



**Office of General Services
Procurement Services**

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | customer.services@ogs.ny.gov | 518-474-6717

Solicitation (Revised September 18, 2019)

BID OPENING DATE: 9/25/19 TIME: 11:00 A.M. EST SOLICITATION NUMBER: 23162		TITLE: GROUP 05302 – COMMUNITY SOLAR (Statewide) Classification Codes: 26	
CONTRACT PERIOD: Five years with a one (1) year renewal option.			
DESIGNATED CONTACTS: 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.			
Todd Kayser Contract Management Specialist Telephone No. (518) 473-6469 E-mail address: todd.kayser@ogs.ny.gov		Todd Gardner Team Leader Telephone No. (518) 474-3540 E-mail address: todd.gardner@ogs.ny.gov	
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Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>		NYS Vendor Identification Number: <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) *(check all that apply)*

<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
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If you are not bidding, place an "x" in the box and return this page only.

WE ARE NOT BIDDING AT THIS TIME BECAUSE:

FOR PROCUREMENT SERVICES USE ONLY

LITERATURE <input type="checkbox"/>	LETTER <input type="checkbox"/>	USB FLASH DRIVE <input type="checkbox"/>	# of Binders/Packages: _____
PURC. MEMO <input type="checkbox"/>	OTHER <input type="checkbox"/>	Documented by: _____	

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 120 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/acpl> .

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 being issued by the New York State Office of General Services, Procurement Services (OGS). OGS is a New York State Agency authorized by law to establish Centralized Contracts for use by NYS Agencies and other Authorized Users, as that term is defined by State Finance Law Section 163(1)(k).

The purpose of this Solicitation is to establish statewide Centralized Contracts for the use of Authorized Users to purchase subscriptions to Community Solar projects for smaller capacities where it may be uneconomical or unfeasible to develop on-site solar generation.

The Centralized Contract includes a two-tiered procurement process. The first tier involves the prequalification of Contractors for regional pricing that is bid in response to this Solicitation, and the second tier involves the award of a Request for Quotes (RFQ) for pricing for a specific Community Solar project. Contractors do not need to identify specific Community Solar projects until the RFQ process (second tier) except to meet minimum qualifications. The RFQ process maximizes flexibility and competition. After completion of the second tier RFQ process, AUs may enter into subscriptions in order to receive either discounted monetary or volumetric credits on their utility bills.

This Solicitation including its appendices and attachments 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. Bidders are strongly encouraged to read the language of this Solicitation including its appendices and attachments thoroughly and to precisely follow the instructions included in the Solicitation and all appendices and attachments.

1.2 Scope

The Contracts resulting from this Solicitation will provide Authorized Users who have a residential service classification (typically referred to as SC-1 residential) or non-residential, non-demand service classification (typically referred to as SC-2 non-residential, non-demand) the ability to subscribe for smaller capacities to a Community Solar project in New York State in order to receive discounted credits on the Authorized User's utility bill. The purchase of subscriptions as a host or an anchor tenant or the development of a community solar project that would require the payment of prevailing wage rates is outside the scope of this contract. The Contracts will offer two types of subscriptions: Lot 1 (VDER Community Solar Projects) allows the Authorized User to purchase discounted monetary credits that they will receive on their utility bill and Lot 2 (NEM Community Solar Projects) allows the Authorized User to purchase a volumetric credit that they will receive on their utility bill.

It is OGS's intent to award Centralized Contracts to Bidders offering Community Solar project subscriptions by Item for each Lot and Region, to all responsive and responsible Bidders meeting the minimum requirements established in the Solicitation who pass a reference check and offer reasonable pricing as determined by OGS. (Please refer to Section 5.3 – *Reasonableness of Price*). The Centralized Contracts will be non-competitive multiple award Contracts which will qualify awarded Contractors to be eligible to submit responses to Requests for Quotes (RFQs) issued at a later date by Authorized Users.

1.3 Estimated Quantities

Any 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 rate. There is no current Centralized Contract for Community Solar. The potential dollar value of the award for this Solicitation, based on a survey of potential Authorized Users, is estimated to be approximately \$9 million, per year for a total estimated value of \$45 million over five years. 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. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

Numerous factors could cause the actual dollar value of the awards resulting from this Solicitation to vary substantially from the estimate above. Such factors include, but are not limited to, the following:

1. Such Contracts may be non-exclusive Contracts.
2. 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.
3. The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the Contract period.
4. 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.
5. Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
6. 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 Lots

This Solicitation has two Lots. Each Lot has a different valuation method for crediting Authorized Users for their subscriptions. Lot 1 is for subscriptions to Value of Distributed Energy Resources (VDER) Community Solar Projects which utilize the Value of Distributed Energy Resources (VDER) method for compensating members, and Lot 2 is for subscriptions to Net Energy Metered (NEM) Community Solar Projects which utilize the Net Energy Metering method for compensating members for their subscriptions. Please refer to Section 1.11 – *Definitions*.

For both Lots there is a two-tier Bidding process. The first tier, for the Centralized Contract, will be prices that Bidders will Bid to qualify for award of a Centralized Contract. The second tier of bidding comes after the Centralized Contracts have been awarded to Contractors and involves prices bid in response to RFQs issued by Authorized Users. Only bidders that are awarded tier 1 Centralized Contracts are able to respond to tier 2 Request for Quotes.

Section 1.4.1 Lot 1 - Subscriptions to VDER Community Solar Projects

Lot 1 Pricing

The first-tier subscription pricing for Lot 1, VDER Community Solar Projects is the 'VDER Discount Rate for the Centralized Contract' (VDER-DR-CC) which is submitted during the response to this Solicitation. Lot 1 contains the following items:

Item 1, Residential, % Discount (typically referred to as SC-1) – The pricing for Item 1 is a percent discount (VDER-DR-CC) for Authorized Users who have a residential service classification.

Item 2, Non-residential, non-demand, % Discount (typically referred to as SC-2) – The pricing for Item 2 is a percent discount (VDER-DR-CC) for Authorized Users who have a non-residential, non-demand service classification.

