> <li>~Design</li> <li>~Permitting</li> <li>~Selection of system components</li> <li>~Construction of simple foundations</li> <li>~Assembly of the system</li> <li>~Anchoring of the system</li> <li>~Construction of electrical connections</li> <li>~Construction of the interconnection with the existing electrical network</li> <li>~Installation of performance monitoring systems</li> <li>~System start up</li> <li>~System commissioning</li> <li>~Coordination of testing and inspections</li> <li>~The provision of drawings and technical documents</li> <li>~Training to the Authorized User</li> </ul>
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1.2.3 Regions

This Solicitation includes five regions, as illustrated in the following map, with each region containing the counties listed below.



Notes:

Zones A-K plotted on map above and noted below are provided as reference only. Bidders bidding regions in Lots 1 or Lots 1 and 2 must bid the entire regions, regardless of zone.

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

### 1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of all contracts to be awarded for this Solicitation, based in part on historical purchases under previous awards, is approximately \$1,500,000 for each lot for a total of \$3,000,000 annually.

The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See *Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts*.

Numerous factors could cause the actual quantities of Photovoltaic Systems and Installation Services purchased under a Contract resulting from this Solicitation to vary substantially from the estimates in the Solicitation. Such factors include, but are not limited to, the following:

- A. Such Contracts will be non-exclusive Contracts.
- B. There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- C. The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
- D. The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- E. Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- F. Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this Solicitation.

### 1.4 Key Events/Dates

<b>EVENT</b>	<b>DATE</b>	<b>TIME</b>
Solicitation Release	April 9, 2018	N/A
Registration Deadline for Pre-Bid Webinar	April 18, 2018	9:30 AM ET
Pre-Bid Webinar	April 18, 2018	12:30 PM ET
Closing Date for MWBE/SDVOB Expression of Interest	April 25, 2018	5:00 PM ET
Closing Date for Bidder Questions	April 25, 2018	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	May 2, 2018	N/A
Bid Opening / Due date for Bids	May 16, 2018	11:00 AM ET

### 1.5 Pre-Bid Webinar

A Pre-Bid Webinar will be held at the time and date indicated in *Section 1.4 Key Events/Dates*. Bidder participation during the Pre-Bid Webinar is not mandatory, but it is recommended that all Bidders participate in the Pre-Bid Webinar. A Bidder should register for the Pre-Bid Webinar by following the directions found below in *Section 1.6 WebEx Instructions* on or before the "Registration Deadline for Pre-Bid Webinar" date indicated in *Section 1.4 Key Events/Dates*.

Prospective Bidders may not participate in the Pre-Bid Webinar in person. The Webinar call in number and website participation instructions will be provided to registered attendees prior to the Pre-Bid Webinar. If technological issues arise during the Pre-Bid Webinar, participants shall immediately email or call the designated contact. If the technological issues are attributable to the State and cannot be immediately resolved, the Pre-Bid Webinar will be re-scheduled.

The purpose of the Pre-Bid Webinar is to review Bid submission procedures related to the Solicitation. 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.

#### 1.6 WebEx Instructions

It is highly recommended that you or your organization register for this webinar, the webinar will be online only with an audio bridge.

The Bidder must:

1. Go to: <https://meetny.webex.com/meetny/j.php?RGID=r7daa5dfb940575678e1fe43f6bfd8024> (New Link)
2. If requested, enter your name and email address
3. If a password is required, enter the meeting password
4. Click "Join".
5. Follow the instructions that appear on your screen.

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, please do not join the session. Please note that any such recordings may be subject to Freedom of Information Law (FOIL) or discovery in the event of litigation.

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

#### 1.7 Bidder Questions

All questions regarding this Solicitation should be submitted using *Attachment 7 – Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to [kelly.rothkopf@ogs.ny.gov](mailto:kelly.rothkopf@ogs.ny.gov) by the date and time indicated in the (Section 1.4 Key Events/Dates). Questions submitted after the deadline indicated may not be answered. Bidders are strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter.

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 *Questions* period so that they may be given due consideration prior to the submission of Bids. See (Section 4.10 Bid Deviations) for additional information.

#### 1.8 MWBE and SDVOB Interest in Participating with Bidders

If a New York State certified MWBE or SDVOB would like to indicate its interest in working with participating Bidders, please send an email entitled "Solicitation 23085 MWBE or SDVOB INTEREST [Your company name]" to [kelly.rothkopf@ogs.ny.gov](mailto:kelly.rothkopf@ogs.ny.gov) on or before the date and time indicated in (Section 1.4 Key Events/Dates). The email should include:

Company Name

Contact Name, Phone Number, Mailing Address, E-Mail Address

Brief description of company type (for example "Company ABC is an Authorized Dealer for XYZ")

NYS Empire State Development Certification Type (Minority- and/or Women-Owned Business Enterprise).

Lists of all NYS certified MWBEs and SDVOB who have expressed interest in this Solicitation through the timely submission of such email, will be included in a Purchasing Memorandum posted through the New York State Contract Reporter in accordance with the *New York State Contract Reporter* section.

[23085R2\\_05232018.docx](#)

## 1.9 NYS Contract Reporter

Bidders 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 email notifications regarding updates to the content or status of a particular ad, you must “bookmark the ad” on the upper right-hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select “send me notification updates” option listed to the right of the ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. 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 email notifications regarding updates, including email 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 Bid being deemed non-responsive to the Solicitation.

## 1.10 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: <https://www.ogs.ny.gov/acpl/>.

## 1.11 Definitions

Capitalized terms used in this Solicitation shall be defined in accordance with Appendix B, Definitions, or as below.

“**Battery Storage System**” stores the excess electricity produced by a Photovoltaic System and provides the electricity when more energy is being demanded than the Photovoltaic System is generating.

“**Bid Deviation**” shall refer to any variance submitted or proposed by a Bidder, which deviates from, adds extraneous terms to, conflicts with or offers an alternative to any term, condition, specification or requirement of the Solicitation.

“**Cloud**” Any remote administration, maintenance/support service that transmits, stores, acts upon or could remotely access Authorized User’s data.

“**Cost per Watt**” The Net Cost of a Photovoltaic System divided by the capacity of the system measured in Watts DC.

“**Grid Tied PV System**” shall refer to a photovoltaic power system that is generating electricity that is connected to the local utility company’s system (utility grid).

“**Government Entity**” A federal, state, municipal entity or tribal government located in the United States.

“**Installation Services**” For the purposes of this Solicitation, Installation includes those tasks specifically associated with the design, assembly and commissioning of the Photovoltaic System including but not limited to system design, permitting, selection of system components, construction of simple foundations, assembly of the system, anchoring of the system, construction of electrical connections, installation of performance monitoring systems, system start up, system commissioning, coordination of testing and inspections and the provision of drawings, technical documents and training to the Authorized User. Installation does not include construction work such as land clearing, grading, the construction of new structures (other than simple foundations), the construction of roads, structural modifications to buildings, the construction of new power lines, interconnection fees or upgrades to electrical equipment on the utility side of the electrical system.

**“LEED” (Leadership in Energy and Environmental Design)** is an internationally recognized green building certification system, providing third-party verification that a building or community was designed and built using strategies intended to improve performance in metrics such as energy savings, water efficiency, CO2 emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts.

**“Levelized Cost of Energy (LCOE)”** – The average amount that will be paid for the electricity generated by the Photovoltaic System over its lifetime. LCOE is calculated by dividing the Net Cost of the Photovoltaic System plus the estimated cost of maintenance and operations over the system’s lifetime by the total amount of electricity (in kWh) produced over the system’s lifetime.

**“Manufacturer”** An organization or Business Entity that creates, makes, processes, or fabricates a Product or something of value, which changes a raw material or commodity from one form to another or creates a new Product or commodity.

**“Mini-Bid”** A document used by the Authorized User to define a project that will be competitively bid on by eligible Contractors. Awards will be based on best value for Products and/or Services under the Centralized Contract.

**“Mini-Bid Contract”** The agreement between the Contractor and the Authorized User which results from the competitive bidding of an Authorized User’s Mini-Bid Project Definition. A Mini-Bid Contract consists of the Contractor’s Executed Contract, the Authorized User’s Mini-Bid Project Definition and the Contractor’s response to the Mini-Bid Project Definition, as accepted by the Authorized User.

**“MWBE”** shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-owned Business Enterprise.

**“Net Cost”** – The cost of the Photovoltaic System including the cost of all components and Installation Services but excluding any incentives, rebates or credits.

