



Office of General Services

Procurement Services

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Solicitation

BID OPENING DATE: June 25, 2026 TIME: 1:30 P.M. ET SOLICITATION NUMBER: 23378		TITLE: Group 05302 – Solar Arrays and Subscriptions Classification Codes: 26, 30, 72	
CONTRACT PERIOD: Five (5) years from the date of OSC approval, with renewal options for up to two (2) additional years			
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.			
Email Address: ogs.sm.SolarContracts@ogs.ny.gov			
Bradford Deforge Contract Management Specialist Phone: (518) 473-3876 Email: ogs.sm.SolarContracts@ogs.ny.gov		Ruth Quezada Assistant Director Phone: (518) 473-2801 Email: ogs.sm.SolarContracts@ogs.ny.gov	

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	
Email Address:		Company Website:	

If applicable, place an "x" in the appropriate box(es) <i>(check all that apply)</i>			
<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business

If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE NOT BIDDING AT THIS TIME BECAUSE:

OGS Use Only: # of Binders/Packages: _____ # of USB Flash Drives _____ Documented by: _____
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Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for ninety (90) 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

CONTENTS

- 1. INTRODUCTION7
 - 1.1 Overview.....7
 - 1.2 Scope7
 - 1.2.1 Lot 1 Photovoltaic Systems8
 - 1.2.2 Lot 2 Photovoltaic Services9
 - 1.2.3 Lot 3 Solar Subscriptions..... 11
 - 1.2.4 Lot 4 Solar Power Purchase Agreements..... 11
 - 1.2.5 Regions..... 12
 - 1.3 Estimated Quantities 13
 - 1.4 Key Events/Dates 13
 - 1.5 Intent to Bid 14
 - 1.6 Pre-Bid Conference 14
 - 1.7 NYS Contract Reporter 14
 - 1.8 Bidder Questions 14
 - 1.9 NYS Comptroller Approval 15
 - 1.10 MWBE & SDVOB Interest in Partnering with Bidders 15
 - 1.11 Summary Of Policy and Prohibitions On Procurement Lobbying 15
 - 1.12 Definitions..... 16
 - 1.13 Appendices and Attachments..... 19
 - 1.14 Conflict of Terms 20
- 2. BIDDER QUALIFICATIONS 20
 - 2.1 Lot 1 Photovoltaic Systems Mandatory Requirements21
 - 2.2 Lot 2 Photovoltaic Services Mandatory Requirements21
 - 2.3 Lot 3 Solar Subscriptions Mandatory Requirements22
 - 2.4 Lot 4 Solar Power Purchase Agreements Mandatory Requirements22
- 3. SPECIFICATIONS..... 23
 - 3.1 Renewable Energy Certificates and Environmental Value23
 - 3.2 Lot 1 Photovoltaic Systems Specifications.....23
 - 3.3 Lot 2 Photovoltaic Services Specifications.....24
 - 3.4 Lot 3 Solar Subscriptions Specifications26
 - 3.5 Lot 4 Solar Power Purchase Agreements Specifications.....26
- 4. BID SUBMISSION 27
 - 4.1 Performance and Bid Bonds27
 - 4.2 NYS Vendor File Registration27
 - 4.3 Format of Bid Submission28
 - 4.4 Content.....28
 - 4.5 Bid Pricing Submittal for Back-Drop Contracts 31

4.6	Bid Envelopes and Packages.....	34
4.7	Bid Delivery	34
4.8	Important Building Access Procedures	34
4.9	NYS Required Certifications.....	35
4.10	Bid Deviations	35
4.11	Bid Opening Results.....	35
4.12	Bid Liability	35
4.13	Firm Offer	35
4.14	NYS Reserved Rights	35
4.15	Incorporation.....	36
5.	METHOD OF AWARD.....	37
5.1	Method of Award	37
5.2	Reasonableness of Price	37
5.3	Periodic Recruitment.....	38
5.4	Procurement Instructions for Authorized Users	39
5.4.1	General Procurement Instructions.....	39
5.4.2	Request for Quotes.....	42
5.4.3	Third Party Consultant Assistance.....	44
5.4.4	Feasibility Studies & Stakeholder Considerations.....	45
5.4.5	Lot 1 Photovoltaic Systems Pre-Order Meeting	46
5.4.6	Authorized User Reserved Rights	46
5.5	Notification of Award	47
6.	TERMS AND CONDITIONS.....	47
6.1	Contract Term and Extensions.....	47
6.2	Short Term Extension.....	48
6.3	Authorized User Agreements Term and Survival.....	48
6.4	Price	48
6.4.1	Travel, Meals, and Lodging	50
6.5	NYS DOL Prevailing Wage Rates – Public Works and Building Services Contracts	51
6.6	Price Updates.....	51
6.7	Pricelist Update Format.....	53
6.8	Contract Pricelist Updates Reserved Rights.....	53
6.9	Escalation Cap / Maximum Price Increase	54
6.10	Government Mandated Program.....	54
6.11	Best Pricing Offer	54
6.12	Price Structure.....	54
6.13	Ordering.....	55
6.14	Minimum Order.....	55
6.15	Invoicing and Payment.....	55

6.16	Product Delivery	56
6.17	Product Returns and Exchanges	56
6.18	Contract Administration	56
6.19	NYS Financial System (SFS)	56
6.20	N.Y. State Finance Law § 139-I	57
6.21	Insurance	57
6.22	Report of Contract Usage.....	57
6.23	Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women	58
6.24	Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses	63
6.25	Use of Recycled or Remanufactured Materials.....	64
6.26	Bulk Delivery and Alternate Packaging	64
6.27	Surplus/Takeback/Recycling	65
6.28	Environmental Sustainability and NYS Executive Order Number 22.....	65
6.29	Diesel Emission Reduction Act	66
6.30	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	67
6.31	NYS Labor Law § 220-i	67
6.32	NYS Vendor Responsibility	67
6.33	NYS Tax Law Section 5-a	68
6.34	“OGS or Less” Guidelines	69
6.35	Non-State Agencies Participation in Centralized Contracts	69
6.36	Extension of Use	69
6.37	Resellers.....	69
6.38	New Accounts	70
6.39	Centralized Contract Modifications	71
6.40	Drug and Alcohol Use Prohibited	71
6.41	Traffic Infractions.....	71
6.42	Instruction Manuals	71
6.43	Drawings.....	71
6.44	Embedded Software/Firmware; Updates	72
6.45	Contract Documents; Electronic Format	72
6.46	Purchasing Card Orders.....	72

APPENDICES

Appendix A – *Standard Clauses for New York State Contracts* (June 2023)

Appendix B – *General Specifications* (April 2016)

Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023)

ATTACHMENTS

Attachment 1 – *Pricing*

Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Encouraging Use of New York State Businesses in Contract Performance*

Attachment 4 – *Insurance Requirements*

Attachment 5 – *Bidder Information Questionnaire*

Attachment 6 – *Bidder Submission Checklist*

Attachment 7 – *Bidder Questions Form*

Attachment 8 – *Report of Contract Usage*

Attachment 9 – *Certification Under Executive Order No. 16*

Attachment 10 – *Minimum Qualifications Submittal Form*

Attachment 11 – *Owner's Authorization Form*

Attachment 12 – *Contractor and Reseller/Distributor Information*

Attachment 13a – *Request for Quotes Template: Lot 1*

Attachment 13b – *Request for Quotes Template: Lot 2*

Attachment 13c – *Request for Quotes Template: Lot 3*

Attachment 13d – *Request for Quotes Template: Lot 4*

1. INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Solar Arrays and Subscriptions as specified herein for all Authorized Users eligible to make purchases under the Back-Drop Contract(s) (“Contract(s)”) resulting from this Solicitation.

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

This Solicitation contains four (4) Lots, as specified in Section 1.2 *Scope*, on which Bidders may Bid to provide Solar Arrays and Subscriptions: Lot 1 *Photovoltaic Systems*; Lot 2 *Photovoltaic Services*; Lot 3 *Solar Subscriptions*; and Lot 4 *Solar Power Purchase Agreements (PPA)*. For each Lot, it is OGS’s intent to award Contracts to all Responsive and Responsible Bidders meeting the minimum requirements established in the Solicitation for that Lot (see Section 2 *Bidder Qualifications*), whose Products meet the Scope and Specifications of this Solicitation (see Section 1.2 *Scope* and Section 3 *Specifications*), whose prices indicate that those Products will be provided at a reasonable price (see Section 5.2 *Reasonableness of Price*) as determined by OGS, and who are eligible for award under that Lot (see Section 5 *Method of Award*). The Centralized Contracts will be multiple-award Back-Drop Contracts which will qualify awarded Bidders to be eligible to submit responses to Requests for Quotes (RFQs) issued at a later date by Authorized Users. See Section 5.4.2 *Request for Quotes* for additional information.

This Solicitation, and the resultant Contracts, is not related to the NYS legislation that gives New York Power Authority (NYPA) additional authority to advance renewable energy generation and decarbonization in NYS (see <https://www.nypa.gov/news/press-releases/2023/20230503-legislation>). This Solicitation, all Back-Drop Contracts resulting from this Solicitation, and any Authorized User Agreements resulting from RFQs are separate from and unrelated to the NYS Public Power for Public Entities (PPPE) initiative, as announced in Governor Hochul’s 2025 State of the State (see <https://www.governor.ny.gov/news/governor-hochul-commits-more-1-billion-tackle-climate-crisis-single-largest-climate-investment>).

Contractor shall provide Authorized Users with the option to purchase Renewable Energy Certificates (RECs) following New York State policies, if applicable (see Section 3.1 *Renewable Energy Certificates and Environmental Value*). At the Authorized User’s discretion, Contractor shall provide Authorized Users with the option to forgo payment for Environmental Value (E Value) if indicated in the RFQ.

1.2 Scope

The purpose of the resultant Contracts is for the acquisition of Solar Arrays and Subscriptions, as specified in the four (4) Lots listed below. A Bidder is not required to bid on every Lot; a Bidder may bid on as few or as many Lots as desired. Product Categories for each Lot, and examples of Products within each Product Category, are provided in the tables below. Examples are not meant to be exhaustive.

Lot	Description
1	Photovoltaic Systems
2	Photovoltaic Services
3	Solar Subscriptions
4	Solar Power Purchase Agreements (PPA)

1.2.1 Lot 1 Photovoltaic Systems

Bidders for Lot 1 shall offer Photovoltaic Systems (“PV Systems”) Statewide. Product Categories that may be offered are shown in the table below. Bidder is not required to offer Products in all Product Categories; a Bidder may offer Products in as few or as many Product Categories as desired.

Product Category	Examples
Packaged PV Systems	<p>A complete packaged PV System which contains all necessary components of the system, including but not limited to:</p> <ul style="list-style-type: none"> a. Photovoltaic Panels b. Inverters c. Meters d. Mounting racks e. Battery packs f. Breakers g. Charge controllers h. Array disconnects i. Cables <p>A packaged PV System may be a Grid Tied PV System; a Grid Tied PV System with Battery Storage; an Off-Grid PV System; or an Off-Grid PV System with Battery Storage.</p>
Photovoltaic Modules (Solar Arrays)	Monocrystalline silicon Photovoltaic Module (mono-silicon or single silicon)
	Polycrystalline silicon Photovoltaic Module (multi-crystalline, multi-silicon, ribbon)
	Thin film Photovoltaic Panels
	Building Integrated Photovoltaic (BIPV)
Racking Systems	Roof mounts
	Ground mounts
	Canopy mounts
	Tracking hardware
Inverters	String inverters
	Micro-inverters
	Power optimizers
	Inverter communication units
Charge Controllers	Maximum power point tracking (MPPT)
Battery Packs	High cycle-life batteries
	Deep cycle emergency/stand by
	Lithium ion
	Battery racks
	Lead acid batteries

Product Category	Examples
Ancillary Products	Wiring
	Cables
	Adaptors
	Combiner boxes
	Safety disconnects
	Surge suppressors
	Breaker panels
	Meters

1.2.2 Lot 2 Photovoltaic Services

A. Product Categories that may be offered for Lot 2 are shown in the table below. Photovoltaic Installation and Remedial Maintenance Services shall be offered by NYS County (by PV System size: i.e., 0 to 100 kW, 101 to 500 kW, and >500 kW), while Assessment, Design, Preventative Maintenance, and Training Services shall be offered statewide in NYS. A Bidder is not required to offer Products in all Product Categories: a Bidder may offer Products in as few or as many Product Categories as desired. Bidders are not required to bid on every NYS County or every PV System size within a NYS County for Installation and Remedial Maintenance Services. A Bidder that is awarded Lot 2 is not required to also be awarded Lot 1, or to have been the provider of the applicable Products for which the Photovoltaic Services will be provided, in order to offer Photovoltaic Services.

Product Category	Examples
Assessment Services	Assessment Services that are required by an Authorized User during initial PV project planning, including but not limited to: <ul style="list-style-type: none"> a. Fatal flaw analysis b. Feasibility analysis c. Financial analysis d. Analysis of Interconnection with distribution utility e. Site assessment f. Evaluation of subsurface conditions
Design Services	Design Services that are required by an Authorized User during PV project planning, including but not limited to: <ul style="list-style-type: none"> a. Site design b. Permitting c. Selection of system components d. Provision of drawings and technical documents, including as-built drawings and maintenance and operations manuals

Product Category	Examples
<p>Installation Services</p>	<p>PV Installation Services that are required by an Authorized User, including but not limited to:</p> <ul style="list-style-type: none"> a. Purchase of PV System components b. Construction of simple foundations c. Assembly of the system d. Anchoring of the system e. Construction of electrical connections f. Construction of the Interconnection with the existing electrical network g. Installation of performance monitoring systems h. System startup i. System commissioning j. Coordination of testing and inspections k. Basic system operation/maintenance training to the Authorized User <p>PV Installation Services may be offered on the following PV System sizes:</p> <ul style="list-style-type: none"> a. 0 to 100 kW b. 101 to 500 kW c. >500 kW
<p>Preventative Maintenance Services</p>	<p>Preventative Maintenance Service: recurring scheduled repair or replacement services that an Authorized User may require for continued operation of a PV System or its component parts. Preventative Maintenance Services are intended to prevent future PV Systems failures and to extend the useful life of the PV Systems, including but not limited to:</p> <ul style="list-style-type: none"> a. Inspection b. Monitoring c. Preventative care d. Reporting e. Repairs f. Parts required for maintenance services
<p>Remedial Maintenance Services</p>	<p>Remedial Maintenance Service: a one-time repair or replacement of previously installed, integrated, and accepted PV System(s) or its component parts that an Authorized User may require for continued operation of a PV System or its component parts, including but not limited to:</p> <ul style="list-style-type: none"> a. Inspection b. Reporting c. Repairs d. Parts required for maintenance services <p>Remedial Maintenance Services may be offered on the following PV System sizes:</p> <ul style="list-style-type: none"> a. 0 to 100 kW b. 101 to 500 kW c. >500 kW
<p>Training Services</p>	<p>Training Services (on-site, practical guidance; virtual training; or a combination) requested by an Authorized User, including but not limited to:</p> <ul style="list-style-type: none"> a. How to install PV System components b. How to maintain PV System components c. Detailed owner/operator training

B. The following are excluded from the scope of Lot 2:

1. Site development activities such as land clearing, grading, the removal of trees or the construction of roads;
2. The construction of new structures (other than racking systems with simple foundations), fundamental or significant modifications to structures or the replacement of roofs;
3. Electrical work not directly related to the assembly and wiring of the PV System such as the construction of new transmission lines or upgrades to electrical equipment on the utility side of the meter;
4. Interconnection costs, fees or charges that are billed separately from the NTELMR or Recurring Maintenance Price, as applicable; and
5. Costs, fees, or charges for quality control/assurance activities (e.g., code compliance inspections), including those performed by third parties, that are billed separately from the NTELMR or Recurring Maintenance Price, as applicable.

1.2.3 Lot 3 Solar Subscriptions

Bidder shall provide Authorized Users with the ability to subscribe to any solar Value of Distributed Energy Resources (VDER) Project that it offers in NYS. Bidder may offer subscriptions to solar VDER Project(s) it owns and/or solar VDER Projects it is not the owner of but is authorized by the owner to manage and sell subscriptions for. If Bidder is offering subscription to a solar VDER Project it does not own, then such Bidder must also submit Attachment 11 – *Owner’s Authorization Form* with its Bid.

Solar VDER subscriptions under this Lot may be offered under the Product Categories listed in the table below. A Bidder is not required to offer Products in both Product Categories: a Bidder may offer Products in one or both Product Categories as desired.

Product Category	Description
Mass Market	Small commercial and local government accounts that have a residential service classification. Non-demand commercial and industrial accounts that have a non-demand metering structure.
Commercial and Industrial	Commercial and industrial-sized accounts that have a demand metering structure.

Bidder may offer subscriptions in any of the seven (7) Utility Service Territories outlined in Section 1.2.5 *Regions* and is not required to offer subscriptions Statewide. The Contracts will allow an Authorized User to purchase a monetary credit that it will receive on its utility bill. The subscription will calculate the monetary credit using the VDER method.

1.2.4 Lot 4 Solar Power Purchase Agreements

Bidder shall provide Authorized Users with a streamlined process/turnkey solution to acquire solar-generated electricity via PV Systems installed on behalf of the Authorized User at no upfront cost. This arrangement will be established through an Authorized User Agreement (which is referred to as a Power Purchase Agreement [“PPA”] for Lot 4 *Solar Power Purchase Agreements*). A Bidder may offer PPAs in any of the three (3) Product Categories outlined in the table below, in any region and corresponding kW sizes as outlined in Section 1.2.5 *Regions* and is not required to offer PPAs Statewide. See also Attachment 1 – *Pricing*, Lot 4 *Solar PPA* worksheet.