VDER-DR-CC is the minimum percent discount to the monetary credit applied to the subscriber's utility bill for the electricity generated by the solar farm. The second-tier pricing is the 'VDER Discount Rate for the Request for Quote' (VDER-DR-RFQ) which is submitted during responses to a Request for Quote issued by Authorized Users in the future. The VDER-DR-RFQ for the Request for Quote shall not be less than the VDER-DR-CC for the Centralized Contract.

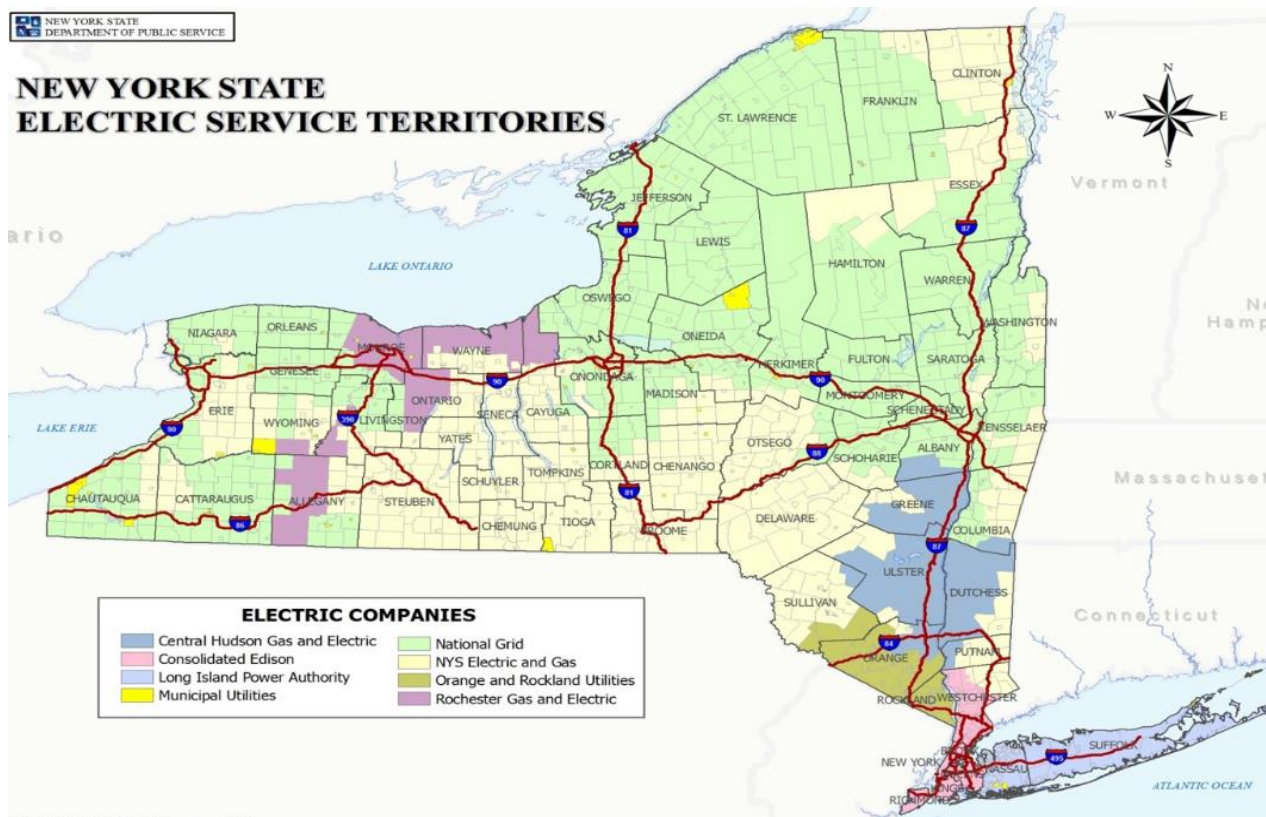
Lot 1 Regions

Lot 1 will be awarded according to the regions shown in Table 1, which are based on utility service areas.

Table 1: Lot 1 Regions

Region Number	Utility Service Area
1	National Grid
2	New York State Electric and Gas
3	Central Hudson Gas & Electric
4	Rochester Gas and Electric
5	Con Edison
6	PSEG Long Island
7	Orange and Rockland

Figure 1: New York State Electric Utility Service area map (provided for reference).



Section 1.4.2 Lot 2 – Subscriptions to NEM Community Solar Projects

Lot 2 Pricing

The first-tier subscription pricing for NEM Community Solar Projects is a ‘NEM Subscription Rate for the Centralized Contract’ (NEM-SR-CC) and a NEM Discount Rate for the Centralized Contract (NEM-DR-CC) which is submitted during the response to this Solicitation. Lot 2 contains the following items:

- Item 1, Residential, \$ per kWh (typically referred to as SC-1) – The pricing for Item 1 is a subscription rate (NEM-SR-CC) in dollars per kWh for for Authorized Users who have a residential service classification.

Item 2, Residential, % Discount (typically referred to as SC-1) – The pricing for Item 2 is a percent discount (NEM-DR-CC) for Authorized Users who have a residential service classification.

NEM-SR-CC is the maximum subscription rate in dollars per kWh for the electricity generated by the subscription to the solar farm, and NEM-DR-CC is the minimum percent discount to the monetary credit applied to the subscriber's utility bill for the electricity generated by the subscription to the solar farm.

The second-tier pricing is a 'NEM Subscription Rate for the Request for Quote' (NEM-SR-RFQ) and a 'NEM Discount Rate for the Request for Quote' (NEM-DR-RFQ) which is bid in response to a Request for Quote issued by Authorized Users in the future.

The NEM-SR-RFQ (\$/kWh) shall not be greater than the NEM-SR-CC.

The NEM-DR-RFQ (% Discount) shall not be less than the NEM-DR-CC.