**“Not to Exceed Labor Markup Rates (NTELMR)”** is a single markup percentage over the prevailing wage rates. NTELMR is inclusive of all costs associated with the Installation Services.

**“NYS Vendor ID”** shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

**“Miscellaneous Solar Products”** refers to pre-assembled Products such as area lighting or generators that utilize an integrated photovoltaic system for power.

**“Off-Grid PV System”** shall refer to a photovoltaic power system that is not connected to the local utility company’s system (utility grid) and is a self-sustaining energy source.

**“Photovoltaic (PV) System”** Refers to either complete, prepackaged systems or individual components of systems that convert solar radiation into electricity. For the purposes of this Solicitation, Photovoltaic Systems includes packaged Photovoltaic Systems, solar modules, racking systems, inverters, charge controllers, battery packs, ancillary products and miscellaneous photovoltaic products.

**“Preferred Source Products”** shall refer to those Products that have been approved in accordance with State Finance Law § 162.

**“Preferred Source Program”** shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to a state agencies, political subdivisions and public benefit corporations (including most public authorities).

**“Procurement Services”** shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSPPro”) and Procurement Services Group (“PSG”).

**“SDVOB”** shall refer to a NYS-certified Service-Disabled Veteran-Owned Business.

## 1.12 Appendices and Attachments

The following appendices and attachments, attached hereto, are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

Appendix A	Standard Clauses for NYS Contracts (January 2014)
Appendix B	General Specifications (April 2016)
Appendix C	Contract Modification Procedure
Appendix D	Mini-Bid Project Definition Template

Attachment 1	Pricing
Attachment 2	NYS Required Certifications
Attachment 3	Encouraging Use of NYS Businesses
Attachment 4	Insurance Requirements
Attachment 5	Bidder Information Questionnaire
Attachment 6	Bidder Submission Checklist
Attachment 7	Bidder Questions Form
Attachment 8	Report of Contract Usage
Attachment 9	Manufacturer's Authorization Form
Attachment 10	Minimum Qualifications Submittal Form
Attachment 11	Verifiable Sales
Attachment 12	Contractor and Reseller/Distributor Information

## 1.13 Conflict of Terms

Conflicts among the documents comprising this Solicitation shall be resolved in the following order of precedence:

- A. Appendix A, Standard Clauses for New York State Contracts;
- B. The Solicitation, including all appendices and attachments;
- C. Appendix B, General Specifications;

## 2. BIDDER QUALIFICATIONS

Bidder is advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required. Procurement Services retains the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work.

### 2.1 Lot 1 Photovoltaic Systems Mandatory Requirements

A Bidder shall meet the following requirements:

- A. The Bidder must be either:
  - I. A manufacturer of the Photovoltaic Systems being bid or,
  - II. An entity authorized by the manufacturer to sell the Photovoltaic Systems being bid.
- B. The Bidder must have maintained an organization, in continuous operation, for a minimum of three (3) years immediately preceding the bid opening date as either a manufacturer of Photovoltaic Systems or an entity authorized by a manufacturer to sell Photovoltaic Systems.
- C. The Bidder must have verifiable sales of at least \$100,000 of Photovoltaic Systems to governmental entities in each of the three (3) years immediately preceding the bid opening date (See Section 2.3 Verifiable Sales).

### 2.2 Lot 2 Installation Services Mandatory Requirements

Bidder shall meet the following requirements:

- I. The Bidder must bid on and be awarded Lot 1 Photovoltaic Systems for the region being bid on in Lot 2.

II. If the Bidder is not a manufacturer of the Photovoltaic Systems being bid for Lot 1, then the Bidder must be authorized by the manufacturer to install the Photovoltaic Systems being bid for Lot 1.

III. The Bidder must list five (5) PV projects that Bidder, either directly, or as prime contractor using subcontractors under Bidder's direct control, completed for government and/or commercial (not residential) entities. All 5 PV projects must have been completed within the five years preceding the date of the Bid opening. For each project, Bidder, using Attachment 10, must list the name of the project, the size of the PV system in kW DC, the year the installation of the PV system was completed, the date the system was made operational, the name and address of the subcontractor(s) used for Installation Services (if applicable), the customer name, customer contact name, customer's phone number and e-mail address. These references will be evaluated in accordance with Section 5.2.2 'Reference Check – Lot 2'.

- a. At least one (1) reference (of the five required) shall meet the following minimum size requirement based on largest sized item for which Bidder is bidding:

Item 1: 0 to 100 kW systems – 50 kW, minimum  
 Item 2: 101 to 500 kW systems– 250 kW, minimum  
 Item 3: >500 kW systems – 500 kW, minimum

- b. In addition, at least one of the PV Projects must have been completed and made operational three or more years prior to the Bid opening date of this Solicitation.

### 2.3 Lot 1 Photovoltaic Systems Verifiable Sales

To demonstrate that the Bidder meets the verifiable sales requirement for Lot 1, Bidder shall utilize Attachment 11 - Verifiable Sales, which summarizes the Government Entity, invoice date, invoice number, and invoice total and shall provide copies of the invoices listed in the attachment for verification purposes.

In order to meet the verifiable sales requirements for Lot 1, the invoices must be in the Bidder's name. However, if a Manufacturer has no verifiable sales to any Government Entity, but sells its products only through Resellers to Government Entities, then that Manufacturer may use those Reseller invoices to demonstrate verifiable sales. In Attachment 11 – Verifiable Sales the Manufacturer will attest they have no direct government sales and sell through Resellers to Government Entities. Invoices from a Manufacturer's authorized Resellers will be accepted only if the Manufacturer is identified on the invoice. The Manufacturer's name must be printed on the invoice.

Bidder is to utilize the individual tabs in the attachment (Invoice List Year 1, Year 2 & Year 3) to document invoices for each of the three years immediately preceding the bid opening date.

The Bidder is required to submit only the minimum number of invoices needed to meet requirements for each year of the three years.

Each invoice must contain or be accompanied by the following information:

1. Bidder or Reseller name
2. Manufacturer of the Photovoltaic System
3. Government Entity purchaser
4. Product name
5. Product description(s)
6. Product price
7. Invoice date
8. Invoice number
9. Invoice total

**Failure to provide this information may result in a request for clarification and may delay review of Bidder's Submission and possibly result in a non-responsive finding.**

Where the invoice references a bundled item that includes one or more qualifying items, Bidder must submit a detailed breakdown of the amounts attributable to each item within the bundle. Where the invoice references items other than PV products, please identify the PV products.

Bidders who hold other contracts with OGS may provide contract sales reports in lieu of invoices. OGS reserves the right to request invoices if OGS determines that the contract sales reports are insufficient. Sales reports are to [23085R2\\_05232018.docx](#)

be provided in searchable PDF. Only sales made during the three (3) years immediately preceding the bid opening date will be evaluated.

**Completion and submission of Attachment 11 – Verifiable Sales is required even if submitting sales reports in lieu of invoices.**

Attachment 11 – Verifiable Sales must be signed by a person authorized to bind the Bidder who must attest that:

1. Sales meet the minimum requirements;
2. Sales were to Government Entities;
3. All qualifying invoice totals have been paid; and
4. Any detailed breakdown submitted with an invoice containing a bundled item is accurate.

All required information contained in verifiable sales documentation should be free of restrictions on confidentiality or claims of confidentiality. OGS will not enter into a Non-Disclosure Agreement (NDA) for Bidders who assert that information contained in their verifiable sales documentation is confidential.

OGS in its sole discretion, may request additional information regarding Attachment 11 – Verifiable Sales, including any information contained on the invoice tabs, submitted invoices and/or sales reports.

### 3. SPECIFICATIONS

#### 3.1 Lot 1 - Product

The Products offered shall meet or exceed the following minimum requirements. For Products offered under the 'Packaged Photovoltaic Systems' and 'Miscellaneous Solar Products' categories, the individual components of the system or Product shall meet or exceed the applicable minimum requirements listed below. The Bidder shall provide specification sheets with their proposal demonstrating that all products meet the specifications contained in this section. OGS reserves the right to request additional information regarding any product bid and to remove products from the price list for which the specification requirements cannot be verified.

All power generation and transmission equipment shall be either UL or ETL listed for its designed use and shall have a minimum Product warranty of 10 years unless otherwise noted in this section.

Fasteners and other connecting hardware shall be either stainless steel or a material of equivalent corrosion resistance.

Racking components shall be either anodized aluminum, hot-dipped galvanized steel or a material of equivalent corrosion resistance.