The streamlined process/turnkey solutions offered to Authorized Users shall include, at a minimum, the following: Bidder financing, designing, installing, owning, operating, and maintaining the PV Systems throughout the life of the PPA, and selling the electricity output to the Authorized User at competitive prices through the PPA. Bidders may offer PPAs utilizing either a flat or escalating kWh rate (see Section 4.5 *Bid Pricing Submittal for Back-Drop Contracts* and Section 6.4 *Price, Paragraph D Lot 4 Solar Power Purchase Agreements*).

Product Category	Description/Examples
PV System	PV System mounted on a ground, canopy, or roof frame that will be used by the Authorized User to offset electricity.
PV System and Storage	Integrated PV System and solar power storage system, including all equipment necessary to provide power storage, manage the use of the power, and integrate the storage system into the PV System including, but not limited to, batteries, other power storage devices, hybrid inverters, smart inverters, battery-based grid tie inverters and safety disconnects.
PV Storage	Standalone solar power storage system, including all equipment necessary to provide power storage and manage the use of the power from PV System, including, but not limited to, batteries, other power storage devices, hybrid inverters, smart inverters, battery-based grid tie inverters and safety disconnects.

1.2.5 Regions

The following Regions apply to each Lot.

- A. Lot 1 *Photovoltaic Systems* shall be offered Statewide in NYS.
- B. Lot 2 *Photovoltaic Services*
 - 1. Assessment, Design, Preventative Maintenance, and Training Services shall be offered Statewide in NYS.
 - 2. Installation and Remedial Maintenance Services may be offered in any NYS County. Bidders are not required to offer these services in every NYS County.
- C. Lot 3 *Solar Subscriptions* is divided into seven (7) territories that are all located in NYS (“Utility Service Territories”). Bidders may offer subscriptions in any Utility Service Territory. Bidders are not required to offer subscriptions in every Utility Service Territory. Additional information on the Utility Service Territories is located at <https://data.ny.gov/Energy-Environment/NYS-Electric-Utility-Service-Territories-Map/q5m9-rahr>. The seven (7) Utility Service Territories are:
 - 1. Central Hudson Gas and Electric
 - 2. Consolidated Edison (Con Edison)
 - 3. National Grid
 - 4. New York State Electric and Gas
 - 5. Orange and Rockland Utilities
 - 6. Long Island Power Authority (PSEG Long Island)
 - 7. Rochester Gas and Electric.
- D. Lot 4 *Solar Power Purchase Agreements* is divided into the following three (3) NY-Sun incentive program regions: Consolidated Edison (Con Edison), Long Island Power Authority (PSEG Long Island), and Upstate. The regions are in turn assigned NYS Counties as listed in the table below. Bidders may offer services in any region. Bidders are not required to offer services in every region. Additional information for each region is located at <https://www.nyserda.ny.gov/All-Programs/NY-Sun/Contractors/Dashboards-and-incentives>.

Region	NYS Counties	Size (kW)
Upstate	Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming, Yates	0-750; >750
Consolidated Edison (Con Edison)	Bronx, Kings, New York, Queens, Richmond, Westchester	0-1000; >1000
Long Island Power Authority (PSEG Long Island)	Nassau, Suffolk	Any kW

1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B *Estimated/Specific Quantity Contracts and Participation in Centralized Contracts*.

OGS is unable to provide estimated or historical quantities or dollar values for this Solicitation. 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.

1.4 Key Events/Dates

Event	Date	Time
Solicitation Release	April 30, 2026	N/A
Registration Deadline for Pre-Bid Conference	May 14, 2026	5:00 PM ET
Closing Date for Bidder Questions for the Pre-Bid Conference	May 21, 2026	5:00 PM ET
Pre-Bid Conference	May 28, 2026	TBD
Deadline for Submission of Intent to Bid	June 2, 2026	5:00 PM ET
Closing Date for Additional Bidder Questions	June 2, 2026	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	June 16, 2026 <i>(tentative)</i>	N/A
Bid Opening / Due Date for Bids	June 25, 2026	1:30 PM ET
Contract Approval Date / Award Publish Date	Upon OSC Approval	N/A

1.5 Intent to Bid

A Bidder is requested to indicate its intent to bid by sending an email titled "INTENT TO BID-[BIDDER NAME]" to ogs.sm.SolarContracts@ogs.ny.gov on or before the date and time indicated in Section 1.4 *Key Events/Dates*. The email should include the Bidder's company name and a contact name and contact information. Submission of the Intent to Bid is not required in or to submit a Bid.

1.6 Pre-Bid Conference

A Pre-Bid Conference will be held at the time and date indicated in Section 1.4 *Key Events/Dates*. Attendance at the Pre-Bid Conference is not mandatory, but it is recommended that all Bidders attend the Pre-Bid Conference. A Bidder should register for the Pre-Bid Conference by sending an email to ogs.sm.SolarContracts@ogs.ny.gov on or before the "Registration Deadline for Pre-Bid Conference" date indicated in Section 1.4 *Key Events/Dates*. The email should indicate the Bidder's legal business name, which Lot(s) the Bidder intends to bid (if applicable), and the name and title of Pre-Bid Conference attendees.

The Pre-Bid Conference will be held only online in a webinar format. In-person attendance will not be available. The webinar login information will be provided to registered attendees prior to the Pre-Bid Conference. If technological issues arise during the Pre-Bid Conference, participants shall immediately email or call the agency contact. If the technological issues are attributable to the State and cannot be immediately resolved, the Pre-Bid Conference will be re-scheduled.

The purpose of the Pre-Bid Conference is to review Bid submission procedures and to discuss Bidder questions related to the Solicitation. Questions will be permitted and may be answered verbally at the Pre-Bid Conference. However, answers may be deferred and included in the written and official OGS response to Bidder questions, which will include answers to all submitted questions, and will be posted on the OGS website in accordance with Section 1.8 *Bidder Questions*. Answers given at the Pre-Bid Conference are unofficial and not binding.

1.7 NYS Contract Reporter

Bidders must register with the New York State Contract Reporter ("NYSCR") at <https://www.nyscr.ny.gov> to receive notifications about this Solicitation. Navigate to the "Find Contracts" page to register for your free account, create an Opportunity Profile, and select Category/Classifications matching your business interests. Select "Turn on e-Alert notifications" to receive an email notification when a Solicitation is issued matching your selected Category/Classifications, and to receive email updates regarding selected ads. In order to receive email notifications regarding updates to the content or status of a particular ad, you must view the ad and then select "Notify me if this ad updates" on the right-hand side of the ad. Bidders also have the option to bookmark ads for future reference by selecting "Bookmark this ad" when viewing an ad.

If you do not opt-in to receive e-Alert notifications and select "Notify me if this ad updates" on a particular ad, you will not receive email notifications regarding updates for the ad. This includes email notifications regarding the posting of the question-and-answer document and updated Solicitation documents.

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 ogs.sm.SolarContracts@ogs.ny.gov by the date and time indicated in Section 1.4 *Key Events/Dates*. A Bidder is strongly encouraged to submit questions as soon as possible. Questions submitted after the deadline indicated may not be answered. OGS reserves the right, but is not required to, issue responses to late inquiries.

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. Any updates to Solicitation documents will also be posted to the OGS website. Notification of these postings will be included in the NYS Contract Reporter ad for the Solicitation (see Section 1.7 *NYS Contract*

Reporter). 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 and rejected from consideration.

If Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed Bid Deviations should be submitted during the *Questions* period so that they may be given due consideration prior to the submission of Bids. See Section 4.10 *Bid Deviations* for additional information.

1.9 NYS Comptroller Approval

In accordance with Section 112 of the State Finance Law, a Contract resulting from this Solicitation shall not be valid, effective or binding upon the State until such Contract has been approved by the Office of the New York State Comptroller ("OSC"). Purchase Orders or other procurement transactions issued under such Contract(s) may also be subject to OSC approval.

1.10 MWBE & SDVOB Interest in Partnering with Bidders

- A. If a New York State certified MWBE or SDVOB would like to indicate its interest in working with participating Bidders, please send an email entitled "*Solicitation 23378 MWBE or SDVOB INTEREST_COMPANY NAME*" to ogs.sm.SolarContracts@ogs.ny.gov on or before May 14. The email content should include:
1. Company Name
 2. Contact Name and Contact Information such as Phone Number, Mailing Address and Email Address
 3. Brief description of the company and the Products that the company offers that are related to this Solicitation (for example "Company ABC manufactures pencils")
 4. The NYS Certification Type (Minority and/or Women-Owned or SDVOB)
 5. Include what locations in NYS the company provides services in.
- B. A list of the NYS certified MWBE and SDVOB vendors who have expressed interest in this Solicitation through the timely submission of such email, will be made available to prospective Bidders through the publishing of a Purchasing Memorandum posted through the New York State Contract Reporter.

1.11 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://ogs.ny.gov/acpl/>

1.12 Definitions

Capitalized terms used in this Solicitation and the resultant Contract(s) shall be defined in accordance with Appendix B *Definitions*, or as below. Additional definitions related to the RFQ process are located in Attachment 13 – *Request for Quotes Template*.

“**Affected Entity**” shall refer to any agency or department over which the Governor has executive authority, including all offices and divisions thereof, as well as all public authorities for which the Governor appoints the Chair, the Chief Executive, or the majority of board members, including all offices and divisions thereof, except for the Port Authority of New York and New Jersey. This shall include the State University of New York and the City University of New York. Refer to the list presented in Executive Order 22 Exhibit A: <https://www.governor.ny.gov/executive-order/no-22-leading-example-directing-state-agencies-adopt-sustainability-and>.

“**Authorized User**” is as defined in Appendix B *Definitions*. Authorized Users shall include Affected Entities as defined in the NYS Executive Order 22 and related GreenNY specifications.

“**Authorized User Agreement**” shall refer to the agreement between the Contractor and the Authorized User, resulting from the competitive bidding of the applicable Authorized User RFQ.

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

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

“**Building Integrated Photovoltaic (BIPV)**” shall refer to Solar Cells integrated into building components such as siding or roofing shingles.

“**Business Day(s)**” shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

“**Deeper Discount**” shall refer to an additional single percentage discount that will be added to the Product Category Discount provided for the applicable Product in Lot 1 *Photovoltaic Systems*. The percentage entered must be whole numbers (e.g., 56%) that are greater than zero (0%).

“**Electronic Product Environmental Assessment Tool (EPEAT)**” shall refer to a global ecolabel for electronics and technology products that is managed by the Global Electronics Council. The tool helps purchasers, manufacturers, resellers, and others buy and sell environmentally preferable electronic products. EPEAT-registered products must meet environmental performance criteria that address materials selection, supply chain greenhouse gas emissions reduction, design for circularity and product longevity, energy conservation, end-of-life management, and corporate performance. For additional information, visit <https://www.epeat.net/>

“**Environmental Value (E Value)**” shall refer to the environmental component of the Value of Distributed Energy Resources (VDER) program.

“**Governmental Entity**” shall refer to an entity at the federal, state, county, city, or municipal level.

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

“**Institute of Electrical and Electronics Engineers (IEEE - read I-Triple-E)**” shall refer to an international non-profit, professional organization for the advancement of technology related to electricity. It has the most members of any technical professional organization in the world, with more than 395,000 members in about 150 countries. It develops global standards in a broad range of industries, including power and energy, biomedical and

healthcare, information technology, telecommunication, transportation, nanotechnology, and information assurance.

“Interconnection” shall refer to the process of connecting a solar project to the utility grid. Associated costs incurred may include, but are not limited to, application fees, impact studies, and network upgrades.

“International Brotherhood of Electrical Workers (IBEW)” shall refer to a non-profit labor organization that represents approximately 820,000 active members and retirees who work in a wide variety of fields, including utilities, construction, telecommunications, broadcasting, manufacturing, railroads, and government.

“International Electrotechnical Commission (IEC)” shall refer to the world's leading organization that prepares and publishes International Standards for all electrical, electronic, and related technologies.

“Kilowatt (kW)” shall refer to a unit of electrical power equal to 1,000 watts.

“Kilowatt-Hour (kWh)” shall refer to one thousand watts acting over a period of one hour. The kWh is a unit of energy.

“List Price” shall refer to the price published on a manufacturer or Bidder's regularly published commercial pricelist for the Product.

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

“North American Board of Certified Energy Practitioners (NABCEP)” shall refer to the organization providing certification for PV and solar thermal installation. Designed to raise industry standards and promote consumer confidence, NABCEP offers certification and certificate programs to renewable energy professionals throughout North America.

“Not to Exceed Hourly Rate (NTEHR)” shall refer to the maximum price for all costs associated with the Assessment, Design, or Training Services categories in Lot 2 *Photovoltaic Services*. Contractor cannot quote or sell a Product for more than the NTEHR.

“Not to Exceed Labor Markup Rates (NTELMR)” shall refer to a not to exceed markup percentage over the prevailing wage rates. NTELMR is inclusive of all costs associated with the Installation and Remedial Maintenance Services categories in Lot 2 *Photovoltaic Services*.

“Not to Exceed (NTE) Net NYS Price” shall refer to the maximum price of the applicable Product offered in Lot 1 *Photovoltaic Systems*.

“Not to Exceed (NTE) PPA Price” shall refer to the maximum price for all costs associated with Solar Power Purchase Agreements offered in Lot 4 *Solar Power Purchase Agreements*, including but not limited to the preparation of responses to RFQs, design work, system construction, ancillary construction costs (e.g., administrative costs, reporting costs, travel costs, parking, permit costs, licensing costs, insurance costs, project management, the performance of quality control/quality assurance activities, inspections and code compliance), system commissioning, and administrative work, but excluding Interconnection costs. Contractor cannot quote or sell a Product for more than the NTE PPA Price.

“NYS Holidays” shall refer 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; Dr. Martin Luther King, Jr. Day; Washington's Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veterans' Day; Thanksgiving Day; and Christmas Day.

“NYS Vendor ID” shall refer to 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.

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

“Photovoltaic (PV)” shall refer to the technology of converting sunlight into direct current electricity with the use of semiconductor material.

“Photovoltaic Cell” or “Solar Cell” shall refer to an electronic device that converts the energy of light directly into electricity through the Photovoltaic effect.

“Photovoltaic Panel” or “Photovoltaic Module” shall refer to a packaged interconnected assembly of Photovoltaic Cells or Solar Cells.

“Photovoltaic System” or “PV System” shall refer to either complete, packaged systems or individual components of systems that convert solar radiation into electricity.

“Product Category(ies)” shall refer to a subgroup of Products within each Lot.

“Product Category Discount” shall refer to the single percentage discount for a Product Category in Lot 1 *Photovoltaic Systems*, entered as whole number-percentages (e.g., 56%) that are greater than zero (0%).

“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 State Agencies, political subdivisions and public benefit corporations (including most public authorities).

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

“Recurring Maintenance Price” shall refer to the maximum cost of a preventative maintenance plan per billing period bid for the Preventative Maintenance Service Product Category under Lot 2 *Photovoltaic Services*. Contractor cannot quote or sell a Product for more than the Recurring Maintenance Price.

“Renewable Energy Certificate (REC)” shall refer to a certificate that represents the environmental attributes of one megawatt-hour (MWh) of electricity generated from a renewable source.

“Request for Quotes (RFQ)” is as defined in Appendix B *Definitions* and shall refer to the document issued by the Authorized User used to solicit price quotations for Products within specific Lots and NYS Counties from Contractors.

“Request for Quotes (RFQ) PPA Price” shall refer to the price for all costs associated with Solar Power Purchase Agreements that is bid in response to an RFQ offered in Lot 4 *Solar Power Purchase Agreements*, including but not limited to the preparation of responses to RFQs, design work, system construction, ancillary construction costs (e.g., administrative costs, reporting costs, travel costs, parking, permit costs, licensing costs, insurance costs, project management, the performance of quality control/quality assurance activities, inspections and code compliance), system commissioning, and administrative work, but excluding Interconnection costs. The RFQ PPA Price cannot exceed the awarded NTE PPA Price.

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

“**Solar Array**” shall refer to a linked collection of Photovoltaic Panels or Photovoltaic Modules which are in turn made of multiple interconnected Photovoltaic Cells or Solar Cells. Solar Arrays are also referred to as Photovoltaic Arrays in the GreenNY specification for “Photovoltaic (PV) Systems” (see Section 6.28 *Environmental Sustainability and NYS Executive Order 22*).

“**Total Discount**” shall refer to the sum of the Product Category Discount plus the Deeper Discount in Lot 1 *Photovoltaic Systems*.

“**Total Net Cost for RFQ**” shall refer to the project cost that is bid in response to an RFQ using the following calculations: Lot 1 (Total Costs minus Incentives, Credits, and Rebates), Lot 2 (Total Costs minus Incentives, Credits, and Rebates), Lot 3 (Total Estimated Costs minus the sum of Incentives, Credits, and Rebates plus Estimated Savings), and Lot 4 (Total Costs minus Incentives, Credits, and Rebates).

“**Underwriters Laboratories (UL)**” shall refer to an independent product safety certification organization that has been testing products and writing standards for safety for more than a century. UL's worldwide family of companies and network of service providers includes 68 laboratory, testing and certification facilities serving customers in 102 countries.

“**Value of Distributed Energy Resources (VDER)**” shall refer to 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. Also known as the “Value Stack.”

“**VDER Project**” shall refer to a solar project that utilizes VDER to compensate the Authorized User for the electricity generated by the project in accordance with guidance and rules established by the New York State Public Service Commission. Also referred to as community distributed generation (CDG), remote crediting, or community solar.