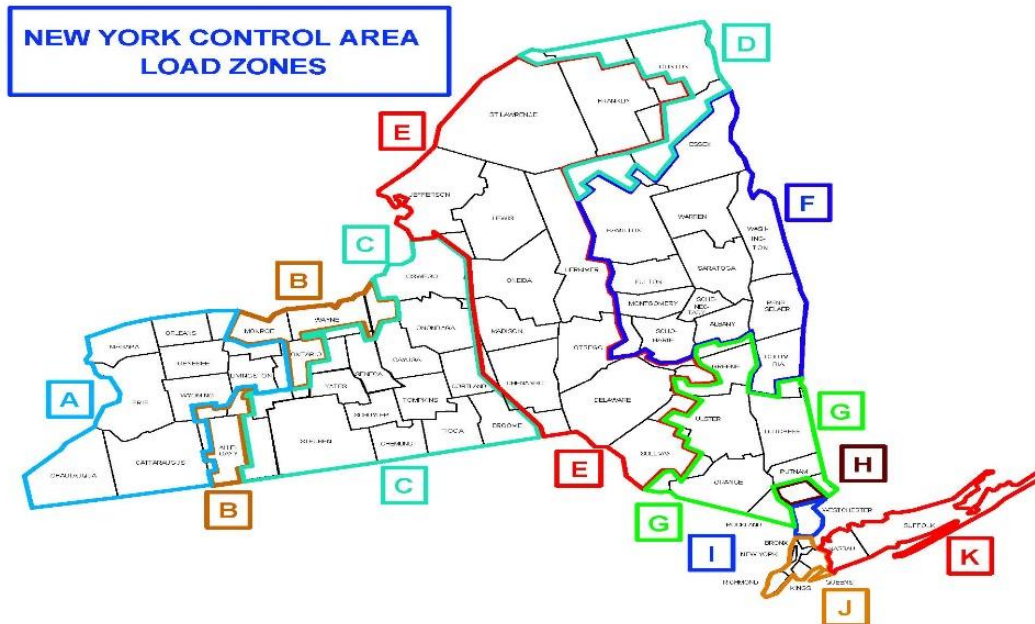
Lot 2 Regions

Lot 2 will be awarded according to the regions shown in Table 2, which are based on utility service areas within each Independent System Operator (ISO) Zone.

Table 2: Lot 2 Regions

Lot 2 Regions	ISO Zone	ISO Zone Name	Utility Service Area
1	A	West	National Grid
2	A	West	New York State Electric and Gas
3	B	Genesee	National Grid
4	B	Genesee	Rochester Gas and Electric
5	C	Central	National Grid
6	C	Central	New York State Electric and Gas
7	D	North	National Grid
8	D	North	New York State Electric and Gas
9	E	Mohawk Valley	Central Hudson Gas & Electric
10	E	Mohawk Valley	National Grid
11	E	Mohawk Valley	New York State Electric and Gas
12	F	Capital	National Grid
13	F	Capital	New York State Electric and Gas
14	G	Hudson Valley	Central Hudson Gas & Electric
15	G	Hudson Valley	New York State Electric and Gas
16	G	Hudson Valley	Orange and Rockland
17	H	Millwood	Central Hudson Gas & Electric
18	H	Millwood	Con Edison
19	I	Dunwoodie	Con Edison
20	J	New York City	Con Edison
21	K	Long Island	PSEG Long Island

Figure 2: New York control Area Load Zones (provided for reference only)



1.5 Key Events/Dates

EVENT	DATE	TIME
Solicitation Release	8/21/2019	N/A
Pre-bid Webinar	8/28/2019	11:00 AM ET
Closing Date for Bidder Questions	9/4/2019	3:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	9/11/2019	N/A
Bid Opening / Due date for Bids	9/25/2019	11:00 AM ET

1.6 Pre-Bid Webinar

A Pre-Bid Webinar will be held at the time and date indicated in Section 1.5 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 1.7 *WebEx Instructions* on or before the “Registration Deadline for Pre-Bid Webinar” date indicated in Section 1.5 *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.

1.7 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.

To register for the webinar, the Bidder must:

1. Go to: <https://meetny.webex.com/meetny/j.php?RGID=r4abe223b3ef529a2be6442f817942757>
2. Follow the instructions to register for the meeting.

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.

1.8 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 todd.kayser@ogs.ny.gov by the date and time indicated in the *Key Events/Dates* section. Questions submitted after the deadline indicated may not be answered. A Bidder is 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. Your company must select the “opt-in” option within the Contract Reporter ad to receive notification updates of this Solicitation.

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 4.4 – *Bid Deviations*, herein for additional information.

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 e-mail 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 e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents.

Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information may result in your 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, are identified on the first page of this Solicitation. 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 State Finance Law §139-j and §139-k. 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.

"Authorized User(s)" As defined in Appendix B.

"Bidder" shall refer to any business entity who submits a response to this Solicitation. At the time that the Bidder executes a Contract with the State for their services a Bidder shall become a "Contractor." See also "Contractor."

"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.

"Business Day" shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

"Community Distributed Generation" Also known as Community Solar. A solar project that allows multiple customers to utilize a single solar generation facility in accordance with guidance and rules established by the New York State Public Service Commission (PSC).

"Contractor" shall refer to a responsive and responsible Bidder who is working under an executed Contract with New York State.

"Kilowatt (kW)" A unit of electrical power equal to 1,000 watts.

"Kilowatt-Hour (kWh)" One thousand watts acting over a period of one hour. The kWh is a unit of energy.

"May" denotes the permissive in a Contract clause or specification. "May" does not mean "required." Also see "Shall" and "Must."

"Must" denotes the imperative in a Contract clause or specification. "Must" is synonymous with "required." Also see "Shall" and "May."

"n/a" is a common abbreviation for *not applicable* or *not available*, used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.

“**Net Energy Metering (NEM)**” means the use of a net energy meter to measure the net amount of electricity supplied by an electric corporation and provided to the corporation by a customer-generator and the crediting of the customer-generator’s utility bill (when production exceeds use) using a volumetric credit, at the same rate per kWh applicable to service provided to other customers in the same service class.

“**NEM Community Solar Project**” is a Community Solar project that utilizes Net Energy Metering to compensate the Authorized User for the electricity generated by the project.

“**NEM Discount Rate for the Centralized Contract (NEM-DR-CC)**” is the minimum percent discount to the monetary credit applied to the subscriber’s utility bill for the electricity generated by the subscription to the solar farm. NEM-DR-CC includes all costs associated with the implementation of the Community Solar program including, but not limited to financing, designing, installing, owning, operating, and maintaining solar photovoltaic systems (“PV Systems”) through the life of the agreement. The NEM-DR-RFQ submitted by the Contractor in response to Request for Quotes (RFQ) shall not be less than the awarded NEM-DR-CC for the Centralized Contract.