##### 3.1.1 Packaging

In accordance with Environmental Conservation Law section 37-0205, packaging shall not contain inks, dyes, pigments, adhesives, stabilizers, or any other additives to which any lead, cadmium, mercury or hexavalent chromium exceed the following concentration level: 100 parts per million by weight (0.01%).

The Bidder is encouraged to adopt the following:

- A. The use of bulk packaging
- B. The use of reusable packaging
- C. The use of innovative packaging that reduces the weight of packaging, reduces packaging waste, or utilizes packaging that is a component of the Product
- D. That all packaging remain the property of the supplier and not become the property of the affected state entity under any circumstance or condition. In situations where packaging take back is sought, the vendor shall certify that the packaging material will be reused, recycled, or composted, and managed in compliance with applicable local, state, and federal laws
- E. Packaging that maximizes recycled content and/or meets or exceeds the minimum post-consumer content level for packaging in the U.S. Environmental Protection Agency Comprehensive Procurement Guidelines
- F. Packaging that is recyclable or compostable



## 3.1.2 Solar Modules (Solar Panels)

- A. Solar Modules shall:
  - I. Have a minimum commercial efficiency rating of 16%;
  - II. Be free of intentionally added cadmium and lead;
  - III. Have a minimum power performance warranty of 90% for the first 10 years and 80% for 25 years;
  - IV. Have a minimum 20-year product warranty covering defects in materials and workmanship including at a minimum discoloration/clouding of glass, overall operability of panel, operability of connector plugs and cables and delamination of layers.
- B. Solar Modules shall meet the following International Electrotechnical Commission (IEC) standards:
  - V. IEC 61215, Terrestrial Photovoltaic Modules – Design qualification and type approval
  - VI. IEC 61646, Thin Film Terrestrial Photovoltaic Modules – Design Qualification and Type Approval
  - VII. IEC 61730, Photovoltaic Module Safety Qualification
  - VIII. IEC 60364-4-41, Low-voltage Electrical Installations – Part 4-41: Protection for Safety – Protection Against Shock
  - IX. IEC 61853, Photovoltaic Module Performance Testing and Energy Rating
  - X. IEC 62804, Photovoltaic Modules – Test Methods for the Detection of Potential-Induced Degradation
- C. Solar modules shall meet the following Underwriters Laboratory (UL) standard:
  - I. UL 1703, Standard for Flat Plate Photovoltaic Modules and Panels

## 3.1.3 Inverters

- A. Inverters shall:
    - I. Have a minimum efficiency rating of 90% at all ratios of input power to rated capacity;
    - II. Have a minimum 15-year warranty;
  - B. Inverters shall meet, at a minimum, the following International Electrotechnical Commission (IEC) standards:
    - I. IEC 61000-6-1, Electromagnetic Compatibility (EMC) – Part 6-1: Generic Standards – Immunity Standard for Residential, Commercial and Light-Industrial Environments
    - II. IEC 61000-6-3, Electromagnetic Compatibility (EMC) – Part 6-3: Generic Standards – Emissions Standard for Residential, Commercial and Light-Industrial Environments
    - III. IEC 61683, Photovoltaic Systems – Power Conditioners – Procedure for Measuring Efficiency
    - IV. IEC 61721, Susceptibility of a Photovoltaic Module to Accidental Impact Damage (Resistance to Impact Test)
    - V. IEC 62109, Safety of Power Converters for use in Photovoltaic Power Systems
    - VI. IEC 62116, Utility-Interconnected photovoltaic inverters – Test Procedure of Islanding Prevention Measures
- Inverters shall meet the following European Norm standards:
- VII. EN 55022, Information technology equipment - Radio disturbance characteristics - Limits and methods of measurement
  - VIII. EN 50178, Electronic Equipment for Use in Power Installations

## 3.1.4 Battery Packs

Battery packs shall:

- A. Have a ratio of usable storage to nominal storage of at least 90%
- B. Have a minimum cycle life of 5000 at 80% depth of discharge;
- C. Have a minimum warranty of 10 years
- D. Not consist of Lead Acid type batteries

## 3.1.5 Charge Controllers

Charge controllers shall utilize Maximum Power Point Tracking (MPPT) technology.

### 3.2 Lot 2 – Installation Services

The Bidder shall provide all qualified personnel, materials and equipment necessary to complete the installation in accordance with all local, state and federal laws. All Installation Services must be related to and ordered in conjunction with Products offered under the Bidder's award for Lot 1 – Products. Installation Services shall not be performed for Products not purchased through this Solicitation or offered by another Contractor's Lot 1 award.

All design and installation services shall be performed by staff who are working under the direct supervision of an employee who is certified as a 'PV Installation Professional' by the North American Board of Certified Energy Practitioners (NABCEP). All installation services shall be performed by companies who 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>. All electrical work shall be performed in accordance with the jurisdiction's laws, codes and standards where the work is being performed.

Installation Services shall include a workmanship warranty covering defects or damages arising from the design or installation of the PV system for a period of 5 years, minimum.

The Not to Exceed Labor Markup Rate shall include all costs associated with Installation Services including but not limited to the preparation of responses to Mini-Bids, design work, system construction, ancillary construction costs, system commissioning and administrative work, and no additional compensation will be allowed in addition to the Labor Markup Rate bid or for the preparation of Mini-Bid responses which are not awarded.

The following work shall be included as part of Installation Services:

- **Preparation of Responses to Mini-Bids** - The Bidder is responsible for the development of proposals in response to Mini-Bid Requests for Proposals. This work may include but is not limited to participation in preliminary site visits, the performance of a site evaluation, the completion of a shading analysis, the preparation of preliminary designs for Photovoltaic Systems, the development of an energy production estimate, a structural evaluation of the existing structure(s) that the system will be mounted onto and the completion of the Mini-Bid proposal.
- **Design Work** - The Bidder is responsible for design and procurement work done in response to an awarded Mini-Bid which may include but is not limited to the final design of the Photovoltaic System, the preparation of drawings, the preparation of specifications, the selection of components and obtaining all necessary approvals and permits.
- **System Construction** - The Bidder is responsible for the construction of the Photovoltaic System which may include but is not limited to the construction of simple foundations, assembly of the system, anchoring of the system, wiring, construction of electrical connections and the installation of performance monitoring systems.
- **Ancillary Construction Costs** - The Bidder is responsible for ancillary construction costs which may include but are not limited to administrative costs, reporting costs, travel costs, parking, permit costs, licensing costs, insurance costs, project management, the performance of quality control/quality assurance activities, inspections and code compliance.
- **System Commissioning** - The Bidder is responsible for the testing and commissioning of the system which may include but is not limited to physical & visual Inspections, measurement and verification of system performance, documentation of as-built conditions, the supply of operations and maintenance manuals, the verification of proper system operation, the supply of a commissioning report and the quality assurance review & approvals.
- **Drawings, Technical Documents and Training** – The Bidder is responsible for providing training to the Authorized User in the operation and maintenance of the Photovoltaic System, and shall provide as-built drawings and maintenance and operations manuals.

#### Pass Through Costs

The Bidder may "pass through" the following costs to the Authorized User without any mark-up or additional fees assessed to the Authorized Users:

- Equipment rentals such as a man-lift or crane
- The cost of ancillary construction materials such as concrete or rebar for simple foundations

To be eligible for reimbursement, all pass-through costs must be fully disclosed to the Authorized User in the

Bidder's response to a Mini-Bid Project Definition and must be approved by the Authorized User in advance. Failure to disclose pass through costs may result in the Mini-Bid response being rejected and/or the costs being disallowed.

#### **Items not included in Installation Services:**

The following items are NOT included in Installation Services and are outside the scope of this Contract. To obtain these services Authorized Users are required to conduct a separate procurement which follows their organization's procurement rules:

- Site development activities such as land clearing, grading, the removal of trees or the construction of roads;
- The construction of new structures (other than racking systems with simple foundations), structural modifications to structures or the replacement of roofs;
- Engineering services such as civil/site design;
- Electrical work not directly related to the assembly and wiring of the Photovoltaic System such as the construction of new transmission lines or upgrades to electrical equipment on the utility side of the meter;
- Interconnection costs, fees or charges;
- Third party quality control inspections

## 4. BID SUBMISSION

### 4.1 Performance and Bid Bonds

There are no bonds for this Contract. 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 Contract is required, however the Authorized Users may require bonds in its specific Mini-Bid Project Definition.