“**VDER Discount Rate for the Back-Drop Contract (VDER-DR-BC)**” shall refer to the minimum **percentage discount** to be applied to the monetary credit included on the subscriber's utility bill for the electricity generated by the solar VDER Project offered in Lot 3 *Solar Subscriptions*. VDER-DR-BC includes all costs associated with the implementation of the solar VDER Project including, but not limited to, financing, designing, installing, owning, operating, and maintaining Photovoltaic Systems throughout the life of the Authorized User Agreement. The VDER-DR-RFQ submitted by the Contractor in response to an RFQ shall not be less than the awarded VDER-DR-BC for the Back-Drop Contract.

“**VDER Discount Rate for the Request for Quotes (VDER-DR-RFQ)**” shall refer to the **percentage discount** to be applied to the monetary credit included on the subscriber's utility bill for the electricity generated by the solar VDER Project that is bid in response to an RFQ offered in Lot 3 *Solar Subscriptions*. The VDER-DR-RFQ for the RFQ shall not be less than the VDER-DR-BC awarded for the Back-Drop Contract.

1.13 Appendices and Attachments

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

Appendix A – *Standard Clauses for New York State Contracts* (June 2023)

Appendix B – *General Specifications* (April 2016)

Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023)

Attachment 1 – *Pricing*

Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Encouraging Use of New York State Businesses in Contract Performance*

Attachment 4 – *Insurance Requirements*

Attachment 5 – *Bidder Information Questionnaire*

Attachment 6 – *Bidder Submission Checklist*

Attachment 7 – *Bidder Questions Form*

Attachment 8 – *Report of Contract Usage*

Attachment 9 – *Certification Under Executive Order No. 16*

Attachment 10 – *Minimum Qualifications Submittal Form*

Attachment 11 – *Owner's Authorization Form*

Attachment 12 – Contractor and Reseller/Distributor Information

Attachment 13a – Request for Quotes Template: Lot 1

Attachment 13b – Request for Quotes Template: Lot 2

Attachment 13c – Request for *Quotes Template: Lot 3*

Attachment 13d – *Request for Quotes Template: Lot 4*

Attachments 13a, 13b, 13c and 13d are examples of the template documents that may be used by Authorized Users for an RFQ (see Section 5.4.2 *Request for Quotes*) and shall not be incorporated into any Contracts resulting from this Solicitation. These template documents, and subsequent updated versions, will be posted online for Authorized User convenience on the OGS website for the Contract award. OGS reserves the right to modify these template documents during the Contract term in non-material and substantive ways without seeking a Contract amendment.

1.14 Conflict of Terms

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

1. Appendix A – *Standard Clauses for New York State Contracts* (June 2023);
2. Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023);
3. The Solicitation;
4. Appendix B – *General Specifications* (April 2016);
5. All other appendices and attachments to the Solicitation.

2. BIDDER QUALIFICATIONS

- A. 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.
- B. The Bidder must document that it meets the following minimum qualifications using Attachment 10 – *Minimum Qualifications Submittal Form*. OGS reserves the right to verify the information submitted and to reject the Bid if verification checks result in OGS obtaining information that brings into question the accuracy of the information provided by Bidder, the PV project(s) meeting the stipulated requirements, or Bidder's ability to perform the Services bid.

- C. Other Entity Experience: Bidder may rely on the operations of a parent company, subsidiary, predecessor entity, or other entity ("Other Entity") for purposes of satisfying required years in continuous operation. If Bidder is relying on the operations of an Other Entity, Bidder is required to provide, as a separate document, a full explanation describing its relationship with the Other Entity and how it satisfies the minimum qualification (see Attachment 10 – *Minimum Qualifications Submittal Form*). The mandatory requirements for which an Other Entity's operations may be applied are noted for each Lot below. OGS will determine whether such Other Entity's operations satisfies the applicable minimum qualification 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.

2.1 Lot 1 Photovoltaic Systems Mandatory Requirements

Bidders for Lot 1 shall meet the following minimum qualifications:

A. The Bidder must:

1. Have the capacity to provide PV Systems that meet the minimum specifications in Section 3.2 *Lot 1 Photovoltaic Systems Specifications*, which include the GreenNY specification titled "Photovoltaic (PV) Systems" (see <https://ogs.ny.gov/greenny/photovoltaic-pv-systems>);

AND

2. Be either:

- a. A manufacturer of the PV Systems being bid, or
- b. An entity authorized by the manufacturer to sell the PV Systems being bid.

B. The Bidder must have maintained an organization, in continuous operation, during the three (3) consecutive years immediately preceding the Bid Opening Date indicated in Section 1.4 *Key Events/Dates*, as either a manufacturer of PV Systems or an entity authorized by a manufacturer to sell PV Systems. Bidder may rely on Other Entity operations to fulfill this requirement (see Section 2 *Bidder Qualifications*, Paragraph C *Other Entity Experience*).

2.2 Lot 2 Photovoltaic Services Mandatory Requirements

Bidders for Lot 2 shall meet the following minimum qualifications:

A. The Bidder must have maintained an organization that provides services for PV Systems, in continuous operation, during the three (3) consecutive years immediately preceding the Bid Opening Date indicated in Section 1.4 *Key Events/Dates*. Bidder may rely on Other Entity operations to fulfill this requirement (see Section 2 *Bidder Qualifications*, Paragraph C *Other Entity Experience*).

B. If the Bidder is submitting a Bid for Installation Services, then the Bidder must be listed as a New York State Energy Research and Development Authority (NYSERDA) NY-Sun qualified Commercial & Industrial Solar Contractor on the NYSERDA website (see <https://www.nyserda.ny.gov/All-Programs/NY-Sun/On-site-Solar/Businesses/Choosing-a-Contractor/Commercial-Installers>), or as a NYSERDA NY-Sun qualified Residential & Small Commercial Solar Contractor on the NYSERDA website (see <https://www.nyserda.ny.gov/All-Programs/NY-Sun/On-site-Solar/Homes/Choosing-a-Contractor/Residential-Installers>).

C. The Bidder must list five (5) PV projects per Product Category being bid on (Assessment, Design, Installation, Remedial Maintenance, Preventative Maintenance, or Training Services) under which Bidder, either directly, or as prime Contractor using Subcontractors under Bidder's direct control, provided the applicable services to Governmental Entities and/or commercial (not residential) entities. Services for all five (5) PV projects must have been provided within the five (5) consecutive years immediately preceding the Bid Opening Date

indicated in Section 1.4 *Key Events/Dates*. OGS reserves the right to contact the project owner to verify information submitted as part of the Bid.

In addition, at least one of the PV projects per Product Category must have been completed and made operational three (3) or more years preceding the Bid Opening Date indicated in Section 1.4 *Key Events/Dates*.

2.3 Lot 3 Solar Subscriptions Mandatory Requirements

Bidders for Lot 3 shall meet the following minimum qualifications:

- A. The Bidder must be either:
 - 1. The owner of the solar VDER Project(s) bid, and/or
 - 2. An entity authorized by the owner to manage and sell subscriptions for the solar VDER Project(s) bid.
- B. The Bidder must have and be able to offer at least one (1) solar VDER Project that:
 - 1. 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 – *Owner’s Authorization Form* with its response to this Solicitation; and
 - 2. To the extent that New York State Energy Research and Development Authority (NYSERDA) NY-Sun incentives are available, has been submitted for available NY-Sun funding by the Bid Opening Date listed in Section 1.4 *Key Events/Dates*; and
 - 3. Is accepting subscribers at the time of the Bid Opening Date listed in Section 1.4 *Key Events/Dates*.
- C. The Bidder must have maintained an organization that either owns solar VDER Projects and/or sells subscriptions for solar VDER Projects, in continuous operation, within the two (2) consecutive years immediately preceding the Bid Opening Date indicated in Section 1.4 *Key Events/Dates*. Bidder may rely on Other Entity operations to fulfill this requirement (see Section 2 *Bidder Qualifications*, Paragraph C *Other Entity Experience*).
- D. The Bidder must have and provide a list of ten (10) contacts for utility accounts that fall under the “Mass Market” or “Commercial and Industrial” Product Categories (see Section 1.2.3 *Lot 3 Solar Subscriptions*) that were managed as part of a solar VDER Project. OGS reserves the right to contact the project owner to verify information submitted as part of the Bid.

2.4 Lot 4 Solar Power Purchase Agreements Mandatory Requirements

Bidders for Lot 4 shall meet the following minimum qualifications:

- A. Appear on NYSERDA’s list of NY-Sun qualified Commercial & Industrial Solar Contractors on the NYSERDA website, located at <https://www.nyserda.ny.gov/All-Programs/NY-Sun/On-site-Solar/Businesses/Choosing-a-Contractor/Commercial-Installers>.
- B. Have at least three (3) years of continuous operation developing, installing, and maintaining solar PV Systems during three (3) of the five (5) years immediately preceding the Bid Opening Date indicated in Section 1.4 *Key Events/Dates*. Bidder may rely on Other Entity operations to fulfill this requirement (see Section 2 *Bidder Qualifications*, Paragraph C *Other Entity Experience*).
- C. Have (and provide a list of) ten (10) completed (PPA executed and PV System installed) PV projects which Bidder, either directly, or as prime Contractor using Subcontractors under Bidder’s direct control, provided for Governmental Entities and/or commercial (not residential) entities using the PPA model. All ten (10) PV

projects must have been completed (PPA executed and PV System installed) within the five (5) years immediately preceding the Bid Opening Date indicated in Section 1.4 *Key Events/Dates*. OGS reserves the right to contact the project owner to verify information submitted as part of the Bid.

1. At least one (1) PV project (of the 10 required) shall fall within the size range for each Product Category bid. For example, if bidding on the ">1000" kW size in the Con Edison Region for the PV System category or the PV System + Storage category, at least one (1) of the ten (10) required completed PV project sizes must be greater than 1000 kW.
2. In addition, at least one (1) of the PV projects must have a PPA that was completed and made operational three (3) or more years preceding the Bid Opening Date indicated in Section 1.4 *Key Events/Dates*.

3. SPECIFICATIONS

The following minimum specifications shall apply for each Lot. The Authorized User may provide supplemental specifications in the Request for Quotes Template.

3.1 Renewable Energy Certificates and Environmental Value

Bidders shall provide an option for Authorized Users to purchase Tier 1 RECs for each Lot, if applicable. Authorized User shall indicate in its RFQ if RECs will be a requirement for award of the RFQ. Eligibility and additional information about RECs are located on the NYSERDA website at <https://www.nyserd.ny.gov/All-Programs/Large-Scale-Renewables/RES-Tier-One-Eligibility>.

Bidders shall provide an option for Authorized Users to retain or forgo the E Value for each Lot, if applicable. Authorized User shall indicate in its RFQ its requirements for E Value. Additional information about E Value and the Value Stack are located on the NYSERDA website at <https://www.nyserd.ny.gov/All-Programs/NY-Sun/Contractors/Value-of-Distributed-Energy-Resources>.

3.2 Lot 1 Photovoltaic Systems Specifications

- A. **PV Systems** offered by a Bidder in Lot 1 must meet the minimum GreenNY Specification labeled "Photovoltaic (PV) Systems," located on the OGS website at <https://ogs.ny.gov/greenny/photovoltaic-pv-systems> and listed below. The Bidder shall provide specification sheets with its Bid demonstrating that all Products offered meet the specifications contained in this section. OGS reserves the right to request additional information regarding any Product offered, and to remove Products from the pricelist for which the specification requirements cannot be verified.
- B. **PV Systems** offered shall meet the following minimum specifications:
 1. Compliance with these standards and listings as applicable:
 - a. IEC Standard 61215 (testing of crystalline silicon modules)
 - b. IEC Standard 61646 (testing of thin film modules)
 - c. IEC Standard 61730 (safety testing for Photovoltaic Modules)
 - d. UL 1703 (flat plate)
 - e. IEEE 1262 (flat plate)
 2. 25-year 80% minimum rated power performance guarantee.
 3. Minimum efficiency ratings:
 - a. 18% for all crystalline silicon
 - b. 6% for all thin film (often part of BIPV units)

4. Minimum five (5) year Product warranty.
 5. Minimum design life of twenty-five (25) years.
 6. Where applicable, the PV Systems shall be designed for fully automatic, unmanned operation and include communications for monitoring system output.
- C. In addition to the minimum specifications, Bidders are encouraged to provide offerings that meet the “Additional Encouraged Attributes” defined by the GreenNY Specifications and listed in Section 5.4.1 General *Procurement Instructions*, Paragraph K *Additional Encouraged Attributes*.
- D. Product shall be designed and assembled in accordance with all applicable governmental regulations, permits, and industry standards.

At the time of either Purchase Order or RFQ, the Bidder shall provide specification sheets for all components that make up the packaged PV System(s) offered. Authorized Users must review the specification sheets for packaged PV Systems to ensure they meet the requirements of this section.

3.3 Lot 2 Photovoltaic Services Specifications

The Bidder shall provide all qualified personnel, materials and equipment necessary to complete the applicable Photovoltaic Services in accordance with all local, State and federal laws. Definitions and minimum specifications for PV Services that may be offered are provided below. Authorized Users will provide additional specifications in the RFQ, as needed. See Section 5.4.2 *Request for Quotes* for Bidder responsibilities when responding to an RFQ.

- A. **Assessment Services** are tasks that may be required by an Authorized User during initial PV project planning, including but not limited to: fatal flaw analysis, feasibility analysis, financial analysis, analysis of Interconnection with distribution utility, Site assessment, and evaluation of subsurface conditions. Assessment does not include any physical construction, Site design, maintenance, or training.
- B. **Design Services** are those tasks specifically associated with the design of the PV System including, but not limited to, the Services listed below:
1. **Design Work** - The Bidder is responsible for design work done in response to an awarded RFQ which may include, but is not limited to, the final design of the PV System, the preparation of drawings, the preparation of specifications, the selection of system components, the identification of and application for any rebates, grants, and incentives, and obtaining of all necessary approvals and permits. The Bidder shall design the system in accordance with all applicable federal, NY State, and local laws, codes, regulations, and standards. The codes and standards utilized shall be the latest editions in effect at the Authorized User Agreement start date. Where specific features of the equipment or system industry standards are not governed by federal, NY State, and local laws, codes, regulations, and standards, Original Equipment Manufacturer (OEM) specifications shall be applied.
 2. **Drawings, Technical Documents and Training** – The Bidder is responsible for providing basic training for system operation and maintenance to the Authorized User of the PV System and shall provide as-built drawings and maintenance and operations manuals.
- C. **Installation Services** are those tasks specifically associated with the purchase, assembly and commissioning of the PV System including, but not limited to, the services listed below.
1. **System Construction** - The Bidder is responsible for the construction of the PV System which may include but is not limited to the construction of simple foundations, assembly of the system, anchoring of the system, wiring, construction of electrical connections and the installation of performance monitoring systems.

- a. The Bidder is responsible for installing all aspects of the system in strict accordance with the manufacturer's detailed specifications, installation instructions and asset selection criteria for system components.
- b. The Bidder shall provide all equipment, materials, tools, personnel and services necessary to install the PV System.
- c. The Authorized User will designate hours when construction and installation may occur.
- d. The Authorized User reserves the right to inspect and reject any portion of the installation.
- e. The Bidder shall submit to the local utility, for review and approval, any required specifications and detailed plans of the system for Interconnection.

2. **System Commissioning** - The Bidder is responsible for the testing and commissioning of the PV System which may include, but is not limited to, physical and visual inspections, measurement and verification of system performance, documentation of as-built conditions, the supply of operations and maintenance manuals, the verification of proper system operation, the supply of a commissioning report and the quality assurance review and approvals.

All Installation Services shall be performed by staff who are working under the direct supervision of an employee who is certified as a "PV Installation Professional" by the NABCEP. All Installation Services shall be performed by companies who appear on the NYSERDA list of Commercial & Industrial Solar Installers (see <https://www.nyserda.ny.gov/All-Programs/NY-Sun/On-site-Solar/Businesses/Choosing-a-Contractor/Commercial-Installers>) or on the NYSERDA list of Residential & Small Commercial Solar Installers (see <https://www.nyserda.ny.gov/All-Programs/NY-Sun/On-site-Solar/Homes/Choosing-a-Contractor/Residential-Installers>). All electrical work shall be performed in accordance with the jurisdiction's laws, codes and standards where the work is being performed.

Installation Services shall include a workmanship warranty covering defects or damages arising from the installation of the PV System for a minimum of five (5) years.

- D. **Maintenance Services** include, but are not limited to, inspection, monitoring, preventative care, reporting, repairs, and any other service that Authorized Users may require for the continued operation of a PV System. The service may fall under Remedial Maintenance Services or Preventative Maintenance Services, as specified by the Authorized User in the RFQ.
 1. **Remedial Maintenance Services** include a one-time repair or replacement of previously installed, integrated, and accepted PV System(s) or its component parts that an Authorized User may require for continued operation of a PV System or its component parts.
 2. **Preventative Maintenance Services** are recurring scheduled repair or replacement services that an Authorized User may require for continued operation of a PV System or its component parts. Preventative Maintenance Services are intended to prevent future PV Systems failures and to extend the useful life of the PV Systems. Authorized User Agreements for Preventative Maintenance Services that are fully executed prior to the expiration of the Back-Drop Contract shall survive the expiration date of the Back-Drop Contract, if applicable, based on the term of the Authorized User Agreement, but shall in no event survive beyond 36 months from the date of expiration of the Back-Drop Contract.
- E. **Training Services** include, but are not limited to, providing detailed instruction to Authorized Users on how to install and/or maintain PV System components, general ownership/operation, and any other training resources as specified by the Authorized User in the RFQ. Training Services may include on-site, practical guidance, virtual training, or a combination. These services are a separate offering from those provided as described under Paragraph B *Design Services*, Subparagraph 2 *Drawings, Technical Documents and Training*, above.