“**NEM Discount Rate for the Request for Quote (NEM-DR-RFQ)**” is the percent discount to the monetary credit applied to the subscriber’s utility bill for the electricity generated by the subscription to the solar farm that is Bid in response to a Request for Quote. The NEM-DR-RFQ for the Request for Quote shall not be less than the NEM-DR-CC for the Centralized Contract.

“**NEM Subscription Rate for the Centralized Contract (NEM-SR-CC)**” is the maximum subscription rate in dollars per kWh for the electricity generated by the solar farm. The subscription rate includes all costs associated with the implementation of the Community Solar program including, but not limited to financing, designing, installing, owning, operating, and maintaining solar photovoltaic systems (“PV Systems”) through the life of the agreement. The ‘NEM Subscription Rate for the Request for Quotes’ submitted by the Contractor in response to a Request for Quote (RFQ) shall not be greater than the ‘NEM Subscription Rate for the Centralized Contract’.

“**NEM Subscription Rate for the Request for Quote (NEM-SR-RFQ)**” is the subscription rate in dollars per kWh that is Bid in response to a Request for Quote for the electricity generated by the solar farm. The ‘NEM Subscription Rate for the Request for Quote’ shall not be greater than the ‘NEM Subscription Rate for the Centralized Contract’.

“**NYS Holidays**” refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

“**NYS Vendor ID**” is a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

“**Preferred Source Products**” shall refer to those Products that have been approved in accordance with New York 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 (“NYSPRO”) and Procurement Services Group (“PSG”).

“**Request for Quote**” shall refer to the document issued by the Authorized User and used to solicit price quotations for specific Lots and Regions from Contractors.

“**Shall**” denotes the imperative in a Contract clause or specification. “Shall” is synonymous with “required.” Also see “Must” and “May.”

“**Subscription Agreement**” refers to any written document, contract, or service agreement, and any attachments or schedules thereto, required by the Contractor to initiate the procurement of Community Solar credits.

“**Value of Distributed Energy Resources (VDER)** means the use of a net energy meter to measure the net amount of electricity supplied by an electric corporation and provided to the corporation by a customer-generator and the crediting of the customer-generator’s utility bill (when production exceeds use) with a monetary credit calculated using the value stack established by the New York State Public Service Commission.

“**VDER Community Solar Project**” is a Community Solar project that utilizes VDER to compensate the Authorized User for the electricity generated by the project.

“**VDER Discount Rate for the Centralized Contract (VDER-DR-CC)**” is the minimum percent discount to the monetary credit applied to the subscriber’s utility bill for the electricity generated by the solar farm. VDER-DR-CC includes all costs associated with the implementation of the Community Solar program including, but not limited to financing, designing, installing, owning, operating, and maintaining solar photovoltaic systems (“PV Systems”) through the life of the agreement. The VDER-DR-RFQ submitted by the Contractor in response to Request for Quotes (RFQ) shall not be less than the awarded VDER-DR-CC for the Centralized Contract.

“**VDER Discount Rate for the Request for Quote (VDER-DR-RFQ)**” is the percent discount to the monetary credit applied to the subscriber’s utility bill for the electricity generated by the solar farm that is Bid in response to a Request for Quote. The VDER-DR-RFQ for the Request for Quote shall not be less than the VDER-DR-CC for the Centralized Contract.

1.12 Appendix A

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

1.13 Appendix B

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

1.14 Appendix C

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

1.15 Attachments

Attachments 1-13, attached hereto, are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

1.16 Conflict of Terms

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

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Solicitation (**Revised September 11, 2019**);
3. Appendix B, General Specifications; and
4. All other appendices and attachments to the Solicitation.

2. BIDDER QUALIFICATIONS

A Bidder shall meet the following qualifications set forth below. Failure to meet any of the qualifications in Section 2, *Bidder Qualifications*, in whole or in part, may result in the rejection of the Bid and the Bidder being found non-responsive at the discretion of the State.

2.1 Minimum 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. Bidder will submit this information using Attachment 9 – *Minimum Qualification Submittal Form*.

A Bidder shall meet the following qualifications:

Note: If Bidder is relying on operations of a parent company, subsidiary, predecessor entity, or other entity for purposes of satisfying any of the minimum qualifications, Bidder is required to provide a full explanation describing such relationship and how it satisfies this requirement. OGS will determine whether such other entity experience satisfies this requirement, and reserves the right to ask for additional information or require a contract performance guarantee and/or other assurances from such other entity(ies) or the Bidder.

1. The Bidder must be either:
 - a. The owner of Community Solar project(s), or
 - b. An entity authorized by the owner to manage and sell subscriptions for Community Solar project(s).
2. The Bidder must list one Community Solar Project in Attachment 9 – *Minimum Qualifications* submittal form that:
 - a. It either owns or is authorized by the owner to manage and sell subscriptions for. If the Bidder is authorized by the owner to manage and sell subscriptions, then the Bidder must submit Attachment 11 – Owners Authorization form with their response to this Solicitation; and
 - b. Is an approved NY-SUN project, with the exception of regions that include Long Island (Lot 1, Region 6 and Lot 2, Region 21); and
 - c. Is accepting subscribers at the time of the Bid opening date.
3. The Bidder must have maintained an organization, in continuous operation, for a minimum of two (2) years immediately preceding the Bid opening date.
4. The Bidder must provide a list of ten (10) references for residential, governmental or commercial utility accounts that were managed as part of a Community Distributed Generation or Community Solar project.

3. SPECIFICATIONS

This Section describes the requirements for the Community Solar projects Bid in response to **Request for Quotes**.