### 4.2 NYS Vendor File Registration

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder and any 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 to each of your authorized Resellers (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables a vendor 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 New York State Vendor File, the Bidder must enter its Vendor ID on the first page of this Solicitation. Authorized Resellers already registered should list the 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/ac3237s\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237s_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 an authorized Reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized Reseller 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 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)

#### 4.3 Format and Content of Bid Submission

The complete Bid 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.

Email 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. Only completed files (in the specified format) should be saved to a CD or flash drive.

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation may be considered non-responsive and may be rejected.

#### 4.4 Content

A complete Bid consists of ONE copy of each of the following:

- A. CD or flash drive containing:
  - 1. Pages 1 and 2 of the Solicitation (signed and scanned) (PDF);
  - 2. Completed Attachment 1 – Pricing (Excel);
  - 3. Specification sheets for all packaged photovoltaic systems, solar modules, inverters, battery packs, charge controllers and miscellaneous photovoltaic products (PDF);
  - 4. Completed Attachment 2 – NYS Required Certifications with original ink signatures (PDF);
  - 5. Completed Attachment 3 – Encouraging Use of NYS Businesses (PDF);
  - 6. Proof of compliance with Attachment 4 – Insurance Requirements (PDF);
  - 7. Completed Attachment 5 – Bidder Information Questionnaire (Excel);
  - 8. Completed Attachment 6 – Bidder Submission Checklist (Excel);
  - 9. Completed Attachment 9 – Manufacturer's Authorization Form for each Supplier/Manufacturer offered (signed and scanned) (PDF);
  - 10. Completed Attachment 10 – Minimum Qualifications Submittal Form (PDF);
  - 11. Completed Attachment 11 - Verifiable Sales (Searchable PDF)
  - 12. Price lists for all comparable governmental contracts used to establish reasonableness of price (searchable PDF)
  - 13. Copies of invoices from the Bidder or Reseller to Governmental Entities verifying the mandatory requirements identified in (Section 2.1 Mandatory Requirements) have been met. (PDF)
  - 14. Completed ST-220CA, Contractor Certification, notarized with original ink signatures (PDF);
  - 15. Completed MWBE 100, MWBE Utilization Plan (PDF);
  - 16. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF);
  - 17. Completed Form SDVOB 100, SDVOB Utilization Plan (PDF);
  - 18. Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF)
  
- B. One original paper version of each of the following (to be placed in a loose-leaf binder and tabbed):
  - 1. Completed Page 1 and 2 of the Solicitation with original ink signatures;
  - 2. Completed Attachment 2 – NYS Required Certifications with original ink signatures;
  - 3. Completed Attachment 3 – Encouraging Use of NYS Businesses;
  - 4. Proof of compliance with Attachment 4 – Insurance Requirements;
  - 5. Completed Attachment 5 – Bidder Information Questionnaire;
  - 6. Completed Attachment 6 – Bidder Submission Checklist;
  - 7. Completed Attachment 9 – Manufacturer's Authorization Form for each Supplier/Manufacturer offered (signed and scanned) (PDF);
  - 8. Completed Attachment 10 – Minimum Qualifications Submittal Form (PDF);
  - 9. Completed Attachment 11 - Verifiable Sales, notarized with original ink signatures
  - 10. Completed ST-220CA, Contractor Certification, notarized with original ink signatures;

11. Completed MWBE 100, MWBE Utilization Plan;
12. Completed Form EEO100, Equal Employment Opportunity Staffing Plan;
13. Completed Form SDVOB 100, SDVOB Utilization Plan;
14. Standard Vendor Responsibility Questionnaire or Certification that Questionnaire has been completed online

Also, 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.

#### 4.5 Bid Envelopes and Packages

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

- A. BID ENCLOSED (preferably bold, large print, all capital letters)
- B. Solicitation number (Solicitation #23085)
- C. Bid Opening Date and Time
- D. 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 Bid prior to the scheduled Bid opening.

#### 4.6 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. Late Bids shall be rejected, except as provided in Appendix B, Late Bids. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

#### 4.7 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.

#### 4.8 NYS Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 2 – NYS Required Certifications) with its Bid.

#### 4.9 Manufacturer's Authorization Form

Bids will be accepted only from Manufacturers and entities authorized by the manufacturer to distribute and/or install its products. Through completion and submission of the Manufacturer's Authorization Form, the manufacturer certifies that the bidder is authorized to sell/install the manufacturer's products, and certifies that the manufacturer will supply the Bidder with all quantities of Products required by the Bidder in fulfillment of its obligations under any resultant Contract with the State. Bidders shall use the Manufacturer's Authorization Form attached to this Solicitation to document this level of support (see Attachment 9 – Manufacturer's Authorization Form).

The Manufacturer's Authorization Form must be completed for Lot 1 – Photovoltaic Systems and Lot 2 – Installation Services (if being bid on), and is to be forwarded by the Bidder to its proposed manufacturer for completion and returned to the Bidder for inclusion with its Bid. The manufacturer must return the form on its letterhead and must provide an original ink signature.

The Commissioner reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract. See Appendix B, Participation in Centralized Contracts and Employees, Subcontractors, and Agents.

#### 4.10 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Bidder Questions, 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 Questions 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.

#### 4.11 Bid Opening Results

Procurement Services posts Bid information on the OGS web page. The web page makes selected information available about 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: <https://nyspro.ogs.ny.gov/nyspro-bid-openings>.

#### 4.12 Bid Liability

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the production of a Bid or for any work performed prior to the formal execution of a Contract.

#### 4.13 Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least 90 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 90 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

#### 4.14 Reserved Rights

New York State reserves the right, in its sole discretion, to:

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. 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 Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State;
- T. Conduct Contract negotiations with -the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, region, or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, or lots; and
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing.

#### 4.15 Incorporation

Portions of the successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. A final Contract will be formalized either through a separate contract document or through a contract award letter incorporating the Bid, each having its own provision governing conflict of terms.

## 5. METHOD OF AWARD

### 5.1 Method of Award for Lot 1 - Product

Award shall be made by Region using non-competitive periodic recruitment to responsive and responsible Bidders who meet minimum qualifications (Section 2 Bidder Qualifications) and offer reasonable prices (Section 5.1.1 Reasonableness of Price, Lot 1) as determined by OGS.

OGS reserves the right to make Contract awards in phases and have Contracts start on a rolling basis based on the number of Bids received. Bids that do not require clarification or the submission of additional supporting documentation from the Bidder will be awarded first, in phases to responsive and responsible Bidders.

#### 5.1.1 Reasonableness of Price, Lot 1 - Product

Reasonableness of price for Lot 1 will be determined by comparing the New York State Contract Price to the comparable governmental contract price. The Bidder must offer OGS the same or better net price than those provided to other Governmental Entities. Bidder may use multiple comparable governmental contracts to establish reasonableness of price in order to offer OGS the lowest New York State Contract Price.

Bidder will provide pricing information for Lot 1 in Attachment 1 – *Pricing*, on the ‘Lot 1 – Region & Prdt Cat Disc’ and ‘Lot 1 – Product Price List’ tabs. Bidder must provide copies of the price lists for all comparable governmental contracts used to establish reasonableness of price. If the New York State Contract Price is greater than the comparable governmental contract price, the Bidder must provide a written explanation on the Bidder’s letterhead that is acceptable to OGS in order to establish the reasonableness of price. Failure to provide either a New York State Contract Price that is less than or equal to the comparable Government Contract Price or an acceptable explanation will result in the pricing being found unreasonable and the bid rejected.

Bidders who currently hold a New York State OGS Contract(s) must offer the same or better net price of an offered Item in such Contract(s). Bidder to provide current Contract information in Attachment 5 – *Solicitation Questions*. OGS reserves the right to request further information to make a determination of price reasonableness, such as copies of other governmental contracts.

All monetary values will be rounded to 2 decimal points (e.g., \$557.2340 shall be rounded to \$557.23).

Bidder shall offer a percentage Category Discount, from its List pricing in effect at time of Bid opening, in whole numbers, by product category. All percentage Category Discount will be rounded to the whole number (e.g., 55.54% shall be rounded to 56%).

Bidder may offer products using a Unit of Measure of ‘each’ (individual products), ‘package’ (multiple products) or ‘\$ per watt’ (for pre-packaged Photovoltaic Systems).

Bidder is encouraged to offer its best possible pricing and may offer an additional (Deeper) Discount for each Product (Section 6.4 - Additional Discounts).

### 5.2 Method of Award for Lot 2 – Installation Services

Award shall be made by item in each Region using non-competitive periodic recruitment to responsive and responsible Bidders who meet minimum qualifications (Section 2 Bidder Qualifications), offer reasonable prices as determined by OGS (Section 5.2.1 Reasonableness of Price, Lot 2) and pass a reference check (See Section 5.2.2 Reference Check, *Lot 2*).