3.4 Lot 3 Solar Subscriptions Specifications

This section describes the minimum requirements for solar VDER Projects and associated subscriptions that may be bid in response to an Authorized User RFQ. Additional specifications will be provided by the Authorized User in the RFQ. See Section 5.4.2 *Request for Quotes* for Bidder responsibilities when responding to an RFQ.

A. The Bidder's Authorized User Agreement(s) must:

1. Meet the requirements of all applicable governmental regulations, permits, and industry standards, including the NYS Standardized Interconnection Requirements, located at <https://dps.ny.gov/distributed-generation-information>;
2. Allow for the cancellation of subscriptions without any additional charges, financial penalties, or requirements to provide an eligible replacement customer, provided that ninety (90) days written notice is given by the Authorized User;
3. Not require up-front costs to subscribe;
4. Not require a periodic (e.g. monthly) subscription fee;
5. Allow Authorized User to modify its subscription capacity on an annual basis;
6. Provide a monthly statement to the Authorized User showing the amount of electricity generated by their subscription, the credit applied to their utility bill, and the cost of the subscription. This requirement may be modified to use a different time frame (quarterly, etc.) with the prior agreement of the Authorized User; and
7. Provide a true-up or equivalent mechanism at least annually, or upon request, for ensuring that the Authorized User pays only for the actual credits or amount of electricity generated by the subscription.

B. The Bidder shall be responsible for providing customer service to address Authorized User issues, for no additional fee (see Section 6.18 *Contract Administration*).

C. The Bidder is fully responsible for all warranties, maintenance, and production guarantees for the entire solar VDER Project for the entire term of the Authorized User Agreement.

D. The Bidder shall provide any subscription agreements and/or other documents necessary to facilitate subscription to the solar VDER Projects to the Authorized User with the Bidder's response to the RFQ. Documents which contain additional terms or conditions must receive pre-approval by the Authorized User in accordance with Appendix B *Modification of Contract Terms*. Any additional terms, in the subscription agreements and/or other documents, that are accepted by the Authorized User will be incorporated into the resulting Authorized User Agreement.

E. The Bidder will respond to this Solicitation and subsequent RFQs only with solar VDER Projects approved by the NY-Sun program. Should the NY-Sun program be replaced or discontinued during the course of the awarded Contract, OGS reserves the right to substitute an equivalent program for this requirement.

3.5 Lot 4 Solar Power Purchase Agreements Specifications

Bidder shall provide Authorized Users with a streamlined process/turnkey solution to acquire solar-generated electricity via PV Systems installed on behalf of the Authorized User at no upfront cost. This arrangement will be established through an Authorized User Agreement (which is referred to as a "PPA" for Lot 4 *Solar Power Purchase Agreements*). Each PV System installed as part of the PPA includes, but is not limited to, Photovoltaic Modules, inverter, wiring, conduit, display devices, disconnects, and support structure. Minimum specifications are provided below. The Authorized User will provide additional specifications in their RFQ. See Section 5.4.2 *Request for Quotes* for Contractor responsibilities when responding to an RFQ.

- A. PV Systems offered by the Bidder for the PPAs must meet the minimum specifications stated above in Section 3.2 *Lot 1 Photovoltaic System Specifications*. In addition to the minimum specifications, Product warranties must be guaranteed for the term of the PPA and Bidders are encouraged to provide offerings that meet the "Additional Encouraged Attributes" defined by the GreenNY Specifications and listed in Section 5.4.1 *General Procurement Instructions, Paragraph K Additional Encouraged Attributes*.
- B. The PV Systems shall generate direct current which shall be converted to appropriate voltage for direct electric grid connection. Each PV System's line voltage shall have the capability to be individually monitored for energy and capacity output as well as for other grid-specific diagnostic telemetry.
- C. Services offered by the Bidder when providing the PPAs must meet the minimum specifications stated above in Section 3.3 *Lot 2 Photovoltaic Services Specifications*, excluding Training Services.
- D. Unless otherwise agreed to between the Authorized User and the Contractor:
1. The Contractor may utilize year one (1) and year two (2) of the PPA resulting from the RFQ for system design, installation, and completion of communications/network training;
 2. The PV System shall be operational including Interconnection and net metering at or within two (2) years from the date the PPA is awarded (i.e. by the start of year three (3) of the PPA); and
 3. The PV System shall continue to operate through year twenty-five (25) of the PPA.

4. BID SUBMISSION

4.1 Performance and Bid Bonds

There are no bonds for this Contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract is required at any time during the term of the resulting Contract.

4.2 NYS Vendor File Registration

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder and any authorized resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (NYS 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 a 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 (http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) and submit the form to OGS in advance of Bid submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if an authorized reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for

all Bidders and authorized resellers. Once the process is initiated, registrants will receive an email identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the Vendor File please visit the following website: <https://osc.state.ny.us/vendors/>

4.3 Format of Bid Submission

- A. 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:
 - 1. Email or facsimile Bid submissions are not acceptable, and
 - 2. Absent Price Pages (Attachment 1 – *Pricing*) are not acceptable.
- B. 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.
- C. Any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.
- D. Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation may be considered non-responsive and may be rejected.

4.4 Content

- A. A complete Bid consists of submission of the following documents (unless noted as “Not required to be submitted with the bid”). All documents must be completed in accordance with the instructions for the individual document, which may include an original signature or an original notarized signature. At this time, OGS cannot accept an electronic signature that has been generated by software (e.g., DocuSign or Adobe Acrobat Sign) for documents that are not designed to allow for or require an electronic signature. See also Attachment 6 – *Bidder Submission Checklist*.

	Bid Document	Required File Format (Submit on USB)	Paper also Required (Submit printed copy)
1	Page 1 of the Solicitation	PDF	X
2	Page 2 of the Solicitation – <i>Bidder Certification and Affirmation</i> , with signature	PDF	
3	Appendix C – <i>Federal Funding Agency Mandatory Terms and Conditions</i> , with Section 10 completed (page 6)	PDF	
4	Attachment 1 – <i>Pricing</i> (must be included with the Bid at the Bid Opening / Due date for Bids)	Excel	
5	Attachment 2 – <i>NYS Required Certifications</i> , with signature	PDF	

	Bid Document	Required File Format (Submit on USB)	Paper also Required (Submit printed copy)
6	Attachment 3 – <i>Encouraging Use of New York State Businesses in Contract Performance</i>	PDF	
7	Proof of Compliance with Attachment 4 – <i>Insurance Requirements</i>	PDF	
8	Attachment 5 – <i>Bidder Information Questionnaire</i>	Excel	
9	Attachment 6 – <i>Bidder Submission Checklist</i>	Excel	
10	Attachment 7 – <i>Bidder Questions Form</i>	Not required to be submitted with the Bid	
11	Attachment 8 – <i>Report of Contract Usage</i>	Not required to be submitted with the Bid	
12	Attachment 9 – <i>Certification Under Executive Order 16</i> , with signature	PDF	
13	Attachment 10 – <i>Minimum Qualifications Submittal Form</i>	Excel	
14	Attachment 11 – <i>Owner’s Authorization Form</i> (if bidding on Lot 3 Solar Subscriptions, and Bidder is not the owner of the applicable solar VDER Project)	PDF	
15	Attachment 12 – <i>Contractor and Reseller/Distributor Information</i>	Excel	
16	Attachment 13a – <i>Request for Quotes Template: Lot 1</i>	Not required to be submitted with the Bid	
17	Attachment 13b – <i>Request for Quotes Template: Lot 2</i>	Not required to be submitted with the Bid	
18	Attachment 13c – <i>Request for Quotes Template: Lot 3</i>	Not required to be submitted with the Bid	
19	Attachment 13d – <i>Request for Quotes Template: Lot 4</i>	Not required to be submitted with the Bid	
20	EEO 100 – <i>Equal Employment Opportunity Staffing Plan</i> , with signature (see https://ogs.ny.gov/mwbe/forms under “Commodity & Service Contracts”)	PDF	
21	MWBE 100, <i>MWBE Utilization Plan</i> , with signature (see https://ogs.ny.gov/mwbe/forms under “Commodity & Service Contracts”)	PDF	
22	Vendor Responsibility Questionnaire (copy of certification that a Questionnaire has been completed online, and certified no more than six (6) months prior to the Bid Opening Date; see https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire)	PDF	
23	ST-220-CA, <i>Contractor Certification to Covered Agency</i> , with signature and notary (see https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)	PDF	
24	ST-220-TD, <i>Contractor Certification</i> , with signature and notary (see https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)	Must be submitted directly to the NYS Tax Department	

	Bid Document	Required File Format (Submit on USB)	Paper also Required (Submit printed copy)
25	If bidding on Lot 1 <i>Photovoltaic Systems</i> , the regularly published commercial pricelist(s) from which Product Category Discounts bid on Attachment 1 – <i>Pricing</i> are derived (see Section 4.5 <i>Bid Pricing Submittal for Back-Drop Contracts</i> , Subsection B (1), <i>Lot 1 Photovoltaic Systems</i>)	Excel/ PDF	
26	If bidding on Lot 1 <i>Photovoltaic Systems</i> , specification sheets that demonstrate that all Products offered meet the specifications contained in Section 3.2 <i>Lot 1 Photovoltaic Systems Specifications</i>	PDF	
27	If bidding on Lot 1 <i>Photovoltaic Systems</i> or Lot 2 <i>Photovoltaic Services</i> (excluding Installation and Remedial Maintenance Services), copies of the comparable Governmental Entity or commercial contracts or invoices used to establish reasonableness of prices bid in Attachment 1 – <i>Pricing</i> (see Section 5.2 <i>Reasonableness of Price and Section 2 Bidder Qualifications</i>)	Excel/ PDF	
28	Pursuant to Section 2 <i>Bidder Qualifications</i> , Paragraph C <i>Other Entity Experience</i> , if Bidder is relying on the operations of an Other Entity, Bidder is required to provide, as a separate document, a full explanation describing its relationship with the Other Entity and how it satisfies the minimum qualification.	PDF	

B. Documents should be submitted as an electronic copy and in the format specified in the list above for each document (e.g., PDF, Excel), following the instructions provided in this section. Electronic copies of documents must be submitted on two (2) USB flash drives, with each USB flash drive containing a complete set of the submitted documents. For bid identification purposes, include a printed copy of page 1 of the Solicitation with the two (2) USB flash drives in the Bid envelope or package (see Section 4.6 *Bid Envelopes and Packages*, below).

Electronic copies of documents provided in PDF format should be saved as an Adobe Acrobat PDF, AND THEN converted to allow for Optical Character Recognition (OCR) (see <https://www.adobe.com/acrobat/how-to/ocr-software-convert-pdf-to-text.html>).

- C. OGS shall consider documents submitted on multiple USB flash drives to be equal, provided that the date/time modified is the same for documents that have the same file name. In the case of discrepancies between file names and date/time modified, the file with the most recent date/time modified shall take precedence.
- D. Documents that are not indicated as “Paper Also Required” in the above table should not be submitted in paper format, and may not be reviewed by OGS if they are received. In the case of discrepancies between paper versions that are received (if applicable) and USB flash drive submissions of the documents submitted by the Bidder, the electronic USB flash drive copy shall take precedence over the paper version.
- E. Bidder is responsible for retaining copies and original versions (if applicable), of all submitted bid documents until a determination of award is made. If an award is made to Bidder, the bid documents shall be retained by the Bidder for a period of six (6) years after the term of the Contract has ended. Document retention for pre- and post-award includes both copies of electronic documents, and original paper documents with required original signatures that have been scanned and submitted electronically. Bidder shall submit such retained documents to OGS upon request.

4.5 Bid Pricing Submittal for Back-Drop Contracts

A Bidder shall submit Attachment 1 – *Pricing* in accordance with Section 4.4 *Content* and the instructions worksheet within Attachment 1 – *Pricing*. Failure to enter all required information on Attachment 1 – *Pricing* may render the Bid non-responsive and result in the rejection of the Bid.

The Attachment 1 – *Pricing* submitted by the successful Bidder shall be incorporated into the resultant Back-Drop Contract and the Bidder shall be required to provide the awarded Lot(s) at the prices quoted in its Bid. See also Section 6.4 *Price* for terms and conditions for pricing for the Back-Drop Contract.

- A. A Bidder is not required to Bid on every Lot. A Bidder may bid on as few or as many Lots as desired.
- B. The following is an overview of the information that a Bidder must complete on Attachment 1 – *Pricing* to be found responsive for each applicable Lot that is bid.

1. Lot 1 Photovoltaic Systems

Bidder must complete the “Lot 1 Category Discount” worksheet for each Product Category being Bid. Bidder shall offer a single Product Category Discount percentage (must be a whole number greater than 0%) from its regularly published commercial pricelist which shall apply to all Products within the Product Category. Bidder is encouraged to offer an optional Deeper Discount percentage for each Product, in whole numbers, from its regularly published commercial pricing in effect at time of Bid Opening on the “Lot 1 Pricelist” worksheet. The NTE Net NYS Price for each Product will be calculated by subtracting the Total Discount (Product Category Discount plus any Deeper Discount) from the applicable List Price.

Discounts quoted shall be firm for the entire period of the Contract, and no discount reductions will be allowed at any time. Discount increases are permitted at any time (see Section 6.6 *Price Updates*). The resultant NTE Net NYS Price includes all transportation, customs, tariffs, delivery charges and is F.O.B. destination any point in New York State, for orders, as designated by the ordering agency (see also Section 6.16 *Product Delivery* for further requirements on delivery of Contract Products).

Bidder must also complete all editable cells for each Product offered on the worksheet labeled “Lot 1 Pricelist”.

2. Lot 2 Photovoltaic Services

- a. Installation and Remedial Maintenance Services: Bidder must enter a percent markup rate designated as the Not to Exceed Labor Markup Rate (NTELMR) for the performance of Photovoltaic Installation and/or Remedial Maintenance Services offered in each applicable NYS County (by PV System size: i.e., 0 to 100 kW, 101 to 500 kW, and >500 kW), on the “Lot 2 Install & Maint” worksheet, for the Bid to be considered responsive for Installation Services and/or Remedial Maintenance Services and NYS County. Bidder is not required to bid on every NYS County or on all three (3) PV System sizes (i.e., 0 to 100 kW, 101 to 500 kW, and >500 kW) within a Product Category; Bidder may bid on as many or as few of the three (3) PV System sizes in each NYS County as desired.

The NTELMR is the not to exceed markup percentage that will be added over the then-current prevailing wage rates in the applicable NYS County for the NYS Department of Labor Occupation title(s) required by the Authorized User for the Installation or Remedial Maintenance Services performed in response to an RFQ. The NTELMR bid shall be firm for the entire period of the Contract, and no increase to the NTELMR will be allowed at any time. The NTELMR may be decreased at any time (see Section 6.6 *Price Updates*).

The NTELMR for PV Installation Services shall include all costs, including but not limited to the preparation of responses to RFQs, system construction, ancillary construction costs, Interconnection costs, system commissioning, and administrative work. The NTELMR for PV Remedial Maintenance

Services shall include all costs, including but not limited to preparation of responses to RFQs, system repair, system testing as part of a repair, Interconnection costs, and administrative work.

- b. Other Lot 2 Services: Bidder must complete the “Lot 2 Other Services” worksheet for any Assessment, Design, Preventative Maintenance, and Training Services being bid. Bidder must complete all editable cells for each service offered on the worksheet.

Bidder must enter a Not to Exceed Hourly Rate (NTEHR) if offering Products in the Assessment, Design, or Training Services categories; or a Recurring Maintenance Price if offering Products for Preventative Maintenance Services. The NTEHR shall include all costs associated with the applicable service, including but not limited to the preparation of responses to RFQs, ancillary construction costs (i.e., administrative costs, reporting costs, travel costs, parking, permit costs, licensing costs, insurance costs, project management, the performance of quality control/quality assurance activities, inspections and code compliance), system commissioning, and administrative work. The Recurring Maintenance Price shall include the cost of a preventative maintenance plan per billing period, including but not limited to preparation of responses to RFQs; system inspection, monitoring, and repair; system testing as part of a repair; parts required for maintenance services; Interconnection costs; and administrative work. No additional compensation will be allowed in addition to the NTEHR and/or Recurring Maintenance Price bid.

3. Lot 3 Solar Subscriptions

Bidder must enter a single VDER Discount Rate for the Back-Drop Contract (VDER-DR-BC) on the “Lot 3 Solar Subscriptions” worksheet for the applicable Utility Service Territory for a Product Category (i.e., Mass Market or Commercial & Industrial) for the Bid to be considered responsive for that Product Category and Utility Service Territory. The VDER-DR-BC shall indicate the minimum percentage (%) discount that will be applied to the monetary credit included on the subscriber’s utility bill for the electricity generated by the solar Value-Distributed Energy Resources (VDER) project. A Bidder is not required to offer Products in both Product Categories or in all Utility Service Territories; a Bidder may offer Products in one or both Product Categories and as many Utility Service Territories as desired.

No future price changes or adjustments will be allowed for the pricing awarded for either the Back-Drop Contract or an RFQ for the life of the award, except for an increase in the VDER-DR-BC or VDER-DR-RFQ (see Section 6.6 – *Price Updates*). As a result, the Bidder must incorporate all factors that will affect future pricing into the VDER-DR-BC submitted in response to this Solicitation.

4. Lot 4 Solar Power Purchase Agreements

Bidder must enter a Not to Exceed PPA Price (NTE PPA Price) on the “Lot 4 Solar PPA” worksheet for the applicable region(s) and size(s) bid within a Product Category (i.e., PV System, PV System and Storage, or PV Storage), for the Bid to be considered responsive for that Product Category, region, and size.