1. The Bidder's subscription agreement(s):
 - a. Must allow for the cancellation of subscriptions without any additional charges, financial penalties, or requirements to provide an eligible replacement customer, provided that 90 days written notice is given by the Authorized User, and
 - b. Must not require up-front costs to subscribe, and
 - c. Must allow Authorized Users to modify their subscription capacity on an annual basis, and
 - d. Must provide a monthly statement to the Authorized User showing the amount of electricity generated by their subscription, the credit applied to their utility bill (either monetary or volumetric) and the cost of the subscription. This requirement may be modified to use a different time frame (quarterly, etc) with the agreement of the Authorized User, and

- e. Must provide a true-up or equivalent mechanism at least annually for ensuring that the AU pays only for the actual credits or amount of electricity generated by the subscription.
2. The Bidder shall be responsible for resolving all Authorized User complaints. In addition, the Bidder is fully responsible for all warranties, maintenance, and production guarantees for the entire system for the entire term of the subscription.
3. The Bidder shall provide those agreements or other documents necessary to facilitate subscription to the Community Solar projects being Bid to the Authorized User with the Bidder's response to the Request for Quote.
4. The Bidder will respond to Request for Quotes only with Community Solar projects approved by NY-SUN, with the exception of regions that include Long Island (Lot 1, Region 6 and Lot 2, Region 21). Should the NY-SUN program be replaced or discontinued during the course of this contract, OGS reserves the right to substitute an equivalent replacement program for this requirement.

4. BID SUBMISSION

4.1 Owner's Authorization Form

A Bidder that is not the owner of the Community Solar projects they are selling subscriptions for must submit an 'Owner's Authorization Form' (Attachment 11) as part of the Minimum Qualifications (See Section 2.1 of the Solicitation) and in response to RFQs issued by Authorized Users.

4.2 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 at any time during the term of the resulting Contract.

4.3 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. (The Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or TIN/FEIN number.)

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 https://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 e-mail 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

4.4 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Section 1.8 – *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.

4.5 Contract Document

Portions of a successful Bidder's Bid and this Solicitation shall be incorporated into a written Contract which will be executed by the successful Bidder and OGS. The Contract shall be comprised of the following documents. In the case of a conflict or inconsistency among such documents, such conflict or inconsistency shall be resolved by giving precedence to the documents in the following order:

1. Appendix A – Standard Clauses for New York State Contracts;
2. The Base Contract;
3. Appendix B – General Specifications;
4. All other appendices and attachments to the Base Contract as determined by OGS.

4.6 Subscription Agreement

The Contract awarded as a result of this Solicitation shall govern all transactions and Subscription Agreements entered into by Authorized Users. In the event that there is a provision in an Authorized User's Subscription Agreement which conflicts with, or is less favorable to the Authorized User than a provision in the Contract, the provision in the Contract shall prevail.

For the avoidance of doubt, indemnification of the Contractor by Authorized Users is prohibited under the Contract.

All Subscription Agreements shall be subject to the provisions of the Contract, and Contractor shall cause a rider in the form of Attachment 13 to be attached to all Subscription Agreements signed by Authorized Users.

4.7 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.

4.8 Format 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 handled in accordance with Appendix B, *Late Bids*. Any Bid pricing or portions

thereof submitted on USB 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.

Situations susceptible to Disqualification may include:

- E-mail or facsimile Bid submissions are not acceptable, and
- Absent Price Pages (Attachment 1 – *Cost Proposal* are not acceptable.)

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

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.

4.9 Proposal Content

An administrative proposal that does not provide all the information requested below may be subject to rejection. Your administrative proposal must contain sufficient information to assure the Office of General Services of its accuracy. A complete administrative proposal consists of one copy of each of the following:

1. Electronic (USB flash drive) containing:
 - a. Pages 1 and 2 of the Solicitation (signed and scanned) (PDF);
 - b. Completed Attachment 1 – *Cost Proposal* (Excel);
 - c. Completed Attachment 2 – *NYS Required Certifications* with original ink signatures (PDF);
 - d. Completed Attachment 3 – *Encouraging Use of NYS Businesses* (PDF);
 - e. Completed Attachment 5 – *Bidder Information Questionnaire* (Excel);
 - f. Completed Attachment 6 – *Bidder Submission Checklist* (Excel);
 - g. Completed Attachment 9 – *Minimum Qualifications Submittal Form* in accordance with Section 2.1, *Minimum Qualifications* (Word);
 - h. Completed Attachment 10 – *Contractor Reseller Information Form* (PDF);
 - i. Completed Attachment 11 – *Owner's Authorization Form(s)* for the Community Solar project used to meet Section 2.1 *Minimum Qualifications* (signed and scanned) (PDF)
 - j. Completed ST-220-CA, Contractor Certification, notarized with original ink signatures (PDF);
 - k. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF);
 - l. Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF);
 - m. Proof of New York State Workers' Compensation Insurance coverage in accordance with Attachment 4 – *Insurance Requirements*; and
 - n. Proof of New York State Disability Benefits Insurance coverage in accordance with Attachment 4 – *Insurance Requirements*.
2. Original paper versions of each of the following (to be placed in a loose-leaf binder and tabbed):
 - a. Pages 1 and 2 of the Solicitation with original ink signatures;
 - b. Completed Attachment 1 – *Cost Proposal* (Excel);
 - c. Completed Attachment 2 – *NYS Required Certifications* with original ink signatures;
 - d. Completed Attachment 3 – *Encouraging Use of NYS Businesses*;
 - e. Completed Attachment 5 – *Bidder Information Questionnaire*;
 - f. Completed Attachment 6 – *Bidder Submission Checklist*;
 - g. Completed Attachment 9 – *Minimum Qualifications* in accordance with Section 2.1, *Minimum Qualifications* (Word);
 - h. Completed Attachment 10 – *Contractor Reseller Information Form* (PDF);
 - i. Completed Attachment 11 – *Owner's Authorization Form* for the Community Solar project used to meet Section 2.1 *Minimum Qualifications*
 - j. Completed ST-220-CA, Contractor Certification, notarized with original ink signatures;
 - k. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF);

- l. Standard Vendor Responsibility Questionnaire (completed and signed) or Certification that Questionnaire has been completed online;
- m. Proof of New York State Workers' Compensation Insurance coverage in accordance with Attachment 4 – *Insurance Requirements*; and
- n. Proof of New York State Disability Benefits Insurance coverage in accordance with Attachment 4 – *Insurance Requirements*.

Also, please note that in the case of discrepancies between paper copies and USB flash drive submissions of the documents required in both formats, the electronic USB flash drive copy shall take precedence over the paper copy.

4.10 Cost Proposal

This section sets forth the Cost Proposal requirements for this Solicitation.