OGS reserves the right to make Contract awards in phases and have Contracts start on a rolling basis based on the number of Bids received. Bids that do not require clarification or the submission of additional supporting documentation from the Bidder will be awarded first, in phases to responsive and responsible Bidders.



### 5.2.1 Reasonableness of Price, Lot 2 – Installation Services

Reasonableness of price for Lot 2 will be determined in the following manner:

The Bidder is required to submit Not to Exceed Labor Markup Rates (NTELMR) over prevailing wage rates for the job titles listed in Attachment 1 – Pricing. In accordance with State Finance Law, the Cost Proposal will be evaluated to determine the reasonableness of the maximum NTELMRs proposed.

Step 1: For each Region, the Bidder's NTELMR will be multiplied by the current highest prevailing wage rate (PWR) (including supplemental benefits(SB)) found within the region to create a Daily Crew Rate (DCR) for a crew of 2 (two) electricians and 2 (two) laborers.

$$DCR = (2 \text{ Electricians} \times (1 + NTELMR/100) \times (PWR + SB)) + (2 \text{ Laborers} \times (1 + NTELMR/100) \times (PWR + SB)) \times 8 \text{ hours}$$

Where: NTELMR = Not to Exceed Labor Markup Rate (%)  
PWR = Prevailing Wage Rate

SB = Supplemental Benefit

Step 2: For each Region, all Bidder's DCRs will be averaged to create an "Average DCR". OGS reserves the right to remove an inordinately low or high bid from the calculation of the "Average DCR" if, in the judgement of OGS, the bid would skew the results.

Step 3: For each Region, each Bidder's "DCR" will be compared to the "Average DCR". If a Bidder's "DCR" is at or less than 150% of the "Average DCR", the Bid shall be deemed to have passed for that Region. If a Bidder's "DCR" is greater than 150% of the "Average DCR", the bid for that Region shall be deemed to have failed and will not be considered for an award.

### 5.2.2 Reference Check, Lot 2 – Installation Services

In Attachment 10 'Minimum Qualifications Submittal Form', Bidder will provide contact information for five (5) Photovoltaic Systems Projects submitted for verifiable sales. Procurement Services will contact three of the customers to perform a reference check which will be evaluated on a Pass/Fail basis. The references will be evaluated as follows:

- Three 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 three ratings are obtained;
- If an attempt has been made to contact all five of the references and there are still references 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.
- 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 Regions and Items bid will be considered a "pass".

If a Bidder's average performance rating is less than 10.0, the bids for all Regions and Items bid will be considered a "fail" and will not be evaluated further.

### 5.3 Periodic Recruitment

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. The purpose of periodic recruitments will be to:

- Add new Lots for additional and/or emerging technologies
- Add new Contractors to existing and new Lots
- Add additional Lots to existing Contract

Additional recruitment periods will be advertised in the NYS Contract Reporter. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for Products or Services covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

### 5.4 Procurement Instructions To Authorized Users

The resultant Contracts will be centralized Contracts issued under a multiple award structure. Products and Services offered under the Contracts, pricing, and other Contract information will be posted to the OGS website and, if applicable, the awarded Contractors' dedicated NYS websites. Authorized Users shall procure Products and Services that best meet their form, function and utility requirements.

Authorized Users who are subject to NYS Executive Order 4 are encouraged to:

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

Before proceeding with their purchase, Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law, particularly § 162, regarding commodities/services provided by preferred source suppliers. Where commodities/services are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the centralized Contracts awarded under this Solicitation.

To utilize the centralized contracts, Authorized Users must conduct a Mini-Bid Request for Proposals, issue a Mini-Bid Contract number to the winning Contractor and, if the Authorized User is a state agency, set up the Mini-Bid contract in SFS before placing Purchase Orders against the Mini-Bid Contract Number.

When placing Purchase Orders against a Mini-Bid Contract, the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular Mini-Bid contract. Please see Appendix

B Clauses 26, Modification of Contract Terms, and 30, Purchase Orders. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible.

**Note: Contractor must disclose any forms or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents which contain additional terms or conditions must receive pre-approval by the Authorized User. Additional terms or conditions that were not pre-approved by the Authorized User or which conflict with or diminish the Contract terms and conditions are void and unenforceable at the sole discretion of the State.**

The following are examples of documentation that should be created and maintained by the Authorized User as part of a Procurement Record. This list is not meant to be all inclusive.

- Approved Requisition or Purchase Order;
- DOB 1184 Attachment A or B ([http://www.budget.ny.gov/guide/bprm/bulletins/b-1184\\_revised.html](http://www.budget.ny.gov/guide/bprm/bulletins/b-1184_revised.html));
- Bid distribution and announcements;
- Pre-bid Conference Sign-In Sheet and Transcript;
- Bid Protests and Responses;
- Justification for Rejecting Bids or Proposals;
- Blank Solicitation Document (including appendices);
- Questions & Answers;
- Evaluation Instruments;
- Completed Evaluation Score Sheets & Evaluation Summary;
- Bid Tabulation;
- Bidders List;
- Reasonableness of Price;
- Price Lists, if applicable;
- Awarded Bid;
- Proposals Received;
- If less than 3 Bids received, No-Bid/No-Reply Survey;
- Any Contractor Correspondence (e.g. clarifications);
- Rejected Bids with Justification;
- Tentative Award letter;
- Non-award Letters;
- Authorized User (Contract) Agreement

#### 5.4.1 Mini-Bid Requirements

Authorized Users who utilize this contract must create and conduct a Best Value Mini-Bid. The Mini-Bid must be distributed to all of the Contractors awarded the Region, Lot(s) and Item(s) contained in the Mini-Bid Project Definition. Mini-Bid Project Definitions may contain multiple Lots and items, but may only contain one Region. Close attention should be made to ensure the Mini-Bid only goes to Contractors that have been awarded the applicable Region, Lot(s) and item(s). Appendix D - Mini-Bid Project Definition Template has been created to assist Authorized Users in the creation of Mini-Bid Project Definitions.

The process of developing a Mini-Bid Project Definition includes, but is not limited to, studying the feasibility of constructing a PV System, obtaining all necessary stakeholder approvals, gathering site and billing data, developing the Mini-Bid document, developing evaluation criteria and tools for the technical and cost proposals, distributing the Mini-Bid, evaluating responses, choosing the winning proposal, making an award and overseeing the construction of the system.

The OGS Centralized Contract requires that a Mini-Bid be completed and an award made on the basis of “best value”. Thus, a Mini-Bid award must be made to the Contractor who offers the best value solution. State Finance [23085R2\\_05232018.docx](#)

Law § 163(4)(d) mandates that a contract for services be awarded on the basis of best value which takes into consideration cost as well as technical or non-cost factors. For certain service and technology procurements, best value can be equated to lowest price, where all requirements have been met by the Contractor.

For procurements where best value is equated to lowest price, the following methods may be used to determine lowest price:

Type of PV System	Recommended Method of Determining Lowest Price (See Note 1)
PV Systems	Lowest Levelized Cost of Energy (LCOE)
PV Systems with Battery Storage Systems	Lowest Levelized Cost of Energy (LCOE)
Stand-Alone Battery Storage Systems	Lowest Levelized Cost of Energy (LCOE)

*Note 1: See Section 1.11 'Definitions' for definitions of Lowest Levelized Cost of Energy and Lowest Net Cost.*

Authorized Users may also choose to award Mini-Bids using weighted technical and cost evaluations, however it is the Authorized User's responsibility 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. Should a weighted evaluation be used, the evaluation weight assigned to the Technical evaluation shall not exceed 70% of the total score, and Cost evaluation shall be no less than 30% of the total score.

In addition, if the Authorized User elects to develop technical evaluation criteria and is subject to the requirements of Article 11 of the State Finance Law, State Finance Law Section 163(1) (j) allows the inclusion of a quantitative factor for offerers that are small businesses or certified minority- or women-owned business enterprises (MWBES) as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the Executive Law. It is recommended that up to 5% of the total technical evaluation scale be awarded to a proposer who meets one of these criteria. In addition, if the Authorized User includes a quantitative factor in its evaluation as part of the Mini-Bid process, it must obtain a certification from each Contractor indicating whether such Contractor is a small business pursuant to Executive Law Section 310(20). The Authorized User must use the directory of New York State Certified MWBES to verify a Contractor's status as a MWBE.