The NTE PPA Price shall include all costs associated with Solar Power Purchase Agreements including but not limited to the preparation of responses to RFQs, design work, system construction, ancillary construction costs (e.g., administrative costs, reporting costs, travel costs, parking, permit costs, licensing costs, insurance costs, project management, the performance of quality control/quality assurance activities, inspections and code compliance), system commissioning, and administrative work, but excluding Interconnection costs. Average hourly solar insolation levels, power outages, maintenance, and system degradation should be taken into account when determining the NTE PPA Price to bid. No additional compensation will be allowed in addition to the NTE PPA Price bid and any Interconnection costs bid during an RFQ.

The NTE PPA Price is the highest price that may be offered in a response to an RFQ; however, PPAs utilizing an escalating kWh rate shall be eligible for an additional annual percentage increase (“Adder”)

over the NTE PPA Price, commencing in Year 2 of the PPA. Bidder shall enter the Adder on Attachment 1 – *Pricing*.

- C. Bid pricing submitted in a format other than Attachment 1 – *Pricing* shall render the Bid non-responsive and result in rejection of the Bid. Also, Bidder shall not attempt to alter or modify Attachment 1 – *Pricing* from the original format (e.g. hide or unhide cell(s)/column(s)/row(s)/worksheet(s), or modify formulas in Attachment 1 – *Pricing*). Only those cells provided for entering a Bidder's response on Attachment 1 – *Pricing* are to be accessed by the Bidder. Any attempt to alter or modify Attachment 1 – *Pricing* beyond what is allowed may result in the Bid being deemed non-responsive and rejected.
- D. In accordance with Appendix B *Pricing*, the NYS prices shall be net, including transportation, customs, tariffs, delivery and other charges fully prepaid by the resultant Contractor to the destination indicated in the Solicitation or Authorized User Purchase Order.
- E. For all dollar amounts that a Bidder may enter, a Bidder may enter as many decimal places as desired and the formulas included in Attachment 1 - *Pricing* will calculate based on the full number entered. However, the number displayed in the cells will be rounded to no more than two (2) decimal places (e.g., \$557.2340 shall be rounded to \$557.23). All percentages entered by the Bidder must be a whole number (e.g., 56%).
- F. **Additional Instructions**

Additional instructions for submitting Bid pricing are included in the "Instructions" worksheet in Attachment 1 – *Pricing*. A Bidder is responsible for reviewing the completed Attachment 1 – *Pricing* prior to Bid submittal to ensure compliance with the Solicitation requirements and that all necessary fields have been populated correctly.

G. **Supporting Documentation**

The following supporting documentation for Bid pricing must be submitted in accordance with Section 4.4 *Content*.

1. If bidding on Lot 1 *Photovoltaic Systems*, specification sheets that demonstrate that all Products offered meet the specifications contained in Section 3.2 *Lot 1 Photovoltaic Systems Specifications*.
2. If bidding on Lot 1 *Photovoltaic Systems*, the regularly published commercial pricelist(s) from which category discounts on Attachment 1 – *Pricing* are derived.
3. If bidding on Lot 1 *Photovoltaic Systems* or Lot 2 *Photovoltaic Services* (excluding Installation or Remedial Maintenance Services), copies of the comparable Governmental Entity or commercial contracts or invoices used to establish reasonableness of prices bid in Attachment 1 – *Pricing* (see Section 5.2 *Reasonableness of Price* and Section 2 *Bidder Qualifications*).

H. **Two-Tier Bidding Process**

The Contracts resulting from this Solicitation will be Back-Drop Centralized Contracts issued under a multiple award structure. Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State. Authorized Users are also encouraged to seek better than Contract pricing for all items, especially when purchasing in volume, as Bidders may or may not automatically offer volume discounts.

For Lot 1, the first tier is pricing for the Back-Drop Contract which is submitted in response to this Solicitation. However, for the second tier, Authorized Users may, but are not required to, utilize an RFQ for pricing of Products. If the formal RFQ process is not utilized for the second tier, Authorized Users are strongly encouraged to seek a minimum of three (3) quotes, where possible, when multiple Bidders offer Product(s) that are similar in nature to the Product being sought (e.g., multiple Bidders offer a Product that is a similar

size, style and material). Authorized Users are required to obtain three (3) quotes when the identical Product being sought is offered by multiple Bidders (e.g., multiple Bidders offer a Product that has an identical manufacturer's model code).

For Lots 2, 3, and 4, the first tier is pricing for the Back-Drop Contract which is submitted in response to this Solicitation (on Attachment 1 – *Pricing*), and the second tier is pricing submitted in response to a formal RFQ issued by an Authorized User at a later date (see Sections 5.4 *Procurement Instructions for Authorized Users* and 6.4 *Price*).

4.6 Bid Envelopes and Packages

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

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation number 23378
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

All Bids should also include a PRINTED copy of page 1 of the Solicitation, completed with the Bidder's information. This printed copy of page 1 should be placed in the envelope with the USB flash drives.

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.

4.7 Bid Delivery

Bids shall be delivered to the following address on or before 1:30 p.m. ET, on or before the Bid Opening Date as stated in Section 1.4 *Key Events/Dates*:

State of New York Executive Department
Office of General Services
Procurement Services
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242
Attn: Bid Enclosed – Solicitation 23378

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the timeclock 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. Refer to "*Important Building Access Procedures*" clause.

4.8 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the Corning Tower 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 or Customer Services (518) 474-6717 at least 24 hours prior to the visit. If no answer, leave a detailed phone message including the following information: reason for visit and/or delivering a Bid, Solicitation number, date and estimated time of delivery or visit, first and last name of visitor, and visitor's cell phone number. Visitor may email customer.services@ogs.ny.gov providing the same information. Visitors who are not pre-registered will be directed to a designated phone at the Corning Tower Information Desk, where they are to call the Procurement Services Receptionist (518) 474-6262 or Customer Services (518) 474-6717 for access. The

visitor will be registered at that time. Bids are not allowed to be left at the Corning Tower Information Desk. Please note that delays may occur. Building access procedures may change or be modified at any time.

4.9 NYS Required Certifications

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

4.10 Bid Deviations

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

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

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

4.11 Bid Opening Results

OGS Procurement Services posts Bid information on the OGS Procurement Services website. The Bid Opening Results webpage makes available the list of Bidders that responded to the Solicitation. Such information is anticipated to be available online within two (2) Business Days after the Bid Opening.

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

4.12 Bid Liability

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

4.13 Firm Offer

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

4.14 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 dates in the *Key Events/Dates* section, or in other Solicitation sections (if applicable), 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 State be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, region, or Lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, or Lots;
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing; and
- 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.

4.15 Incorporation

Portions of a successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. OGS may require that the document be executed with an electronic signature that has been generated by software (e.g., DocuSign or Adobe Acrobat Sign). The final Contract will be formalized either through a separate contract document or through a contract award letter incorporating the Bid, each having its own provision governing conflict of terms.

5. METHOD OF AWARD

5.1 Method of Award

Awards for the Back-Drop Contracts shall be made by Lot to all Responsive and Responsible Bidders that meet the minimum requirements for the Lot bid (see Section 2 *Bidder Qualifications*), whose Products meet the Scope and Specifications of this Solicitation (see Section 1.2 *Scope* and Section 3 *Specifications*), whose prices indicate that those Products will be provided at a reasonable price (see Section 5.2 *Reasonableness of Price*), as determined by OGS. Because of the nature of the Products involved, and in recognizing that no one Bidder will be able to supply all of the Products required by Authorized Users, award shall be made to more than one (1) qualifying Bidder for each Lot. Awarded Contractors shall be eligible to submit responses to Requests for Quotes (RFQs) issued by Authorized Users at a later date (see Section 5.4.2 *Request for Quotes*).

Bids will be reviewed beginning on the “Bid Opening/Due Date for Bids” date indicated in Section 1.4 *Key Events/Dates*. OGS intends to award Contracts simultaneously to all Responsive and Responsible Bidders on the “Contract Approval Date / Award Publish Date” indicated in Section 1.4 *Key Events/Dates*. A Bidder responding to this Solicitation is advised that each Bid will undergo an initial administrative review for completeness. In order for a Bid to be evaluated, it must include all required documents for a complete Bid (see Section 4.4 *Content*). Upon completion of the administrative review, OGS will request any missing documentation from the Bidder and will review all documents for completeness upon receipt of the missing documents.

5.2 Reasonableness of Price

Bidders must demonstrate that the pricing offered on Attachment 1 – *Pricing* is reasonable. Failure to provide Bid pricing that is deemed to be reasonable may result in the pricing being found unreasonable and rejection of the Bid.

A. Lot 1 Photovoltaic Systems

Bidder will provide pricing information for Lot 1 on Attachment 1 – *Pricing*, on the “Lot 1 Category Discount” and “Lot 1 Pricelist” worksheets. Reasonableness of price for Lot 1 *Photovoltaic Systems* Product Category Discount(s), Deeper Discounts, and resultant NTE Net NYS Prices on the submitted Attachment 1 – *Pricing* will be determined by comparing the Total Discount and resultant NTE Net NYS Price(s) to the Comparable Contract or Invoice Prices entered on Attachment 1 – *Pricing*. The Bidder must offer OGS prices that are equal to or better than those provided to other Governmental Entities and commercial entities. Bidder may use multiple comparable Governmental Entity or commercial contracts or invoices to establish reasonableness of price.

Bidder must provide copies of all contracts or invoices used to establish reasonableness of price with its Bid. OGS reserves the right to request additional information if the Product Category Discount(s) results in a NTE Net NYS Price that is greater than the price offered to other Governmental Entity or commercial entities, and to provide Bidders whose Product Category Discount(s) has been determined to be unreasonable the opportunity to increase their Product Category Discount(s).

B. Lot 2 Photovoltaic Services

1. Installation and Remedial Maintenance Services: Reasonableness of price for Installation and Remedial Maintenance Services for Lot 2 *Photovoltaic Services* will be determined by comparing the Bidder's NTELMR entered for the applicable NYS County and PV System size on Attachment 1 – *Pricing*, to the NTELMR submitted for the applicable NYS County and PV System size by other Bidders in response to this Solicitation. If Bidder's NTELMR is deemed to be unreasonable, OGS reserves the right to request additional information to make a determination of price reasonableness and to provide Bidders whose NTELMR has been determined to be unreasonable the opportunity to lower its NTELMR.

2. Other Lot 2 Services: Reasonableness of price for Assessment, Design, Preventative Maintenance, and Training Services for Lot 2 *Photovoltaic Services* will be determined by comparing the applicable NTEHR(s) and/or Recurring Maintenance Price(s) entered on Attachment 1 – *Pricing* to the Comparable Contract or Invoice Prices entered on Attachment 1 – *Pricing*. The Bidder must offer OGS prices that are equal to or better than those provided to other Governmental Entities and commercial entities. Bidder may use multiple comparable Governmental Entity or commercial contracts or invoices to establish reasonableness of price.

Bidder must provide copies of all contracts or invoices used to establish reasonableness of price with its Bid. OGS reserves the right to request additional information if the NTEHR and/or Recurring Maintenance Price is greater than the price offered to other Governmental Entity or commercial entities and to provide Bidders whose NTEHR and/or Recurring Maintenance Price has been determined to be unreasonable the opportunity to increase its NTEHR or decrease its Recurring Maintenance Price.

C. Lot 3 Solar Subscriptions

Reasonableness of price for Lot 3 will be determined by comparing the Bidder's "VDER Discount Rate for the Back-Drop Contract" (VDER-DR-BC) for the applicable Utility Service Territory entered on Attachment 1 – *Pricing*, to the VDER-DR-BC submitted by other Bidders for the applicable Utility Service Territory in response to this Solicitation. If Bidder's VDER-DR-BC is deemed to be unreasonable, OGS reserves the right to request additional information to make a determination of price reasonableness and to provide Bidders whose VDER-DR-BC has been determined to be unreasonable the opportunity to increase its VDER-DR-BC.

OGS reserves the right to request additional information from Bidder to determine price reasonableness, such as comparable Governmental Entity or commercial contracts from within the applicable Utility Service Territory.

D. Lot 4 Solar Power Purchase Agreements

Reasonableness of price for Lot 4 will be determined by comparing the Bidder's NTE PPA Price for the applicable region and Product size entered on Attachment 1 – *Pricing*, to the NTE PPA Price submitted for the applicable region and Product size by other Bidders in response to this Solicitation. If Bidder's NTE PPA Price is deemed to be unreasonable, OGS reserves the right to request additional information to make a determination of price reasonableness and to provide Bidders whose NTE PPA Price has been determined to be unreasonable the opportunity to lower its NTE PPA Price.

OGS reserves the right to request additional information from Bidder to determine price reasonableness, such as comparable Governmental Entity or commercial contracts from within the applicable NYS County.

5.3 Periodic Recruitment

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. 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.

OGS reserves the right to limit a periodic recruitment to specific Lots (e.g., to only solicit for Lot 2 *Photovoltaic Services*).

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

5.4 Procurement Instructions for Authorized Users

5.4.1 General Procurement Instructions

The following procurement instructions for Authorized Users shall be published on the OGS website for the resultant Contract Award as a stand-alone document separate from the Contract. OGS reserves the right to change the instructions in the stand-alone document, and in Attachment 13 – *Request for Quotes Template*, once published, in non-material and substantive ways without seeking a Contract amendment.

- A. Each Contractor's approved Attachment 1 – *Pricing* and Attachment 12 – *Contractor and Reseller/Distributor Information* document will be posted on the OGS website so that Authorized Users can find Contract pricing information, Contractor and Reseller/Distributor contact information, prompt payment discounts and NYS Purchasing Card information.
- B. When utilizing the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS contracts, should also hold the Contractor accountable for compliance with the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
 1. A statement of need and associated requirements;
 2. Obtaining all necessary prior approvals;
 3. A summary of the Contract alternatives considered for the purchase, if any; and
 4. The reason(s) supporting the resulting purchase (e.g., show that the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).
- C. All State agencies, political subdivisions, and public benefit corporations (which include most public authorities) having their own purchasing agency are required to purchase approved products and services from Preferred Sources in accordance with §§ 162 and 163 of the New York State Finance Law. Before proceeding with their purchase, such Authorized Users shall check the list of Preferred Source Program offerings for Products that meet the form, function, and utility required. These Authorized Users are reminded that they must comply with State Finance Law § 162, which requires that they afford first priority to the commodities and services of Preferred Source suppliers, which include the Division of Correctional Industries (Corcraft), the NYS Preferred Source Program for People who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities or services meet the form, function, and utility of the Authorized User, and the price offered by Corcraft does not exceed a reasonable fair market price, and the price offered by NYSPSP and NYSID is within 15% of prevailing market prices. If a Preferred Source offering does not meet an Authorized User's form, function, and utility, or the Preferred Source price is more than fair market price or more than 15% above prevailing market prices, then the Authorized User may use this Contract.
- D. The Contracts resulting from this Solicitation will be Back-Drop Contracts issued under a multiple award structure. Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Back-Drop Contracts upon which is the most practical and economical alternative that is in the best interests of the State. The following procurement procedures apply to the Lots:
 1. Lot 1 Photovoltaic Systems. Authorized Users may, but are not required to, utilize an RFQ for pricing of Products. If the formal RFQ process is not utilized for the second tier, Authorized Users are strongly encouraged to seek a minimum of three (3) quotes, where possible, when multiple Bidders offer Product(s) that are similar in nature to the Product being sought (e.g., multiple Bidders offer a Product that is a similar size, style and material). Authorized Users are required to obtain three (3) quotes when the identical Product being sought is offered by multiple Bidders (e.g., multiple Bidders offer a Product that has an identical manufacturer's model code). Authorized Users are also encouraged to seek better

than Contract pricing for all items, especially when purchasing in volume, as Contractors may not automatically offer volume discounts.

2. Lots 2, 3, and 4. For Lot 2 *Photovoltaic Services*, Lot 3 *Solar Subscriptions*, and Lot 4 *Solar Power Purchase Agreements*, Authorized Users must conduct a formal RFQ to obtain second-tier pricing for the Authorized User's specific project as outlined below in Section 5.4.2 *Request for Quotes*.
- E. Work being done under a resulting Authorized User Agreement may be subject to the prevailing wage rate provisions of the New York State Labor Law (see Section 6.5 *NYS DOL Prevailing Wage Rates – Public Works and Building Services Contracts, and Appendix B Prevailing Wage Rates – Public Works and Building Services Contracts*). Such work shall be identified by the Authorized User within the RFQ.

The Prevailing Wage Rates schedules and updates covering work under Article 8 *Public Construction* can be accessed at the NYS Department of Labor (DOL) website at <https://dol.ny.gov/prevailing-wage-schedules>.

IMPORTANT NOTE: When obtaining services from the Contracts under this Award, Authorized Users MUST obtain a separate Prevailing Wage Case Number (PRC#) for each project where prevailing wage rates apply, and note it on all Purchase Orders.

Request the PRC# and current Wage Schedule for the applicable NYS County by filling out the online application at <https://apps.labor.ny.gov/wpp/showPublicNewProject.do?method=showI>. Note that if you submit the same request multiple times, it will assign different PRC#s for the same project.