A complete Cost Proposal consists of the completion of Attachment 1 – *Cost Proposal* in accordance with the following:

1. The Bidder may provide pricing for one or both Lots;
2. The Bidder may provide pricing for any or all Region(s) in a Lot;
3. The Bidder may provide pricing for any or all Item(s) in a Region;
4. The Bidder shall enter the pricing for each Item within a Region and Lot that they intend to Bid. If a Bidder does not wish to Bid on an Item within a Region and Lot, the pricing should be left blank.

For an explanation of the Reasonableness of Price evaluation see Section 5.3 – *Reasonableness of Price*.

4.11 Bid Envelopes and Packages

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

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Bid Number (Solicitation #23162)
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

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

4.12 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 as stated in Section 1.5, *Key Events/Dates*:

State of New York 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.

4.13 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.

4.14 NYS Required Certifications

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

4.15 Electronic Bid Opening Results

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

The Bid Opening Results Page is available at: <https://ogs.ny.gov/procurement/bid-opening-results-0>

4.16 NYS 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. 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;
- V. Unilaterally make revisions, changes and/or updates to any templates, Appendices (excluding Appendices A and B) and/or Attachments to the proposed Contract without processing a formal amendment and/or modification;
- W. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation;
- X. 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
- Y. Upon discovery of non-material completeness or conformance issues with a Bid, contact the Bidder to attempt to cure the issue prior to completion of the evaluation of the Bid.

5. METHOD OF AWARD

5.1 Method of Award for Centralized Contract

In accordance with New York State Finance Law Article 11, it is the intent of OGS to award Centralized Contracts by Item for each Lot and Region, to all responsive and responsible Bidders meeting the minimum requirements established in the Solicitation who pass a reference check and offer reasonable pricing as determined by OGS. The Centralized Contracts will be non-competitive multiple award Contracts which will qualify awarded Contractors to be eligible to submit responses to Requests for Quotes (RFQs) issued by Authorized Users at a later date.

5.2 Reference Check

For the references listed in Attachment 9 – *Minimum Qualifications*, Procurement Services will contact five of the customers to perform a reference check which will be evaluated on a Pass/Fail basis. The references will be evaluated as follows:

1. Five references will be contacted to obtain either an “Excellent”, “Good” or “Poor” rating for the Contractor’s performance and to verify that the Contractor meets minimum qualifications;
2. If one of the references cannot be reached or cannot provide a rating, then the remaining references will be contacted until five ratings are obtained;
3. If an attempt has been made to contact all five of the references and there are still reference(s) that cannot be reached or cannot provide a rating, then a ‘No Rating’ will be assigned to those references which could not be reached or could not provide a rating(s).
4. The performance ratings will then be assigned the following scores for the purposes of evaluating whether the ratings are a pass/fail:
 1. Excellent = 20 points
 2. Good = 10 points
 3. Poor = 0 points
 4. No Rating = 0 points
5. The performance ratings will then be averaged together to create an overall score which will be evaluated as follows:
6. If a Bidder’s average performance rating is 10.0 or greater, the Bidder will be given a score of “pass” for the reference check.
7. If a Bidder’s average performance rating is less than 10.0, the Bidder will be given a score of “fail” for the reference check and the proposal will be removed from further consideration for award.

5.3 Reasonableness of Price

The Bidder is required to submit pricing with their Bid. In accordance with State Finance Law, the Cost Proposal will be evaluated to determine the reasonableness of the pricing proposed.

5.3.1 Lot 1 – Subscriptions to VDER Community Solar Projects

The reasonableness of price for ‘Subscriptions to VDER Community Solar Projects’ (Lot 1) shall be assessed in the following manner:

Step 1: For each Item within a Region, the responsive and responsible Bidders’ “VDER Discount Rate for the Centralized Contract” (VDER-DR-CC) will be averaged to create an “*Average Discount Rate*”. OGS reserves the right to remove an unrealistically low or high Bid from the calculation of the “*Average Discount Rate*” if, in the judgement of OGS, the Bid would skew the results.

Step 2: Each Bidder’s VDER-DR-CC will be compared to the “*Average Discount Rate*” for the Item and Region. If a Bidder’s VDER-DR-CC is at or greater than the “*Average Discount Rate*” divided by 150%, the Bid shall be deemed to have passed for that Item and Region. If a Bidder’s “VDER-DR-CC” is less than the “*Average Discount Rate*” divided by 150%, the Bid for that Item and Region shall be deemed to have failed and will not be considered for an award.

5.3.2 Lot 2 – Subscriptions to NEM Community Solar Projects

The reasonableness of price for ‘Subscriptions to NEM Community Solar Projects’ (Lot 2) shall be assessed in the following manner:

Item 1, Residential, \$ per kWh (typically referred to as SC-1)

Step 1: For each Region, the responsive and responsible Bidders’ “NEM Subscription Rate for the Centralized Contract” (NEM-SR-CC) for Item 1 will be averaged to create an “*Average Subscription Rate*”. OGS reserves the right to remove an unrealistically low or high Bid from the calculation of the “*Average Subscription Rate*” if, in the judgement of OGS, the Bid would skew the results.

Step 2: Each Bidder’s NEM-SR-CC will be compared to the “*Average Subscription Rate*” for the Item and Region. If a Bidder’s NEM-SR-CC is at or less than the “*Average Subscription Rate*” multiplied by 150%, the Bid shall be deemed to have passed for that Item and Region. If a Bidder’s “NEM-SR-CC” is greater than the “*Average Subscription Rate*” multiplied by 150%, the Bid for that Item and Region shall be deemed to have failed and will not be considered for an award.

Item 2, Residential, % Discount (typically referred to as SC-1)

Step 1: For each Region, the responsive and responsible Bidders’ “VDER Discount Rate for the Centralized Contract” (VDER-DR-CC) for Item 2 will be averaged to create an “*Average Discount Rate*”. OGS reserves the right to remove an unrealistically low or high Bid from the calculation of the “*Average Discount Rate*” if, in the judgement of OGS, the Bid would skew the results.