The Authorized User may choose to provide additional Technical evaluation point components for the Contractor to provide more focused proposals (e.g. 5% Key personnel interviews).

The Technical Proposal requirements for the Mini-Bid Project Definition may include items such as the submission of a site plan, a technical description of the proposed photovoltaic system, pricing data, 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, PV system performance guarantee, equipment warranties, environmental considerations, and any other documentation necessary for the Authorized User to conduct a full and complete evaluation. The Contractor will provide a proper analysis of power generation so that actual utility rates and system cost can be compared with expected/derived hourly solar production to determine the cost effectiveness of the project. The Authorized User may determine, at its discretion, whether or not to make an award for the Mini-Bid after review and evaluation of Mini-Bid responses.

Contractors awarded the applicable Region, Lot(s) and Item(s) may respond to a Mini-Bid by submitting a proposal to the Authorized User and fulfilling the Mini-Bid requirements established in the Mini-Bid Project Definition. Only Contractors awarded the applicable Region, Lot(s) and Item(s) included in the Mini-Bid Project Definition are eligible to respond. Please note that Contractors are not required to respond to a Mini-Bid Project Definition.

## 5.4.2 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. Considerations may include, but are not limited to, those listed in the following tables.

Considerations for State Agency Authorized Users:

<b>New York State Division of Budget</b>	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 life of the PV System.
<b>Office of General Services Design &amp; Construction</b>	<p>Inform Design &amp; Construction of their proposed projects; include location and type of Solar project (roof, ground, etc.).</p> <p>Upon final OK to move forward with project, 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.</p> <p>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.”</p>
<b>Office of General Services Real Estate</b>	<p>Inform, for inventory purposes the OGS Real Estate Center of intent to install the PV System on property owned by the state and include the address, and specific proposed location of the panels (i.e., rooftop, or ground mount).</p> <p>Post installation: provide a copy of the approved design plans to Real Property Management to keep on record.</p>

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 life of the PV System.
<b>Local Zoning Enforcement Officer and Planning Board</b>	Authorized Users should review and abide by local zoning and land use laws. 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 life of the PV System.

#### 5.4.3 Development of the Mini-Bid Technical Requirements

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

**a. Project Organization Chart**

As part of the Mini-Bid, the Authorized User may require the Contractor 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 Contractor and State staff roles if identified in the Mini-Bid.

**b. Licensing**

The Authorized User may require Contractors 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 Contractors to provide additional or extended warranties beyond what is required in Section 3, 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 Contractor is bonded.

**d. References**

The Authorized User may require Contractors 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 Contractors 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 Contractors to describe the proposed Operations & Maintenance procedures for the system.

**f. PV System Performance Guarantee Agreement**

As part of the Mini-Bid Project Definition, the Authorized User may require a system performance guarantee agreement with a true-up mechanism.

**5.4.4 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.

**5.4.5 Authorized User Compliance With SDVOB Participation Goals**

OGS has determined that the overall service disabled veteran owned business (“SDVOB”) participation rate on the Contracts resulting from this solicitation shall be equal to or greater than 6% based on the current availability of qualified SDVOBs. These goals have been applied at the Centralized Contract level, as a result State Agency Authorized Users do not need to collect SDVOB Utilization Plans for the Mini-Bids.

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

**5.4.6 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 Project Definition.

**5.4.7 Mini-Bid Contract Number**

For State agencies, a Mini-Bid Contract Number must be issued by OGS to the selected Contractor for each Mini-Bid. 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 example, if a Contractor was assigned a Master Contract Number PS970AA, then the first purchase order executed with the Contractor would be assigned the number PS970AB, the second PS970AC and the third PS970AD and so on.

For State agencies, the agency is responsible for entering the contract number into SFS. Mini-Bid contracts are not subject to OSC pre-audit and are entered as a TNT audit type with a TFR00017 contract profile.

For Authorized Users who are not State agencies, contract numbers will be issued by OGS for tracking purposes only.

#### 5.4.8 Conducting the Mini-Bid

The process for conducting a Mini-Bid by a State Agency Authorized User is as follows:

1. A State Agency Authorized User will review the location of the project to determine what region it is located in. Please note that if a State Agency Authorized User has projects at multiple sites located in several regions, then separate Mini-Bid Project Definitions must be done for each region.
2. A State Agency Authorized User will review the list of lots and items awarded in the applicable region.
3. A State Agency Authorized User will develop a Mini-Bid Project Definition.
4. A State Agency Authorized User will provide the eligible Contractors awarded the applicable region, lot(s) and item(s) a copy of the Mini-Bid Project Definition.
5. Contractors develop a bid and submit it to the State Agency Authorized User by the appropriate date.
6. A State Agency Authorized User will evaluate the bids and award the Mini-Bid Contract using Best Value as specified in the Project Definition. Please note that the Product pricing and markup rates for the Mini-Bid shall be less than or equal to the corresponding Product pricing and markup rates awarded for the Contractor's Centralized Contract.
7. Should a protest be submitted by a Contractor regarding a Mini-Bid award, the protest must be considered and decided by the Authorized User.
8. The State Agency Authorized User will submit a copy of the 'Mini-Bid Project Definition' and awarded bid to the OGS Procurement Services Contract Manager listed on the Contract Award Notification document or contract landing page.
9. The Procurement Services Contract Manager will provide the State Agency Authorized User with a Contract Number for the awarded Contractor upon receipt of the 'Mini-Bid Project Definition' and awarded bid. NOTE: The OGS Contract Manager is NOT reviewing or approving the 'Mini-Bid Project Definition' or awarded bid, but is only issuing a unique contract number for accurate record keeping purposes.
10. A State Agency Authorized User will enter the Mini-Bid contract number into SFS. Mini-Bid contracts are not subject to OSC pre-audit and are entered as a TNT audit type with a TFR00017 contract profile.
11. A State Agency Authorized User will issue encumbrance documents or other written orders that are effective and binding on the Contractor when placed in the mail addressed to the Contractor at the address shown on the signature page.

The process for conducting a Mini-Bid by any other Authorized User is as follows:

1. The Authorized User will review the location of the project to determine what region it is located in. Please note that if the Authorized User has projects at multiple sites located in several regions, then separate Mini-Bid Project Definitions must be done for each region.
2. The Authorized User will review the list of lot(s) and item(s) awarded in the applicable region.
3. The Authorized User will develop a Mini-Bid Project Definition.
4. The Authorized User will provide the eligible Contractors awarded the applicable region, lot(s) and item(s) a copy of the Project Definition.
5. Contractors develop a bid and submit it to the Authorized User by the appropriate date.
6. The Authorized User will evaluate the bids and award the Mini-Bid Contract using Best Value as specified in the Project Definition. Please note that the Product pricing and markup rates for the Mini-Bid shall be less than or equal to the corresponding Product pricing and markup rates awarded for the Contractor's Centralized Contract.
7. Should a protest be submitted by a Contractor regarding a Mini-Bid award, the protest must be considered and decided by the Authorized User.
8. The Authorized User will submit a copy of the 'Mini-Bid Project Definition' and awarded bid to the OGS Procurement Services Contract Manager listed on the Contract Award Notification document or contract landing page.



9. The Procurement Services Contract Manager will provide the Authorized User with a Contract Number for the awarded Contractor upon receipt of the 'Mini-Bid Project Definition' and awarded bid. NOTE: The OGS Contract Manager is NOT reviewing or approving the 'Mini-Bid Project Definition' or awarded bid, but is only issuing a unique contract number for accurate record keeping purposes.
10. The Authorized User will issue encumbrance documents or other written orders in accordance with their organization's procurement rules that are effective and binding on the Contractor when placed in the mail addressed to the Contractor at the address shown on the signature page.

## 5.5 Notification of Award

Tentative award of the Contract shall consist of written notice to that effect by OGS to a selected Bidder, who shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible.

Non-awardees will also be notified that their Bid was not selected for award.

## 6. TERMS AND CONDITIONS

### 6.1 Contract Term and Extensions

The Contract will be in effect for a term of up to five years. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*).

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for one year, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in *Appendix B, Contract Term – Extension*.

The term of a Mini-Bid contract may extend for up to two years beyond the expiration date of the centralized contract in order to complete the work included in the Project Definition.

The Contract term provided for in this section shall extend 6 months beyond its termination date upon the then-existing terms and conditions only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract.