DOL will email a link to the Original Wage Schedule with the assigned PRC#, which provides access to:

1. PDF files of the complete Wage Schedule package for each Occupation Title
 2. Online *Notice of Award* (PW16) form
 3. Online *Notice of Completion/Cancellation of Contract* (PW200) form.
- F. Prior to requesting quotes or issuing an RFQ, the Authorized User should conduct a feasibility study, which may involve coordinating project components required in the RFQ with the power-purchasing entity for the Authorized User (see Section 5.4.4 *Feasibility Studies & Stakeholder Considerations* below). Authorized User is encouraged to consult with NYSERDA if procuring under Lot 3 *Solar Subscriptions* and/or NYPA if procuring under Lot 4 *Solar Power Purchase Agreements* (see Section 5.4.3 *Third Party Consultant Assistance*).
- G. Authorized Users who are Affected Entities under Executive Order No. 22 *Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program* ("EO 22") should review the 100% Renewable Electricity Policy Guidance document for more information about whether their RFQ should require the purchase of RECs and/or forgo E Value (for more information, see <https://ogs.ny.gov/system/files/documents/2023/12/greenny-100-renewable-electricity-policy-guidance.pdf>).
- H. The Authorized User shall review the Contracts and associated Contractor and Reseller/Distributor Information, and Contract pricelists on the OGS website under Contract Award 23378 prior to conducting an RFQ or purchasing Products to determine which Contractor(s) offer the required Products.
- I. See Section 5.4.2 *Request for Quotes* for instructions on issuing an RFQ to obtain Products under Award 23378. The Authorized User is responsible for developing specifications for any Request for Quotes. The Authorized User must disclose any additional forms that it requires for Contractor completion in the RFQ.
- J. The Authorized User can request that Contractors provide the option to purchase RECs following New York State policies, if applicable (see Section 3.1 *Renewable Energy Certificates and Environmental Value*). The Authorized User shall also indicate whether it intends to retain or forgo E Value, if applicable.
- K. Additional Encouraged Attributes. In addition to the required minimum specifications detailed in Section 3 *Specifications*, Authorized Users are encouraged to obtain Products that meet the following additional

encouraged attributes, most of which are listed in the GreenNY specification titled "Photovoltaic (PV) Systems" (see <https://ogs.ny.gov/greenny/photovoltaic-pv-systems>):

1. Select systems that are installed by a qualified Contractor certified as an installer by NABCEP, UL or an IBEW Journeyman. (Note: using a NY-Sun participating installer may be required to obtain incentives.)
 2. Purchase higher efficiency units when available.
 3. Purchase Photovoltaic Modules and inverters that meet EPEAT criteria.
 4. Pair solar PV Systems with Battery Storage to provide back-up power, and other possible benefits.
 5. Include routine inspection (recommended yearly at a minimum) as well as cleaning and servicing per manufacturer's recommendations.
 6. Install performance and production monitoring equipment that will allow quantification of PV System's energy generation.
 7. Investigate available government and private funding sources, many of which will be in the form of loans repaid with savings realized by converting to a renewable energy source.
 - a. Affected Entities that are: (i) investor-owned utility customers, are encouraged to contact NYSERDA and (ii) LIPA customers, are encouraged to contact PSEG Long Island, for guidance and any incentives that may apply to solar PV Systems and Battery Storage. Check NYSERDA's website for current offerings: <https://www.nyserda.ny.gov/> (Note: using a NY-Sun participating installer may be required to obtain incentives).
 - b. Affected Entities are encouraged to review the GreenNY Council – 100% Renewable Electricity Policy Guidance document for further information on project eligibility of Solar PV Systems, VDER Subscription models, and Solar Power Purchase Agreements for compliance with EO 22 renewable electricity goals (see <https://ogs.ny.gov/system/files/documents/2023/12/greenny-100-renewable-electricity-policy-guidance.pdf>).
 - c. Affected Entities are encouraged to refer to NY-Sun program manuals and other, then current, NYSERDA and PSEG funding opportunities, all of which evolve over time.
 - d. Affected Entities are encouraged to consider the federal Inflation Reduction Act tax credits and direct pay options, which may be able to be used for State government projects.
 8. Reduce the State's carbon footprint by procuring local or regional Products.
 - a. Products that are manufactured within 500 miles of the project Site are considered regional.
- L. Prior to issuing an RFQ for Lot 2 *Photovoltaic Services*, the Authorized User must determine if the RFQ includes performance of construction-like labor on public work projects covered by Article 8 of the Labor Law. All Contractors submitting Bids to an Authorized User for construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication work on Authorized User public work projects or private projects covered by Article 8 of the Labor Law ("Covered Projects") are required to register with the New York State Department of Labor (NYSDOL) under Labor Law § 220-i. A Subcontractor must also be registered as required by Labor Law § 220-i before the Subcontractor commences work on the covered project. For Covered Projects, the Authorized User must include a requirement in the RFQ that the Contractor submit its Certificate of Registration with its Bid materials when responding to the RFQ. Pursuant to recommendation by NYSDOL, the Authorized User may require the Contractor's proof of registration, as required by Labor Law § 220-I, as a minimum qualification and that failure to provide proof of registration will disqualify the Contractor from bidding.
- M. Authorized Users shall issue Purchase Orders, in accordance with the terms set forth in Appendix B *Purchase Orders*, directly to the Contractor or the Contractor's Authorized Reseller (if applicable), and specify any shipping/delivery requirements, including inside delivery and/or installation. Inside delivery and installation terms must be agreed upon at time of order and prior to delivery. All orders should clearly note the OGS Contract Name and Award Number, Contract Number, and Contractor Name. Authorized Users should follow up with Contractor if they do not receive order acknowledgement within five (5) days.

- N. Contractor documents which contain additional terms or conditions must receive pre-approval by the Authorized User, in accordance with Appendix B Section 26 – *Modification of Contract Terms*.
- O. Upon Authorized User acceptance of Products itemized on the Purchase Order, Contractor will invoice Authorized User (or other entity designated by the Authorized User) for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products. See also Section 6.15 *Invoicing and Payment*.
- P. The following are examples of documentation that should be created and maintained by the Authorized User as part of a Procurement Record. This list is not meant to be exhaustive.
 - Approved Requisition or Purchase Order;
 - DOB 1184 Attachment A or B (<https://www.budget.ny.gov/guide/bprm/b/b-1184.html>);
 - Bid distribution and announcements;
 - Pre-Bid Conference Sign-In Sheet and Transcript;
 - Bid Protests and Responses;
 - Justification for Rejecting Bids or Proposals;
 - Blank Solicitation Document (including appendices);
 - Questions & Answers;
 - Evaluation Instruments;
 - Completed Evaluation Score Sheets & Evaluation Summary;
 - Bid Tabulation;
 - Bidders List;
 - Reasonableness of Price;
 - Price Lists, if applicable;
 - Awarded Bid;
 - Proposals Received;
 - If less than 3 Bids received, No-Bid/No-Reply Survey;
 - Any Contractor Correspondence (e.g. clarifications);
 - Rejected Bids with Justification;
 - Tentative Award letter;
 - Non-award Letters;
 - Authorized User (Contract) Agreement.

5.4.2 Request for Quotes

The following table outlines the second-tier procurement method for each Lot:

Lot	Description	Authorized User Procurement Method
1	Photovoltaic Systems	Issue RFQ (optional, but encouraged) OR seek at least three (3) informal quotes from Contractors (required for identical Products; optional, but encouraged for similar Products)
2	Photovoltaic Services	Issue RFQ (mandatory)
3	Solar Subscriptions	Issue RFQ (mandatory)
4	Solar PPA	Issue RFQ (mandatory)

If the Authorized User has determined that an RFQ will be utilized for Lot 1 *Photovoltaic Systems* (see Section 5.4.1, *General Procurement Instructions*, Paragraph D, above) or intends to procure from Lots 2, 3, or 4, the following RFQ process should be followed.

A. Request for Quotes (RFQ) Process:

1. The Authorized User shall review the Contract Lots to determine which one best meets its needs and develop applicable specifications for the RFQ. Authorized Users should include all Products needed to cover the project in the RFQ (e.g., multiple services under Lot 2). See the Attachment 13 – *Request for Quotes Template* for the applicable Lot for additional instructions.
2. The Authorized User shall determine the location(s) in which the Products will be provided for the project (see Section 1.2.5 *Regions*).
3. The Authorized User shall review the list of Contractors available in the applicable Lot and location (see Section 1.2.5 *Regions*). Please note that an Authorized User should consider issuing separate RFQs if seeking quotes for multiple projects (e.g., Products or services from multiple Lots and/or multiple regions). To ensure sufficient competition, separate RFQs should be issued for each project when Award 23378 does not include multiple Contractors that may respond to all required Lots and/or regions for all of the required projects in a multiple-Lot RFQ.
4. Prior to issuing an RFQ, the Authorized User must determine if the requested Products will be used in public work projects covered by Article 8 of the Labor Law (see Section 5.4.1 *General Procurement Instructions*, Paragraphs E and L).
5. If work being done under a resulting Authorized User Agreement will be subject to the prevailing wage rate provisions of the New York State Labor Law (see Section 5.4.1 *General Procurement Instructions*, Paragraph E), obtain a PRC number and identify such work within the RFQ. If the RFQ includes performance of construction-like labor on public work projects covered by Article 8 of the Labor Law (see Section 5.4.1 *General Procurement Instructions*, Paragraph L), then Authorized User must include a requirement in the RFQ that the Contractor submit its Certificate of Registration with its Bid materials when responding to the RFQ.
6. Authorized User shall prepare its RFQ for release to the previously identified Contractors (see Paragraph 3 above). Attachment 13 – *Request for Quotes Template* is recommended for use, but Authorized Users may substitute their own RFQ template if preferred.
7. The Authorized User shall email the RFQ to the previously identified Contractors for the applicable Lot and location. For contact information, see the Contractor Information document on the OGS website for Award 23378.
8. The Contractors shall develop responses to the RFQ and submit them directly to the Authorized User. In addition to completing the RFQ, a Contractor must also submit the following with its response:
 - a. Any forms or other order information that Contractor will attach to orders or require to be completed for Authorized User purchases (e.g. a service or subscription agreement). Documents which contain additional terms or conditions must receive pre-approval from the Authorized User in accordance with Appendix B *Modification of Contract Terms*;
 - b. For Lot 3 *Solar Subscriptions*, if the Contractor has indicated in its response to the RFQ that they are not the owner of the Lot 3 solar VDER Project offered, then Contractor must also submit a copy of its completed Owner's Authorization Form (initially submitted to OGS as the completed Attachment 11 – *Owner's Authorization Form*, with Contractor's Bid on Solicitation 23378) to the Authorized User as part of its response to the RFQ, demonstrating proof of authorization from the project owner; and
 - c. Drawings and/or plans, if required by the RFQ. Such drawings and/or plans shall conform to the mandates of the RFQ and shall be considered a part of the Bid and of any resulting Authorized User Agreement. All symbols and other representations appearing on the drawings shall be considered a part of the drawing. See also Section 6.43 *Drawings*.

The Contractor shall not be reimbursed for any costs incurred from the preparation of an RFQ response.

9. The Authorized User shall review the submitted documents to ensure that there are no terms or conditions that conflict with or diminish the terms of the Contract. The State has not reviewed any additional terms and conditions that may be included in the Authorized User Agreement for specific 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 agreement. See also Section 5.4.1 *General Procurement Instructions*, Paragraph N above.
10. The Authorized User shall be responsible for evaluation of the Contractors' responses to the RFQ and award of the RFQ to a Responsive and Responsible Bidder. Pursuant to State Finance Law §163(10)(c), the Authorized User must base their selection among multiple Contracts at the time of purchase on what is the most practical and economical alternative which is in the best interest of the State. If there are less than three (3) 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.
11. The Authorized User shall determine, at its discretion, whether or not to enter into an Authorized User Agreement with the Contractor with the winning quote on the RFQ.
12. Once an awardee has been selected, the Authorized User shall provide a copy of the RFQ and the winning quote to the Procurement Services Contract Manager listed on the Contract Award Notification document or Contract landing page. The information provided to OGS by the Authorized User is for information purposes only; OGS is not responsible for review of RFQ award determinations.
13. The Authorized User shall issue a Purchase Order in accordance with their agency procurement guidelines to the selected Contractor.
14. Any Authorized User Agreement executed during the term of the Back-Drop Contract will survive the expiration of the Back-Drop Contract. All services end at the conclusion of the signed Authorized User Agreement. See Section 6.3 *Authorized User Agreements Term and Survival* for limitations on the term of Authorized User Agreements.

5.4.3 Third Party Consultant Assistance

Several third-party consultants are available to assist Authorized Users in developing an RFQ, including the New York State Energy Research and Development Authority (NYSERDA) and the New York Power Authority (NYPA). These two (2) authorities have been tasked with executing the Climate Leadership and Community Protection Act (CLCPA or Climate Act), requiring New York to reduce economy-wide greenhouse gas emissions by 40% by 2030 and no less than 85% by 2050 from 1990 levels; and with Governor Hochul's Executive Order 22, requiring all Affected Entities to achieve 100% renewable energy usage by 2030.

NYSERDA has helped guide NYS renewable energy in on-site solar and community solar through its NY-Sun program and providing information about the Value Stack compensation methodology. Authorized Users are encouraged to consult with NYSEDA when conducting RFQs, especially RFQs under Lot 3 *Solar Subscriptions*. Information can be found on NYSEDA's NY-Sun webpage, at <https://www.nyserda.ny.gov/All-Programs/NY-Sun>.

NYPA has extensive experience in developing and administering RFQ processes for public entities implementing solar installations and has delivered significant value to those projects. NYPA has established streamlined processes, created precedential RFQ documents including industry acceptable PPAs that protect customers, developed relationships with the solar industry, and established an understanding of the practical nuances of developing solar projects. Authorized Users are encouraged to consult with NYPA when conducting RFQs, especially RFQs under Lot 4 *Solar Power Purchase Agreements*.

To request assistance from NYPA, please contact Solar@NYPA.gov.

5.4.4 Feasibility Studies & Stakeholder Considerations

The Authorized User is responsible for determining if a feasibility study should be conducted, and for obtaining all necessary stakeholder approvals, prior to conducting an RFQ or obtaining quotes for Products. Considerations may include, but are not limited to, those listed in the tables below.

State Agency Authorized Users shall consider taking the following steps:

<p>New York State Division of Budget (DOB)</p>	<p>Inform DOB’s Budget Examiner of the proposed projects, including location and type of project (roof, ground, etc.). It is recommended that Authorized User review the costs associated with the project. Consider the present worth of the lower cost electricity over the term of the agreement.</p>
<p>Office of General Services Design & Construction</p>	<ul style="list-style-type: none"> ➤ Inform OGS Design & Construction of Authorized User’s proposed projects; include location and type of project (roof, ground, etc.). ➤ Upon final approval to move forward with projects, obtain a permit from OGS Design & Construction, or other construction-permitting Agency. Although Contractor is responsible for obtaining all required permits and licenses, the final development plans must be reviewed and approved by OGS Design & Construction, or other construction-permitting Agency. ➤ If purchaser is a New York State Agency, OGS Design & Construction division, or other State construction-permitting agency as defined in 19 NYCRR 1204.3(e), then OGS Design & Construction shall provide all Uniform Code services which shall include (i) the issuances of all permits and certificates, (ii) inspections, and (iii) reporting.”
<p>Office of General Services Division of Real Estate</p>	<ul style="list-style-type: none"> ➤ Inform the OGS Division of Real Estate (DRE) of the intent to install a PV System on property owned by the State and include the address and specific proposed location of the Photovoltaic Panels (i.e. rooftop or ground mount). ➤ Notification will inform DRE of required inventory updates, lease considerations, and the issuance of access easements as needed to complete the project. ➤ Post installation: provide a copy of the signed PPA and approved design plans to OGS DRE to keep on record.

Non-State Agency Authorized Users shall consider taking the following steps:

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

Energy Review	Authorized User should review projected grid electricity cost for the proposed term of the PPA.
Legal Review	Authorized User should have the final Authorized User Agreement and related documents reviewed by their counsel.

5.4.5 Lot 1 Photovoltaic Systems Pre-Order Meeting

The Contractor shall be required to consult with the Authorized User upon receipt of a Lot 1 *Photovoltaic Systems* Purchase Order, in order to ensure complete and accurate understanding of the selected Products.

The Contractor shall coordinate and attend a pre-order meeting, if required by the Authorized User, at a location convenient to the Authorized User, to provide all necessary information prior to providing any Products. Only after the pre-order meeting, if required by Authorized User, and subsequent approval from the Authorized User, shall the Contractor fulfill the Purchase Order.

5.4.6 Authorized User Reserved Rights

The Authorized User shall have the following reserved rights for an RFQ:

- A. Reject any or all responses received in response to the RFQ;
- B. Withdraw the RFQ at any time at the sole discretion of the Authorized User;
- C. Make an award under the RFQ in whole or in part;
- D. Disqualify any Contractor submitting a response whose conduct and/or Bid fails to conform to the requirements of the RFQ;
- E. Seek clarifications and revisions of the RFQ responses;
- F. Amend the RFQ prior to the RFQ response submittal deadline, to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Contractors, prior to the RFQ response submittal deadline, to submit modifications addressing subsequent RFQ amendments;
- H. Change any of the schedule dates with email notification to all Contractors that were sent the initial RFQ;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the Contractors that were sent the RFQ;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the RFQ responses received;
- L. Adopt all or any part of a Contractor’s RFQ response in selecting the optimum configuration;
- M. Negotiate with a Contractor responding to the RFQ within the RFQ requirements to serve the best interests of the State. This includes requesting clarifications of any or all RFQ responses;
- 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 Contractor’s RFQ response and/or to determine a Contractor’s compliance with the requirements of the RFQ;
- O. Select and award the RFQ to other than the selected Contractor in the event of unsuccessful negotiations or in other specified circumstances as detailed in the RFQ;
- P. Accept and consider for Contract Award responses to the RFQ with non-material RFQ deviations or non-material RFQ response defects such as errors, technicalities, irregularities, or omissions;

- Q. Use any information which the Authorized User obtains or receives from any source and determines relevant, in the Authorized User's sole discretion, for the purposes of RFQ response evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the Authorized User or the Contractor;
- S. Reject an obviously unbalanced Bid as determined by the Authorized User;
- T. Conduct negotiations with the next responsible Contractor that responded to the RFQ, should the Authorized User be unsuccessful in negotiating with the selected Contractor;
- U. Make no award for any Product, region, or Lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Contractor pricing, a change in Authorized User requirements and/or Products, or an error in the RFQ (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of RFQ responses may be made on the remaining Products, regions, or Lots;
- V. Offer a Contractor the opportunity to provide supplemental information or clarify its response to the RFQ, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing;
- W. Award RFQs on a rolling or staggered start basis, either in whole or in part.