Step 2: Each Bidder’s VDER-DR-CC will be compared to the “*Average Discount Rate*” for the item and Region. If a Bidder’s VDER-DR-CC is at or greater than the “*Average Discount Rate*” divided by 150%, the Bid shall be deemed to have passed for that Item and Region. If a Bidder’s “VDER-DR-CC” is less than the “*Average Discount Rate*” divided by 150%, the Bid for that Item and Region shall be deemed to have failed and will not be considered for an award.

5.4 Notification of Award

Tentative Contract award(s) 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.

5.5 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. 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 a Region that is already 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.

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

- For the evaluation of the Administrative Proposal, the same process set forth in this Solicitation shall be followed;
- For reference checks, the same process set forth in this Solicitation shall be followed; and
- For the reasonableness of price evaluation of the Cost Proposal, bids received under the subsequent Periodic Recruitments will be evaluated in accordance with Section 5.3 and the following modification:

Lot 1 – Subscriptions to VDER Community Solar Projects

In step 2, Each Bidder's VDER-DR-CC will be compared to the "Average Discount Rate" for the Item and Region as calculated for the initial award. If a Bidder's VDER-DR-CC is at or greater than the "Average Discount Rate" divided by 150%, the Bid shall be deemed to have passed for that Item and Region. If a Bidder's "VDER-DR-CC" is less than the "Average Discount Rate" divided by 150%, the Bid for that Item and Region shall be deemed to have failed and will not be considered for an award. If no awards were made for the Item and Region in the initial award, the 'Average Discount Rate' may be calculated from the bids received during the periodic recruitment using the methodology in Section 5.3.

Lot 2 – Subscriptions to NEM Community Solar Projects

Item 1, Residential, \$ per kWh (typically referred to as SC-1)

In step 2, Each Bidder's NEM-SR-CC will be compared to the "Average Subscription Rate" for the Item and Region as calculated for the initial award. If a Bidder's NEM-SR-CC is at or less than the "Average Subscription Rate" multiplied by 150%, the Bid shall be deemed to have passed for that Item and Region. If a Bidder's "NEM-SR-CC" is greater than the "Average Subscription Rate" multiplied by 150%, the Bid for that Item and Region shall be deemed to have failed and will not be considered for an award. If no awards were made for the Item and Region in the initial award, the 'Average Subscription Rate' may be calculated from the bids received during the periodic recruitment using the methodology in Section 5.3.

Item 2, Residential, % Discount (typically referred to as SC-1)

In step 2, Each Bidder's NEM-DR-CC will be compared to the "Average Discount Rate" for the Item and Region as calculated for the initial award. If a Bidder's NEM-DR-CC is at or greater than the "Average Discount Rate" divided by 150%, the Bid shall be deemed to have passed for that Item and Region. If a Bidder's "NEM-DR-CC" is less than the "Average Discount Rate" divided by 150%, the Bid for that Item and Region shall be deemed to have failed and will not be considered for an award. If no awards were made for the Item and Region in the initial award, the 'Average Discount Rate' may be calculated from the bids received during the periodic recruitment using the methodology in Section 5.3.

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

5.6 Procurement Instructions for Authorized Users

Non-competitive, multiple award, centralized Contracts require a Request for Quote process at the Authorized User level to guarantee a competitive element to award business to a Contractor. Authorized Users are required to use the Request for Quote process outlined below to satisfy this requirement for competition.

1. The Authorized User shall review the Lots to determine which one best meets its needs.
2. The Authorized User shall review the location of its facility(ies) to determine what Region it is located in for the selected Lot. Please note that if an Authorized User is seeking quotes for subscriptions at multiple sites located in different Regions, then separate Quotes must be done for each Region. For assistance in determining the Region for Lot 2 'NEM Community Solar Projects, contact your electric utility company.
3. The Authorized User shall review the list of Contractors available in the applicable Lot and Region.
4. The Authorized User shall solicit Request for Quotes from all awarded Contractors in the applicable Lot and Region using Attachment 12 – *Request for Quote Template Form*.
5. Authorized User shall review the submittals. In addition to completing the *Request for Quote Template*, Contractors must also submit the following documents with their response:
 - a. The Subscription Agreement for the Community Solar Project
 - b. Attachment 11 – *Owners Authorization Form* (required if the Contractor is not the owner of the Community Solar project).
6. The Authorized User shall review the subscription agreement to ensure that there are no terms or conditions that conflict with or diminish the terms of the centralized contract.
7. The Authorized User shall select a Community Solar Project from the returned RFQs. Pursuant to State Finance Law § 163(10), the Authorized User must base their selection among multiple Contracts on the basis of lowest price to a responsive and responsible Bidder. If there are less than three quotes submitted for an RFQ, it is strongly recommended that the Authorized User obtain additional informal quotes from open market companies in order to verify the reasonableness of the pricing received.
8. The State has not reviewed any additional terms and conditions that may be included in the Subscription Agreement for specific Community Solar Projects. Accordingly, the Authorized User shall review and make an independent determination, with the advice of legal counsel as necessary, before agreeing to the terms and conditions contained in the Subscription Agreement.
9. Once a Community Solar project has been selected, the Authorized User shall provide a copy of the Request for Quote and the winning quote to the Procurement Services Contract Manager listed on the Contract Award Notification document or contract landing page.
10. The Authorized User issues encumbrance documents or other written orders. Refer to Appendix B, Section 30, Purchase Orders for additional information.

11. Any Subscription Agreement executed during the term of the Centralized Contract will survive the expiration of the Centralized Contract for the full term of the agreement. All services end at the conclusion of the signed agreement.

6. TERMS AND CONDITIONS

6.1 Contract Term and Extensions

The Contracts will be in effect for a term of five (5) 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 (1) year. Whether the optional extension is 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*.

Any Subscription Agreement executed during the term of the Centralized Contract will survive the expiration of the Centralized Contract for the full term of the agreement. All services end at the conclusion of the signed agreement.

The Contract term provided for in this section shall extend 6 months beyond its termination date 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. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

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 Purchasing Card Orders

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, Purchasing Card), also referred to as the Procurement Card, the Contractor shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.

6.4 Pricing

The pricing for this Solicitation includes a two-tier Bidding process. The first tier is pricing for the Centralized Contract which is submitted in response to this Solicitation, and the second tier is pricing submitted in response to a Request for Quote issued by Authorized Users at a later date.