### 6.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract 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 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

### 6.3 Centralized Contract Pricing

#### 6.3.1 Price, Lot 1 - Product

Price includes all customs, tariffs, delivery charges and is F.O.B. destination any point in New York State, for orders, as designated by the ordering agency. (Section 6.6.1 Product Delivery)

In addition, upon mutual agreement, delivery locations may be expanded per the “Extension of Use” clause (see *Section 6.37 Extension of Use*). Contractor’s pricing will be posted to the OGS website.

The Contractor shall hold pricing for one year from the start date of the contract. Contract prices may be changed on the first anniversary of the contract start date and annually thereafter. OGS, at its discretion, may request price changes at any time, if it is in the best interest of the State. It is the State’s intent to publish on the OGS website each Contractor’s price list.

Discounts quoted are to be firm for the entire period of the contract, and no discount reductions will be allowed at any time. Discount increases are permitted at any time (Section 6.5 – Price Updates).

#### 6.3.2 Price, Lot 2 – Installation Services

The Contractor shall provide a percent markup rate designated as the ‘*Not to Exceed Labor Markup Rate*’ (NTELMR) for the performance of Installation Services. The percent markups will be offered over the then-current New York State prevailing wage rates plus supplemental benefits in the county in which the work is performed for Electricians and Laborers, and the prevailing wage rates and supplemental benefits paid will be the current rates listed for the date the work is performed in the county in which the work is performed.

The Not to Exceed Labor Markup Rate shall include all costs associated with Installation Services including but not limited to the preparation of responses to Mini-Bids, design work, system construction, ancillary construction costs, system commissioning and administrative work, and no additional compensation will be allowed in addition to the Labor Markup Rate bid or for the preparation of Mini-Bid responses which are not awarded.

#### 6.4 Mini-Bid Pricing

In response to Mini-Bids the Contractor shall provide detailed pricing for the components used in the PV System (Lot 1 - Product), the costs for Installation Services (Lot 2 – Installation Services) and any pass-through costs.

##### **Lot 1 - Product**

Pricing for components (Lot 1 – Product) shall include a detailed breakdown of each component used in the PV System listing the type of component, manufacturer, manufacturer’s model number, quantity, Mini-Bid Price, NYS Contract Price and Extended Mini-Bid Price. All Products offered as part of a Mini-Bid must be on the Contractor’s awarded price list for Lot 1, and the Mini-Bid Price shall not exceed the awarded NYS Contract Price for that component although it may be lower.

##### **Lot 2 – Installation Services**

Pricing for Installation Services (Lot 2 – Installation Services) shall include a total Not to Exceed Price for Installation Services and a breakdown of the labor costs for Electricians and Laborers that will include the Mini-Bid Labor Markup Rate, Hourly Labor Rate, quantity, number of hours and cost subtotals. For Installation Services, the percent markups will be offered over the then-current New York State prevailing wage rates plus supplemental benefits in the county in which the work is performed for Electricians and Laborers, and the prevailing wage rates and supplemental benefits paid will be the current rates listed for the date the work is performed in the county in which the work is performed. The Labor Markup Rate shall include all costs listed in Section 3.2 Lot 2 -Installation Services as well as all other costs such as salary payments in excess of the prevailing wage rate, benefits, overhead, profit, training, recruitment, etc.; and no additional compensation will be allowed in addition to the Labor Markup Rate bid. Mini-Bid Labor Markup Rates shall be less than or equal to the Contractor’s awarded ‘Not to Exceed Labor Markup Rates’ for Lot 2.

##### **Pass-Through Costs**

The pricing for pass-through costs shall include a detailed breakdown of each cost including a description of the cost, unit prices and extended costs. To be eligible for reimbursement all pass-through costs must be fully

explained and justified in the Mini-Bid response and approved by the Authorized User. Failure to list pass through costs may result in the Mini-Bid response being rejected and/or the cost being disallowed (Section 3.2 Lot 2 - Installation Services) for a list of eligible pass-through costs.

## 6.5 Additional Discounts

A Bidder is encouraged to offer its best possible pricing through the Bid pricing in sheet “*Financial Offer*” in Attachment 1 – *Pricing*.

### Deeper Discount

A Deeper Discount by Bidder within a product category may be offered and is encouraged. Bidder is to complete “*Deeper Discount*” in Attachment 1 – *Pricing*.

### Volume Discounts

Bidder shall state the volume discount(s) offered in the space provided on the “Questions” sheet in Attachment 5 – *Solicitation Questions*. Bidder may offer volume discounts in response to a Mini-Bid using the following thresholds:

- \$500.00 - \$1,000.00
- \$1,000.01 - \$2,500.00
- \$2,500.01 - \$5,000.00
- \$5,000.01 and above

### Prompt Payment Discounts

Bidder shall state the prompt payment discount(s) offered in the space provided on the “Standard Form” sheet in Attachment 5 – *Solicitation Questions*. Bidder may offer prompt payment discounts in response to a Mini-Bid.

### NYS Procurement Card Discount

Bidder shall state the discount offered when using the NYS Procurement Card in the space provided on the “Standard Form” sheet in Attachment 5 – *Solicitation Questions*. Bidder may offer Procurement Card discounts in response to a Mini-Bid.

## 6.6 Price Updates

Price updates shall be made in accordance with the following sections.

### 6.6.1 Lot 1 Product - Price Updates

Contractors may update their pricelists as follows:

Commencing with the first anniversary date of the Bid Opening, and annually thereafter, the Contractor may update the pricelist to reflect Contractor price changes and the addition/deletion of Lot 1 Products.

Requests for price adjustments and new items shall be submitted 30 days prior to the anniversary date of the Bid Opening and annually thereafter. Price updates shall be submitted no later than 30 days after the anniversary date of the bid opening unless otherwise approved by OGS.

The Contractor shall provide OGS with one electronic copy of the updated pricing. No Price Updates will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or any other documentation that is required under the resulting contract.

Contractors shall be permitted to reduce their pricing any time during the contract term.

The discount offered on any new Products added to pricelists shall be no lower than the minimum established product category discount. Contractors shall submit their updated pricelist to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves the right to request copies of existing contracts or price lists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

All approved pricelist updates shall apply prospectively upon approval by OGS. All percentage discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract.

#### 6.6.2 Pricelist Format

Contractor is required to submit Contract pricelist updates electronically in an unprotected spreadsheet, Microsoft Excel format (Excel 2007 or newer), either on a CD or thumb drive or via email to the OGS Procurement Services contract administrator. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets):

- A. Price increases;
- B. Price decreases;
- C. Products being added; and
- D. Products being deleted.

#### 6.6.3 Contractor's Submission of Contract Updates

In connection with any Contract pricelist update, OGS reserves the right to:

- A. Request additional information;
- B. Reject Contract updates;
- C. Remove Products from Contracts;
- D. Remove Products from Contract updates;
- E. Request additional discounts for new or existing Products; and
- F. Request justification for any price increases.

#### 6.6.4 Lot 2 Installation Services

No increases to the Not to Exceed Labor Markup Rates will be allowed for the duration of the contract. However, the Contractor may lower labor markup rates at any time by notifying OGS and/or the Authorized User.

#### 6.6.5 Cover Letters

All Contract pricelist updates shall be accompanied by a cover letter describing the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA Schedule or WSCA Contract pricing update, to add/delete Products, etc., subject to any applicable caps).

#### 6.6.6 Price Structure

- A. If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, *Savings/Force Majeure*.
- B. Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price

structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 business days written notice mailed to the Contractor.

#### 6.7 NYS Department of Labor Prevailing Wage Rates

Work being done under a resulting Mini-Bid Contract may be subject to the prevailing wage rate provisions of the New York State Labor Law. See "Prevailing Wage Rates – Public Works and Building Services Contracts" in Appendix B, Clause 10, OGS General Specifications. 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 proposal.

For bidding purposes, the applicable Prevailing Wage Rate Schedule for the Solicitation is PRC # **2017013213**.

**IMPORTANT NOTE: Authorized Users MUST obtain a separate PRC# for each project under this Contract where prevailing wage rates apply. The PRC# provided in the Solicitation is for information and bidding purposes only.**

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

For Prevailing Wage Updates, use the following DOL link:  
<https://applications.labor.ny.gov/wpp/publicViewPWChanges.do?method=showlt>

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

#### 6.8 Worker Notification

Labor Law§ 220(3-a)(a)(ii) requires Contractors and subcontractors to provide written notice to all laborers, workers or mechanics of the prevailing wage rate for their particular job classification on each pay stub\*. It also requires Contractors and subcontractors to post a notice at the beginning of the performance of every public work Contract on each job site that includes the telephone number and address for the Department of Labor and a statement informing laborers, workers or mechanics of their right to contact the Department of Labor if he/she is not receiving the proper prevailing rate of wages and/or supplements for his/her particular job classification. The required notification will be provided with each wage schedule, may be downloaded from [www.labor.state.ny.us](http://www.labor.state.ny.us) or made available upon request by contacting the Bureau of Public Work at 518-457-5589.