5.5 Notification of Award

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

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

6. TERMS AND CONDITIONS

6.1 Contract Term and Extensions

The Contract shall be in effect for a term of up to five (5) years. The Contract term shall commence after all necessary approvals and shall become effective upon the date of OSC approval of the final executed documents, and the Contract term shall end five (5) years from the date of OSC approval.

All OGS 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 two (2) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to the approval of OSC and any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B *Contract Term – Extension*.

The Contract term provided for in this section shall extend six (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 six (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 that OGS determines that a short term extension is in the best interest of the State, (e.g., a replacement Contract has not been issued, or an extended period is needed for Authorized Users to transition to another procurement method), any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to thirty (30) calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any previously approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to ninety (90) calendar days in lieu of thirty (30) calendar days. However, unless otherwise noted in the extension notification or agreement, this extension automatically terminates should a replacement Contract be issued in the interim.

6.3 Authorized User Agreements Term and Survival

Authorized User Agreements fully executed prior to the expiration of the Back-Drop Contract (“Contract”), but are set to expire after the expiration date of the Contract, shall survive the expiration of the Contract as follows:

Authorized User Agreements for Lot 2 *Photovoltaic Services* fully executed prior to the expiration of the Contract may have a total term of up to five (5) years, including any extensions. The end date of an Authorized User Agreement for Assessment, Design, Installation, Remedial Maintenance, or Training Services with a start date prior to the end date of the Contract may be up to five (5) years past the end date of the Contract provided that the total term of the Authorized User Agreement does not exceed five years, including any extensions. The end date of an Authorized User Agreement for Preventative Maintenance Services may be up to 36 months past the end date of the Contract provided that the total term of the Authorized User Agreement does not exceed five years, including any extensions.

Authorized User Agreements for Lot 3 *Solar Subscriptions* and Lot 4 *Solar Power Purchase Agreements* fully executed prior to the expiration of the Contract may have a total term of up to twenty-five (25) years, including any extensions. Furthermore, the end date of the Authorized User Agreement with a start date prior to the end date of the Contract may be up to twenty-five (25) years past the end date of the Contract provided that the total term of the Authorized User Agreement does not exceed twenty-five (25) years, including any extensions.

6.4 Price

The following terms and conditions shall apply to pricing offered under the Contract and responses to an RFQ. For Bid pricing, see Section 4.5 *Bid Pricing Submittal for Back-Drop Contracts*. See also Appendix B *Pricing*. Contract pricing will be published on the OGS website.

The Contractor shall not be reimbursed for any costs incurred for the preparation of an RFQ response.

A. Lot 1 Photovoltaic Systems

The Net NYS Price for Lot 1 *Photovoltaic Systems* Products offered in response to an RFQ shall be less than or equal to the NTE Net NYS Price included on Contractor’s Attachment 1 – *Pricing*. The discount applied shall either be the agreed-upon Total Discount (Product Category Discount plus Deeper Discount) identified on the Contractor’s approved Attachment 1 – *Pricing*, or a greater discount.

B. Lot 2 Photovoltaic Services

1. Installation and Remedial Maintenance Services

- a. In response to an RFQ, Contractor will bid a labor markup rate (%) which will be added over the current NYS prevailing wage rates for the NYS Department of Labor Occupation title(s) required for the Installation or Remedial Maintenance Services, for the date the work is performed in the NYS County in which the work is performed. The labor markup rate (%) offered in response to an RFQ

must be less than or equal to the NTELMR included on Contractor's approved Attachment 1 – *Pricing*.

- b. The Contractor is responsible for ancillary construction costs which may include but are not limited to administrative costs, reporting costs, travel costs, parking, permit costs, licensing costs, insurance costs, project management, the performance of quality control/quality assurance activities, inspections and code compliance.
- c. Pass-Through Costs. The Contractor may “pass through” the following costs to the Authorized User without any mark-up or additional fees assessed to the Authorized Users:
 - i. Equipment rentals such as a man-lift or crane;
 - ii. The cost of ancillary construction materials such as concrete or rebar for simple foundations; and
 - iii. Any additional items identified by the Authorized User in the RFQ or otherwise approved by the Authorized User in the Authorized User Agreement resulting from the RFQ.

To be eligible for reimbursement, all pass-through costs must be fully disclosed to the Authorized User in the Contractor's response to an RFQ and must be approved by the Authorized User in advance. Failure to disclose pass-through costs may result in the RFQ response being rejected and/or the costs being disallowed.

2. Other Lot 2 Services

- a. The hourly rate for the Assessment, Design, and Training Services categories offered in an RFQ shall be less than or equal to the NTEHR included on Contractor's Attachment 1 – *Pricing*.
- b. The Recurring Maintenance Price for Preventative Maintenance Services offered in an RFQ shall be either the Recurring Maintenance Price included on Contractor's Attachment 1 – *Pricing*, or a lower price.

C. Lot 3 Solar Subscriptions

1. For all RFQs, the “VDER Discount Rate for the Request for Quotes” (VDER-DR-RFQ) offered shall be greater than or equal to the “VDER Discount Rate for the Back-Drop Contract” (VDER-DR-BC) included on the Contractor's approved Attachment 1 – *Pricing*. In response to an RFQ, the Contractor is encouraged to offer a competitive discount that is greater than the VDER-DR-BC.
2. The price charged for the subscription shall be calculated using the following formula:

$$\text{Subscription Rate} = (\text{the monetary value of the VDER credit}) \times (1 - (\text{VDER-DR-RFQ}))$$
3. For all Product Categories, 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 3.4 *Lot 3 Solar Subscriptions Specifications*).

D. Lot 4 Solar Power Purchase Agreements

1. In response to an RFQ, Contractors shall provide an RFQ PPA Price (\$ per kWh) for the PPA Term (Years). The Total Net Cost for RFQ that is calculated includes the cost for the PPA Term, amounts of all incentives, credits, or rebates, Interconnection costs, and REC costs, and shall also provide a breakdown showing the kWh cost of the electricity, monetary amount of incentives, Interconnection costs, and REC costs as separate line items.

The RFQ PPA Price that is offered in an RFQ must be less than or equal to the NTE PPA Price on Attachment 1 – *Pricing* for that Product in the applicable region and size. The Contractor must account for any Interconnection costs and incentives, credits, or rebates in the Total Net Cost for RFQ that is calculated for the RFQ.

The NTE PPA Price on Attachment 1 – *Pricing* is the highest price that may be offered in a response to an RFQ; however, Contractors can and are encouraged to offer a lower price.

2. PPAs may have a flat or escalating kWh rate at the discretion of the Authorized User.
 - a. For PPAs with a flat kWh rate, the RFQ PPA Price (\$ per kWh) shall remain the same for the entire term of the PPA.
 - b. For PPAs with an escalating kWh rate, the RFQ PPA Price (\$ per kWh) shall equal the average of the RFQ PPA Price for all years of the PPA term.
 - c. For PPAs with an escalating kWh rate, the annual percentage increase (“Adder”) shall not exceed the Adder set forth in Contractor’s Attachment 1 – *Pricing*. The Adder shall remain firm for the duration of the Contract and resultant PPAs. The Adder will commence in Year 2 of the PPA.
3. Authorized Users will purchase from the Contractor the electricity output generated by the PV Systems in accordance with the terms and conditions of the PPA. At its discretion, the Authorized User may also purchase RECs and/or forgo payment for E Value. Authorized Users shall not be responsible for any costs related to the PV System during the term of the PPA, including, but not limited to, network upgrades, environmental costs, curtailment costs, fees, or similar items that might not yet be identified or may arise after PPA execution or commercial operation commences.
4. As applicable, the Authorized User shall be entitled to all E Values, RECs, and any other tradable energy or environmental-related commodity produced by or associated with the PV System during its useful life, including but not limited to greenhouse gas credits, emissions credits, tradable carbon credits, and all other types of tradable project-related commodities, however named, that are presently known or designated or created in the future. The Authorized User shall be entitled to trade, transfer, or retire these credits or commodities at its discretion.

6.4.1 Travel, Meals, and Lodging

When provided for in the quote and resultant Authorized User Agreement, travel expenses may be reimbursed by the Authorized Users. All rates, rules and regulations associated with this travel can be found at <http://osc.state.ny.us/agencies/travel/travel.htm>. In no case will any travel reimbursement be paid that exceeds these rates. All travel will be paid only as part of a deliverable specified within the Authorized User Agreement and must be billed with the associated invoice for the deliverable with receipts attached.

The Contractor shall receive prior approval from the Authorized User for any travel that occurs during the term of an Authorized User Agreement. Parking costs may not be paid by an Authorized User unless agreed upon in the Authorized User Agreement.

Unless otherwise specified in writing by the Authorized User, a vehicle will not be provided by Authorized User to the Contractor for travel. Therefore, the Contractor will be responsible for ensuring that the Contractor has access to an appropriate vehicle (e.g., personal vehicle or rental vehicle) or common carrier with which to carry out any necessary travel.

For the Contractor to obtain reimbursement for the use of a rental vehicle, such use must be justified as the most cost-effective mode of transportation under the circumstances (including consideration of the most effective use of time).

The Contractor shall provide evidence of three (3) written or telephone price quotes, and the paid invoice must detail the type of vehicle rented, miles traveled, license plate number, and time of pickup and return. The Contractor is responsible for keeping adequate records to substantiate any claims for reimbursement, by personnel for travel in performance of the services. Determinations regarding claims for reimbursement are at the sole discretion of the Authorized User.

6.5 NYS DOL Prevailing Wage Rates – Public Works and Building Services Contracts

Work being done under a resulting Authorized User Agreement may be subject to the Prevailing Wage Rate provisions of New York State Labor Law (see Appendix B *Prevailing Wage Rates - Public Works and Building Services Contracts* and Section 6.31 *NYS Labor Law § 220-i*). Such work shall be identified by the Authorized User within the RFQ (see Section 5.4 *Procurement Instructions for Authorized Users*). The actual bill rates for each Authorized User Agreement will be established in response to a particular Authorized User's RFQ and based upon the Prevailing Wage Case Number (PRC#) obtained by each requesting Authorized User.

Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility, rejection of a Contractor's response to an Authorized User's RFQ, or suspension or termination of the Contract or Authorized User Agreement.

The following also applies to this Contract.

- A. Worker Notification.** Labor Law § 220(3-a)(a)(ii) requires Contractors and Subcontractors to provide written notice to all laborers, workers or mechanics of the prevailing wage rate for their particular job classification on each pay stub. It also requires Contractors and Subcontractors to post a notice at the beginning of the performance of every public work Contract on each job Site that includes the telephone number and address for the Department of Labor and a statement informing laborers, workers or mechanics of their right to contact the Department of Labor if he/she is not receiving the proper prevailing rate of wages and/or supplements for his/her particular job classification. The required notification will be provided with each wage schedule and may be downloaded from <https://dol.ny.gov/> or made available upon request by contacting the Bureau of Public Work at 518-457-5589. In the event that the required information will not fit on the pay stub, an accompanying sheet or attachment of the information will suffice.
- B. OSHA 10-Hour Construction Safety and Health Course.** Labor Law § 220-h requires that on all public work contracts of at least \$250,000, all laborers, workers, and mechanics working on Site be certified as having successfully completed the OSHA 10-hour construction safety and health course. It further requires that the advertised Bids and contracts for every public work contract of at least \$250,000 contain a provision of the requirement AND only applies to workers on a public work project that are required under Article 8 to receive the prevailing wage. Further information may be found at: <https://dol.ny.gov/workforce-protections>.
- C. Living Wage.** An Authorized User subject to a local law establishing a "living wage," such as Section 6-109 of the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies with such local law. If the pay rate(s) for a job title(s) is less than the local law "living wage," then the Authorized User subject to such local law cannot use this Contract for such job title(s). Local laws, however, are not a term and condition of the OGS Contract.

6.6 Price Updates

Contractor may update its pricelist as follows:

- A.** Following the first six (6) months from the Contract start date, and during the first year of the Contract term, the Contractor shall be permitted to update its pricelist one (1) time. There shall be no price increases permitted in the first year of the Contract term; however, the Contractor may add new Products or remove Products that are no longer available. Any new Products added shall have a discount structure consistent with that of existing comparable Products or Product Category.

B. Following the first year of the Contract term, the Contractor may submit requests to update the Contract pricelist to reflect Contractor price changes to its List Prices and the addition/deletion of Products. Pricelist update requests shall be submitted within thirty (30) calendar days of the anniversary date of the Contract, and annually thereafter. Pricelist update requests from a Contractor at any other time will not be granted, unless OGS determines that such update is in the best interest of the State and/or its Authorized Users.

1. Lot 1 *Photovoltaic Systems*. The Product Category Discount percentages, associated Deeper Discount percentages, and resultant Total Discount percentages may be increased by the Contractor at any time during the Contract term, without prior approval from OGS, but may not be decreased for the entire term of the Contract. The Contractor may, however, submit requests to update the Contract pricelist to reflect Contractor price increases to its Product List Prices and resulting NTE Net NYS Prices (see Section 6.9 *Escalation Cap / Maximum Price Increase*) and the addition/deletion of Products.

The discount offered on any new Product(s) added to the Contract pricelist shall be no lower than the established Product Category Discount percentage for the applicable Product Category.

2. Lot 2 *Photovoltaic Services – Installation and Remedial Maintenance Services*. The NTELMR may be decreased by the Contractor at any time during the Contract term, without prior approval from OGS, but may not be increased for the entire term of the Contract.
3. Lot 2 *Photovoltaic Services – Assessment, Design, Preventative Maintenance, and Training Services*.
 - a. The NTEHR for Assessment, Design, and Training Services may be decreased by the Contractor at any time during the Contract term, or the term of the Authorized User Agreement as applicable, without prior approval from OGS. Price increases must receive prior approval from OGS and are subject to the escalation cap set forth in Section 6.9 *Escalation Cap / Maximum Price Increase*.
 - b. The Recurring Maintenance Price for Preventative Maintenance Services may be decreased by the Contractor at any time during the Contract term, or the term of the Authorized User Agreement as applicable, without prior approval from OGS. Price increases must receive prior approval from OGS and are subject to the escalation cap set forth in Section 6.9 *Escalation Cap / Maximum Price Increase*.
4. Lot 3 *Solar Subscriptions*. The VDER-DR-BC or VDER-DR-RFQ may be increased by the Contractor at any time during the Contract term or the term of the Authorized User Agreement respectively, without prior approval from OGS, but may not be decreased for the entire term of the Contract or the Authorized User Agreement.
5. Lot 4 *Solar Power Purchase Agreements*. The NTE PPA Price may be decreased by the Contractor at any time during the Contract term or the PPA respectively, without prior approval from OGS. Price increases must receive prior approval from OGS and are subject to the escalation cap set forth in Section 6.9 *Escalation Cap / Maximum Price Increase*. The annual percentage increase ('Adder') shall remain firm for the duration of the Contract and resulting PPAs.

C. A Contractor shall be permitted to reduce its pricing at any time during the Contract term, without prior approval from OGS. All percentage discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract. All NTELMR for Lot 2 Installation and Remedial Maintenance shall either remain firm (unchanged) or they may decrease for the duration of the Contract.

D. The discount offered on any new Products added to pricelists shall be no lower than the minimum established Product Category discount. A Contractor shall submit its updated pricelist to the OGS Procurement Services Contract administrator pursuant to the requirements of Section 6.7 *Pricelist Update Format*, below, for review and written approval prior to issuing to Authorized Users.

- E. Pricelist updates are effective upon notification from OGS that the update has been approved. Revised pricelists shall be posted by OGS on the OGS Contract website within five (5) Business Days after approval, or as soon as possible thereafter.

6.7 Pricelist Update Format

Contractor is required to submit Contract pricelist updates in the format requested by the OGS Contract administrator. The pricelist update must be dated and submitted electronically via email to the OGS Contract administrator. Unless otherwise directed, the pricelist update must include the complete updated pricelist, with the following changes from the pricelist currently posted on the OGS website identified (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts). The OGS Contract administrator may also provide a pricelist update template that must be used for submissions.

- A. Product additions or deletions;
- B. Price adjustments (e.g., increases or decreases to the List Price, Product Category Discount, Deeper Discount, NTE Net NYS Price, NTELMR, NTEHR, Recurring Maintenance Price, NTE PPA Price, or another cost indicator identified as applicable for a Product); and
- C. Other changes to a Product listed on the pricelist that is currently posted on the OGS website (e.g., Product Description, Manufacturer Name, Part/Stock Number, Unit of Measure, or other Product information).

All Contract pricelist updates shall be accompanied by either a separate cover letter, or a paragraph within the body of an email, describing the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA Schedule, or to add/delete Products, etc.).

Pricelist updates that include Product additions or price increases must be accompanied by proof of reasonableness of price for the applicable Products. Proof of reasonableness may be in the form of pricing from a contract held with a Governmental Entity or commercial entity, invoices from sales made to such entities, or sales reports, that are less than twelve (12) months old from the date of the Contract pricelist update submission for the Products offered, or such other information as determined by OGS.