For all Items, subscriptions may be billed by estimating the value of the credits or amount of electricity generated by the subscription, however the Bidder must provide a true-up mechanism to ensure that the Authorized User pays for the actual credits or amount of electricity generated (See Section 3 *Specifications*).

No future price changes or adjustments will be allowed for the pricing awarded for either the Centralized Contract or a Request for Quote for the life of the award. As a result, the Bidder must incorporate all factors that will affect future pricing in their pricing submitted in response to this Solicitation and to Request for Quotes.

Lot 1 – Subscriptions to VDER Community Solar Projects

For all Requests for Quote, the 'VDER Discount Rate for the Request for Quote' shall be greater than or equal to the 'VDER Discount Rate for the Centralized Contract'. In response to a Request for Quote the Contractor is encouraged to offer a competitive discount that is greater than the 'VDER Discount Rate for the Centralized Contract'.

For both Items in Lot 1, the price charged for the subscription shall be calculated using the following formula:

$$\text{Subscription Rate} = (\text{the monetary value of the VDER credit}) \times (1 - (\text{VDER-DR-RFQ})/100)$$

Lot 2 – Subscriptions to NEM Community Solar Projects

Item 1, Residential, \$ per kWh (typically referred to as SC-1)

For all Requests for Quote, the 'NEM Subscription Rate for the Request for Quote' (NEM-SR-RFQ) shall be less than or equal to the 'NEM Subscription Rate for the Centralized Contract' (NEM-SR-CC). In response to a Request for Quote the Contractor is encouraged to offer a competitive subscription rate that is less than the 'NEM Subscription Rate for the Centralized Contract'.

For Lot 2, Item 1, the price charged for the subscription shall be calculated using the following formula:

$$\text{Subscription Rate} = (\text{the amount of electricity generated by the subscription}) \times (\text{NEM-SR-RFQ})$$

Item 2, Residential, % Discount (typically referred to as SC-1)

For all Requests for Quote, the 'NEM Discount Rate for the Request for Quote' (NEM-DR-RFQ) shall be greater than or equal to the 'NEM Discount Rate for the Centralized Contract' (NEM-DR-CC). In response to a Request for Quote the Contractor is encouraged to offer a competitive discount that is greater than the 'NEM Discount Rate for the Centralized Contract'.

For Lot 2, Item 2, the price charged for the subscription shall be calculated using the following formula:

$$\text{Subscription Rate} = (\text{the monetary value of the NEM credit}) \times (1 - (\text{NEM-DR-CC})/100)$$

For Authorized Users who receive a volumetric credit on their utility bill, the monetary value shall be determined by summing the delivery and supply charges for the volume of electricity generated by the subscription to the solar farm and shall not include the basic service charge.

6.5 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, if available, may submit orders electronically via web-based ordering, e-mail, 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).

6.6 Invoicing and Payment

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

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order. 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:

1. Contractor Name
2. Contractor Billing Address
3. Contractor Federal ID Number
4. NYS Vendor ID Number
5. Account Number
6. NYS Contract Number
7. Name of Authorized User indicated on the Purchase Order
8. NYS Agency Unit ID (if applicable)
9. Authorized User's Purchase Order Number
10. Order Date
11. Invoice Date
12. Invoice Number
13. Invoice Amount
14. Product Descriptions
15. Unit Price
16. Quantity
17. Unit of Measure
18. Dates of Service

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>.

6.7 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning 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://ogs.ny.gov/procurement/emarketplace>.

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 modules in the near future. Further information regarding business processes, interfaces, and file layouts may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

6.8 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 Solicitation 23162sREV1 (Revised September 18, 2019)

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.

6.9 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*.

6.10 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* no later than 10 days after the close of each calendar quarter.

The report must 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.

6.11 Contractor Requirements and Procedures for Participation by New York State Certified Minority-Owned and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of OGS 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 and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and Contracting opportunities for 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. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of Contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall 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. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- 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 all subcontractors.
 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 and 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 and conviction and prior arrest.
- IV. Contract Goals
- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at:
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.
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.
- B. Good Faith Efforts
- Pursuant to 5 NYCRR § 142.8, evidence of 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, copies of such solicitations, and any responses thereto.
 2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") 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.
- V. Fraud
- Any suspicion of fraud, waste, or abuse involving the Contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/MWBE>

6.12 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 ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of
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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/Contractors are strongly encouraged and 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.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/>

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

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

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.

6.14 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 https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at https://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 <https://www.tax.ny.gov/> for additional information.

6.15 "OGS or Less" Guidelines

Purchases of the Products included in the Solicitation and resulting Contract are subject to the "OGS or Less" provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive Bidding of requirements

exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

6.16 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://online.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.

6.17 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.

6.18 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.

6.19 Centralized Contract Modifications

- A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
- B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
- C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
- D. All modifications proposed by Contractor shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix

C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.

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

6.20 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.

6.21 Traffic Infractions

Neither the State nor Authorized Users shall 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.

6.22 N.Y. State Finance Law § 139-I

Pursuant to N.Y. State Finance Law § 139-I, every Bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive Bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers> .

Pursuant to N.Y. State Finance Law § 139-I, any Bid by a corporate Bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such Bidder, and such authorization shall be deemed to include the signing and submission of such Bid and the inclusion therein of such statement as the act and deed of the Bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the Bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, OGS may reject the Bid or may decide that there are sufficient reasons to accept the Bid without such certification.

The certification required above can be found on Attachment 2 – *NYS Required Certifications*, which Bidder must submit with its Bid.

6.23 Subcontracting/Resellers

Contractors may propose the use of a subcontractor/reseller. The Contractor shall obtain prior written approval from the OGS before entering into an agreement for services to be provided by a subcontractor/reseller. The Contractor is solely responsible for assuring that the requirements of the Solicitation are met. All subcontracts shall contain provisions specifying that the work performed by the subcontractor/reseller must be in accordance with the terms of the prime Contract, and that the subcontractor/reseller specifically agrees to be bound by the

confidentiality provisions set forth in the Contract. Contractors and Resellers shall refer to Section 4.3 – *NYS Vendor File Registration* for requirements regarding resellers that accept payment on behalf of the Contractor.