\* In the event that the required information will not fit on the pay stub, an accompanying sheet or attachment of the information will suffice.

#### 6.9 OSHA 10-Hour Construction Safety and Health Course

Labor Law§ 220-h requires that on all public work contracts of at least \$250,000, all laborers, workers, and mechanics working on site be certified as having successfully completed the OSHA 10-hour construction safety and health course. It further requires that the advertised bids and contracts for every public work contract of at least \$250,000 contain a provision of the requirement AND only applies to workers on a public work project that are required under Article 8 to receive the prevailing wage.

Further information may be found at: [www.labor.state.ny.us/workerprotection/publicwork/PWContents.shtm](http://www.labor.state.ny.us/workerprotection/publicwork/PWContents.shtm)

#### 6.10 Living Wage

An Authorized User subject to a local law establishing a "living wage", such as Section 6-109 of the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies with such local law.

### 6.11 Ordering

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders*. Authorized Users may submit orders over the phone, and may submit orders electronically via web-based ordering, email, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

### 6.12 Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*.

- A. The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice: Contractor Name
- B. Contractor Billing Address
- C. Contractor Federal ID Number
- D. NYS Vendor ID Number
- E. Account Number
- F. NYS Contract Number
- G. Name of Authorized User indicated on the Purchase Order
- H. NYS Agency Unit ID (if applicable)
- I. Authorized User's Purchase Order Number
- J. Order Date
- K. Invoice Date
- L. Invoice Number
- M. Invoice Amount
- N. Product Descriptions
- O. Unit Price
- P. Quantity
- Q. Unit of Measure
- R. Dates of Service (if applicable)

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/content/vendor-information>.

### 6.13 Product Delivery

Delivery of all Contract Products shall be made in accordance with Appendix B, *Product Delivery and Shipping/Receipt of Product*.

### 6.14 Product Returns and Exchanges

In addition to the provisions of Appendix B, *Title and Risk of Loss, Product Substitution, and Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within 10 business days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund, is made in such fashion, the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

#### 6.15 Unanticipated Excessive Purchase

The State reserves the right to negotiate lower pricing, or to advertise for Bids, for any unanticipated excessive purchase.

#### 6.16 Contract Administration

The Contractor shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Contractor shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in Attachment 5 – *Bidder Information Questionnaire*. Contractor must notify OGS within five business days if it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via email to the OGS Contract Management Specialist.

#### 6.17 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>

There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

#### 6.18 Accessibility of Web-Based Information and Applications Policy

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, Resellers, Subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the

stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities. The following language is incorporated into any Contract resulting from this Solicitation:

Any web-based information and applications development, or programming delivered pursuant to the Contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005. Quality assurance testing may be conducted by the State and the results of such testing, if performed, must be satisfactory to the State before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.

#### 6.19 Americans with Disabilities Act (ADA)

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidder is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not mandatory for Bidder to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

#### 6.20 Insurance

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements*.

#### 6.21 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized Resellers, dealers and distributors, if any, no later than 30 days after the close of each calendar quarter. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the quarterly report.

Contractors shall specify if any authorized Resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBES), small business enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

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

The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

#### 6.22 Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

##### 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 group 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. Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.
  - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.

2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy.

B. Form EEO 100 - Staffing Plan.

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO\_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
2. Separate forms shall be completed by Contractor and any subcontractor.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

D. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. Contract Goals

- 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: <https://www.ogs.ny.gov/MWBE/Forms.asp>

## 6.23 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

### I. Contract Goals

- A. OGS hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: [https://www.ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](https://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf). Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts within the OGS Division of Service-Disabled Veterans’ Business Development (the “Division”). Additionally, following Contract execution, Contractor is encouraged to contact the Division at 518-474-2015 to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

### II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows 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 SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.
- C. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven 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/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. 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 or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB 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 SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the 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-responsibility.

### III. Request For Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts in the Division for guidance
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses II (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 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB 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 SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) 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 business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to [kelly.rothkopf@ogs.ny.gov](mailto:kelly.rothkopf@ogs.ny.gov).

### IV. Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- A. Copies of solicitations to SDVOBs and any responses thereto.
- B. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- C. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified SDVOBs whom OGS determined were capable of fulfilling the SDVOB goals set in the Contract.
- D. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- E. Other information deemed relevant to the waiver request.
- F. Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available on the OGS website and should be completed by the Contractor and submitted to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to:

[kelly.rothkopf@ogs.ny.gov](mailto:kelly.rothkopf@ogs.ny.gov)

### VI. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

ALL FORMS ARE AVAILABLE UNDER AT:

[https://www.ogs.ny.gov/Core/SDVOBA.asp?\\_sm\\_au\\_=iVVjF227tLtF4JJH](https://www.ogs.ny.gov/Core/SDVOBA.asp?_sm_au_=iVVjF227tLtF4JJH)

#### 6.24 Use of Recycled or Remanufactured Materials

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Solicitation. Warranties on refurbished or remanufactured components or Products must be identical to the Manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

#### 6.25 Bulk Delivery and Alternate Packaging

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A Contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the Product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

#### 6.26 Surplus/Take-Back/Recycling

A State Agency is reminded of its obligation to comply with the NY State Finance Law § 167, Transfer and Disposal of Personal Property, and § 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.

If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.

The NYS Department of Environmental Conservation ("DEC") Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires Manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a Manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at:

<http://www.dec.ny.gov/chemical/65583.html>

If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology ("NIST") Guidelines for Media Sanitation as found in NIST Special Publication 800-88.



#### 6.27 Environmental Attributes and NYS Executive Order Number 4

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <https://www.ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

#### 6.28 Consumer Products Containing Mercury

The Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any Products containing elemental mercury under this Contract.

#### 6.29 Diesel Emission Reduction Act

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the “Law”), it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology (“BART”) and ultra-low sulfur diesel fuel (“ULSD”). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by Contractors “on behalf of” State Agencies and public authorities and require certain reports from Contractors. All heavy-duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy-duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

#### 6.30 Overlapping Contract Products

Products available under the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost-effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

#### 6.31 NYS 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 encourages each Bidder to file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the following link at the Office of the State Comptroller (OSC) website: [http://osc.state.ny.us/vendrep/info\\_vrsystem.htm](http://osc.state.ny.us/vendrep/info_vrsystem.htm).

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.

#### 6.32 NYS Tax Law Section 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.

### 6.33 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*. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the *Price* clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<https://www.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

### 6.34 Extension of Use

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in any resultant Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

### 6.35 Resellers

Contractors may utilize Resellers in accordance with the following requirements:

#### A. Definitions

Reseller is a company or individual (merchant) that purchases goods or services with the intention of selling them rather than consuming or using them. Also known as Value Added Reseller (VAR) or channel partner. Resellers must be eligible to quote statewide, independently and lower than Manufacturer (Contract) pricing for procurements under resulting Contracts. Reseller must also be able to accept orders, invoice and receive payment for Products.

#### B. Conditions of Reseller Participation

Resellers must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Resellers and their participation under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that:

- I. such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;

- II. all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
- III. those qualifying criteria met by the Reseller must be identified in the Bidder Information Questionnaire at the time that Reseller approval is requested; and,
- IV. immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order.

#### C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in the Bidder Information Questionnaire. Contractor shall also specify whether orders must be placed directly with Contractor, or may be placed directly with designated Resellers.

#### D. Responsibility for Reporting/Performance

Contractor shall be fully liable for a Reseller's performance and compliance with all Contract terms and conditions. Product purchased through a Reseller must be reported by Contractor in the required quarterly sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor's sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User's Contract activity with the Reseller.

#### E. Applicability of Contract Terms

Product ordered directly through Resellers shall be limited to Products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

### 6.36 New Accounts

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references.

### 6.37 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

### 6.38 Traffic Infractions

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

### 6.39 Instruction Manuals

At all times, Contractor shall maintain on its website electronic copies of the Manufacturer's complete product documentation which may include manuals, specifications and warranties. Contractor must provide a complete documentation for the Product and for each component supplied, upon an Authorized User request.

### 6.40 Embedded Software/Firmware; Updates

Contractor shall provide at no charge all updates to any embedded software or firmware in the Product offered to customers generally.