6.8 Contract Pricelist Updates Reserved Rights

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

- A. Request additional information;
- B. Reject Contract pricelist updates in full or in part;
- C. Remove previously approved Products from Contracts;
- D. Remove Products from Contract pricelist updates;
- E. Request additional discounts for new or existing Products;
- F. Require the Contractor to lower its offered pricing to that which OGS has determined to be reasonable and to remove items from Contractor's pricelist which are either out of scope, not in compliance with Contract requirements, or for which pricing is determined not to be reasonable;
- G. Confirm that the existing Contract price and all related columns on the pricelist, adheres to Contract terms and conditions, and to remove any items determined not to be in compliance with the Contract;
- H. Deny pricelist updates to Contractors that are delinquent regarding administrative requirements, including, but not limited to, the submission of Attachment 8 – *Report of Contract Usage*, and/or proof of insurance requirements; and
- I. Request pricelist updates in addition to the annual limit imposed above in Section 6.6 *Price Updates*, or to not permit pricelist updates requested within six (6) months prior to the end of the Contract term.

6.9 Escalation Cap / Maximum Price Increase

Products in Lot 1 *Photovoltaic Systems*; Lot 2 *Photovoltaic Services – Assessment, Design, Preventative Maintenance, and Training Services*; and Lot 4 *Solar Power Purchase Agreements* shall be eligible for price increases in accordance with Section 6.6 *Price Updates*. In a single year of the Contract, the maximum price increase for each individual Product on Contract shall not exceed the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series ID: CUUR0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. To view the Series Report, enter the Series ID at <https://data.bls.gov/series-report>, click “Next,” and then “Retrieve Data.”

The following example illustrates the computation of percent change:

CPI for current period	330.000
Less CPI for previous period	325.000
Equals index point change	5.000
Divided by previous period CPI	325.000
Equals (result of 5.00/325.000 rounded to nearest thousandth)	0.015
Result multiplied by 100	0.015 x 100
Equals percent change	1.5

The “CPI for current period” shall be the index in effect at the time the Contract pricelist update request is received; “CPI for previous period” shall be the index in effect when the Contract pricelist was last updated. Increases are not cumulative. Price increases are limited to the prior year prices only, and in no event can prices exceed the Contractor’s published U.S. commercial List Price. If at any time a Series ID is discontinued or unavailable, the State reserves the right to utilize the next higher-level series available.

6.10 Government Mandated Program

Notwithstanding the allowable Price Updates, an adjustment in price may be permitted during the Contract period if a government mandated program takes effect OR if the manufacturer supplying the Contractor undergoes a complete change in platform (e.g., the manufacturer no longer offers the Product line that was awarded to the Contractor). Contractor shall be required to provide adequate, suitable documentation to Procurement Services, who shall then determine if the requested price change is verifiable and reasonable. OGS reserves the right to terminate the Contract(s) if it deems the price adjustment pursuant to this paragraph is not in the best interests of the State.

6.11 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, State or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

6.12 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the

Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B *Savings/Force Majeure*.

Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon ten (10) Business Days written notice mailed to the Contractor.

6.13 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, email, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

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

6.14 Minimum Order

There is no minimum order for this Contract.

6.15 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 (1) invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- A. Contractor Name
- B. Contractor Billing Address
- C. Contractor Federal ID Number
- D. NYS Vendor ID Number
- E. Account Number
- F. NYS Contract Number
- G. Name of Authorized User indicated on the Purchase Order
- H. NYS Agency Unit ID (if applicable)
- I. Authorized User's Purchase Order Number
- J. Order Date
- K. Invoice Date
- L. Invoice Number
- M. Invoice Amount
- N. Product Descriptions

- O. Unit Price
- P. Quantity
- Q. Unit of Measure
- R. Dates of Service (if applicable)

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

6.16 Product Delivery

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

6.17 Product Returns and Exchanges

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

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

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

6.18 Contract Administration

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

Bidder shall provide a minimum of one (1) dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in Attachment 5 – *Bidder Information Questionnaire*. Contractor must notify OGS within five (5) Business Days if its Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via email to the OGS Contract Management Specialist.

6.19 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS supports requisition-to-payment processing and financial management functions. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <https://www.osc.ny.gov/state-agencies/gfo/chapter-iii/iii1-statewide-financial-system-sfs-overview>.

6.20 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.

6.21 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*.

6.22 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, no later than fifteen (15) days after the close of each calendar quarter. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the quarterly report.

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

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

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

In accordance with Section 6.28 *Environmental Sustainability and NYS Executive Order Number 22*, Contractor shall identify any Products that meet GreenNY Specifications on Contract Usage Reports. The report must also include EPEAT Registration color for Lot 1 Photovoltaic Modules (Solar Arrays). OGS reserves the right to request additional information about the third-party sustainability certifications and other environmental attributes of the Products and related packaging offered under the Contract.

The Authorized User reserves the right to request its applicable sales data from the Contractor, based on criteria identified by the Authorized User, over the life of the Contract. If sales data is requested, Contractor must provide datapoints that are required by Attachment 8 – *Report of Contract Usage*.

This Contract may be terminated if, on the one-year anniversary date of the Contract Award, and annually thereafter, the reports required to be filed under this section show that the Contractor has made no sales to any Authorized User under the Contract for the prior year. Termination of the Contract under this section is in addition to Appendix B *Termination*, and shall take effect upon written notification to the Contractor. The Contract may also be terminated for failure to file the reports required under this section.

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

I. 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, liquidated damages pursuant to clause IX of this section, and/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. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)

The Contractor shall complete, and shall require each of its subcontractors to complete, a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January to report the actual workforce utilized during the previous quarter in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website:

<https://ny.newnycontracts.com>

The Workforce Audits must be completed electronically in the NYS Contract System Workforce Audit Module. Separate audits shall be completed by Contractor and all subcontractors, and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors. 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 complete the Workforce Audit 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 complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

IV. Contract Goals

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE")

participation (based on the current availability of qualified MBEs and WBEs) for Lots 1, 2, and 4; and an overall goal of 0% for MWBE participation, 0% for MBE participation and 0% for WBE participation (based on the current availability of qualified MBEs and WBEs) for Lot 3. The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.

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

V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333.1. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder’s bid/proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an MWBE Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If OGS determines that the Bidder has failed to document good faith efforts.

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

VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333.1, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

VII. Required Good Faith Efforts

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

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, 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.

VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System - Vendor training**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/FrontEnd/TrainingList.asp>
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "**Vendor Account Lookup**" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "**Change Info.**" It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "**Request New User.**" When identifying the person responsible, please add "**- MWBE Contact**" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "**Contact Us & Support**" then "**Technical Support**" on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS OBD Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

IX. Breach of Contract and Liquidated Damages

- A. Where OGS determines that the Contractor is not in compliance with the MWBE requirements of this Section, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and

intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.

- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

X. 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>

Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.

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

Article 3 of the New York State Veterans' Services 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 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/>

6.25 Use of Recycled or Remanufactured Materials

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

6.26 Bulk Delivery and Alternate Packaging

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A Contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the Product for the shipment of multi-unit purchases. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs. The following required and encouraged attributes apply to all layers of Product packaging.

A. Packaging is REQUIRED to have the following sustainability attributes:

1. Pursuant to [NYS Hazardous Packaging Law Section 37-0205](#), the vendor is prohibited from offering packaging or packaging components (inks, dyes, pigments, adhesives, stabilizers, or any other additives) with lead, cadmium, mercury, or hexavalent chromium at concentration levels exceeding 100 parts per million by weight (0.01%).
2. Pursuant to [NYS Expanded Polystyrene Foam Container and Loose Packaging Law Section 27-3003](#), the vendor is prohibited from offering polystyrene loose fill packaging.
3. Packaging must not contain polyvinyl chloride (PVC).
4. Plastic packaging must not be labeled with terms "biodegradable", "decomposable", "degradable", or "oxo-degradable".
5. If packaging is labeled as compostable it must be certified by the Biodegradable Products Institute (BPI), Compost Manufacturing Alliance (CMA), or an equivalent certifier approved by the State.

B. Contractor is ENCOURAGED to offer one (1) or more of the following sustainability attributes:

1. Bulk shipping, order consolidation, and right-sizing packaging
2. Ship Products in only the manufacturer's packaging
3. Packaging that is:
 - Reusable, including pallets, pallet wrap, boxes, and other types of containers
 - Free of expanded polystyrene
 - Free of per- and polyfluoroalkyl substances (PFAS) (Note: Items that are certified by BPI or CMA are verified PFAS-free)
 - Compostable (Note: Compostable packaging should only be used in areas where a composting facility exists and will accept the material)
 - Recyclable (i.e., accepted by most recycling service providers in NYS)

- Made of a single material
- Contains a minimum of 25% post-consumer recycled content

C. Verification of Packaging Requirements and Additional Desirable Attributes

At the request of OGS or the Authorized User, the Contractor must provide verification of compliance with one (1) or more of the required sustainability attributes for packaging. OGS and the Authorized User also reserves the right to request information documenting the packaging desirable attributes and other Contractor environmental claims. The following types of verification documentation will be accepted:

- Third-party certification
- Product test results
- Compliance certification or affidavit signed by the manufacturer
- Other acceptable documentation as approved by OGS or the Authorized User

6.27 Surplus/Takeback/Recycling

The Contractor is encouraged to offer Product and packaging takeback and recycling services for its Products, and manufacturers must offer such services for electronic equipment (see Paragraph C below). Takeback services may include those offered by the manufacturer or the Contractor. When offered, the Contractor should provide the OGS Contract Manager with, at a minimum, a list of accepted Products and packaging materials, estimated pricing (if applicable), and contact information for the service.

- A. A State Agency is reminded of its obligation to comply with the NY State Finance Law § 167 *Transfer and Disposal of Personal Property*, and § 168 *The Management of Surplus Computer Equipment*, regarding transfer and disposal of surplus personal property before utilizing takeback, recycling, or other options for disposition of equipment that is still in operable condition.
- B. If Contractor offers a takeback/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the takeback/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Paragraph C below for specific requirements governing electronic equipment recycling.
- C. The NYS Department of Environmental Conservation (“DEC”) Electronic Equipment Recycling and Reuse Act (“Act”) (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>

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

6.28 Environmental Sustainability and NYS Executive Order Number 22

New York State is committed to environmental sustainability and seeks to minimize the environmental impact of any Products that the State Procures. Executive Order No. 22 *Leading By Example: Directing State Agencies to*

Adopt a Sustainability and Decarbonization Program (“EO 22”), requires State Agencies, authorities, and public benefit corporations (“Affected Entities”) to follow GreenNY procurement specifications for commodities, services and technology. The GreenNY specifications consider a wide range of factors including avoidance of toxic substances, pollution reduction and prevention, sustainable manufacturing, reduction of greenhouse gas emissions, packaging, and water conservation. Resources are available on the OGS website at <https://ogs.ny.gov/greenny-purchasing-requirements-and-tools> for procurement managers and Contractors to learn about which Contracts provide environmentally preferable Products.

A. GreenNY Specifications

A list of GreenNY specifications is located on the OGS website at <https://ogs.ny.gov/greenny/approved-greenny-specifications>. Specification(s) currently applicable to this Contract are Photovoltaic (PV) Systems (see <https://ogs.ny.gov/greenny/photovoltaic-pv-systems>). Award of Products in Lot 1 *Photovoltaic Systems* will be based on ability to meet the GreenNY Specification for “Photovoltaic (PV) Systems” (see Section 3.2 *Lot 1 Photovoltaic Systems Specifications*).

B. Product Labeling per GreenNY Specifications

Over the life of the Contract, the Contractor must label the environmental attributes of all environmentally preferable Products per the GreenNY specifications, or other applicable environmental specifications for this Contract, on its Contract pricelist (see Attachment 1 – *Pricing*), and in any catalogs, marketing materials, or online ordering portal associated with this Contract.

Contractor(s) shall also note Products that meet GreenNY Specifications on Contract Usage Reports (see Section 6.22 *Report of Contract Usage*), in the format requested by OGS.

All claims made about the environmental attributes of the Products and packaging offered shall be consistent with the Federal Trade Commission’s (FTC’s) [Guidelines for the Use of Environmental Marketing Terms](#). The State of New York reserves the right to require the Contractor to remove any environmental claims that are false, vague, misleading or unsubstantiated in catalogs, price sheets, websites or other marketing materials that are provided to the Authorized User under this Contract.

C. Verification of Contractor Compliance with GreenNY Requirements and Other Environmental Claims

At the request of OGS or the Authorized User, Contractor must provide verification of Product and packaging compliance with GreenNY specifications, required third-party certification(s), minimum amount of recycled content, or other environmental attributes required in the Contract. OGS and the Authorized User also reserve the right to request information documenting the Product and packaging desirable attributes and other Contractor environmental claims. The following types of verification documentation will be accepted:

- Third-party certification
- Product test results
- Compliance certification or affidavit signed by the manufacturer
- Other acceptable documentation as approved by OGS or the Authorized User

6.29 Diesel Emission Reduction Act

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

The Law may be applicable to vehicles used by Contractors “on behalf of” State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by the deadline

provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

6.30 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

In accordance with Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019, under any Contract or subcontract resulting from this Solicitation, Bidder or resultant Contractor or Subcontractor shall not provide to the State or Authorized User any equipment, system, or service that uses covered telecommunications equipment or services, as defined by the NDAA, as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver, as set forth in the NDAA and the rules and regulations promulgated thereunder.

6.31 NYS Labor Law § 220-i

All Contractors and Subcontractors submitting Bids to an Authorized User for construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication work on Authorized User public work projects or private projects covered by Article 8 of the Labor Law ("covered projects") are required to register with the New York State Department of Labor (NYSDOL) under Labor Law § 220-i.

Labor Law § 220-i (6) prohibits Contractors from bidding on public work and Subcontractors from commencing work unless the Contractor or Subcontractor is registered with NYSDOL. A Contractor is required to submit its Certificate of Registration with its Bid materials when responding to an RFQ that is subject to Labor Law § 220-i, as determined by the Authorized User. Such Contractor shall submit its Certificate of Registration to the Authorized User in its response to an RFQ. Failure to provide proof of registration may disqualify a Contractor from receiving an award under an RFQ. Subcontractors must also be registered as required by Labor Law § 220-i before commencing work on a covered project.

Any Contractor offering services under the Contract that involves the performance of work that is covered by Article 8 of the Labor Law must obtain and maintain an active valid Certificate of Registration for the duration of the Contract Term. Any Contractor that must obtain and retain a Certificate of Registration under this section that is using any Subcontractor(s) to provide a service covered by Article 8 of the Labor Law under this Contract must require all Subcontractor(s) to register with NYSDOL and obtain a Certificate of Registration before commencing work on a covered project; and any such Subcontractor must maintain an active valid registration for the duration of the Contract Term.

6.32 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://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system>.

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.

6.33 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 (4) 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 (4) 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 website at <https://www.tax.ny.gov/> for additional information.

6.34 “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 (2) 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.

6.35 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 website (<https://ogs.ny.gov/procurement/nys-laws-extending-use-state-centralized-contracts>). 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.

6.36 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.

6.37 Resellers

A. Definitions

“Reseller” shall refer to alternate distribution sources (distributors or dealers) for a manufacturer that are authorized and designated by said manufacturer, subject to approval by New York State.

B. Conditions of Reseller Participation

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

1. Such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. All general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. Those qualifying criteria met by the Reseller must be identified in Reseller designations in Attachment 12 – *Contractor and Reseller/Distributor Information* at the time that Reseller approval is requested; and,
4. Immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term. In addition to notification, if the Contract has goals, Contractors MUST submit to OGS a completed MWBE 100 EVERY TIME they add or remove a reseller that has been certified by NYS as an MWBE.

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

C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 12 – *Contractor and Reseller/Distributor Information*. Contractor shall also specify whether orders must be placed directly with Contractor or may be placed directly with designated Resellers.

D. Responsibility for Reporting/Performance

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

E. Applicability of Contract Terms

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

6.38 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.

6.39 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. 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*.

6.40 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the Contractor's personnel shall not be impaired by alcohol or drugs of any kind in the performance of the Contract.

6.41 Traffic Infractions

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

6.42 Instruction Manuals

At the time of delivery, Contractor shall provide a complete instruction manual for the Product and for each component supplied, as applicable, to the Authorized User. Contractor shall provide complete instructions for unpacking, inspecting, installing, adjusting, aligning, and operating the Product; layout and Interconnection diagrams; schematic and wiring diagrams; preventive and corrective maintenance procedures; and any other information deemed necessary by the Authorized User.

6.43 Drawings

- A. **Drawings Submitted with Bid** - When the Solicitation requires the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Solicitation and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.
- B. **Drawings Submitted During the Contract Term**- Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term

to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User's representative.

- C. **Accuracy of Drawings Submitted** - All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of Product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing Product, or carrying out any other requirements of the intended scope of work.

6.44 Embedded Software/Firmware; Updates

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

6.45 Contract Documents; Electronic Format

OGS requires Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents that require original signatures. Documents requested by OGS should be submitted in the format specified by OGS, which may include a requirement for an electronic signature that has been generated by software (e.g., DocuSign or Adobe Acrobat Sign). Contractor is responsible for retaining all copies and originals (if applicable) of documents submitted to OGS for the term of the Contract and any extensions thereof, and for a period of six (6) years after the term of the Contract has ended. This requirement includes both electronic documents, and original paper documents with required original signatures that have been scanned and submitted electronically. Contractor shall submit such retained documents to OGS upon request. If Contractor seeks to assign the Contract during the term, Contractor shall provide all documents relating to the Bid and Contract that it has retained to the successor Contractor (transferee/assignee) upon OGS consent to the assignment.

6.46 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.