



## **Contract Amendment Number 1**

**THIS CONTRACT AMENDMENT 1** (hereinafter "Amendment") is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OGS") whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law §163, and **Tesla Energy Operations, Inc.** (hereinafter "Contractor"), with its principal place of business at **901 Page Avenue, Fremont, CA 94538**. The foregoing are collectively referred to as the "Parties".

### **WITNESSETH:**

**WHEREAS**, the Parties previously entered into Contract PS933AA, a centralized contract for the acquisition of turnkey solutions, including, but not limited to financing, designing, installing, owning, operating, and maintaining solar photovoltaic systems through the life of a Solar Power Purchase Agreement, and selling the electricity output to Authorized Users (hereinafter "Contract"); and


**WHEREAS**, the Parties wish to amend the Contract to remedy the omission of a reference to Steuben County in the Contract, and to incorporate an updated version of Appendix A, Standard Clauses for New York State Contracts into the Contract.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the Parties do hereby agree as follows:

1. Section 1.4 of the Contract, entitled "Regions," is hereby amended to add "Steuben" to the list of counties set forth in Region 1, Zone C.
2. The attached Appendix A, Standard Clauses for New York State Contracts dated October 2019 shall replace the Appendix A, Standard Clauses for New York State Contracts dated January 2014 attached to the Contract.
3. The reference in Contract section 3.1 to "Appendix A, Standard Clauses for New York State Contracts, dated January 2014" is hereby amended to refer to "Appendix A, Standard Clauses for New York State Contracts dated October 2019," and all other references in the Contract to "Appendix A" shall be deemed to refer to Appendix A, Standard Clauses for New York State Contracts dated October 2019.
4. Except as herein modified, all terms of Contract PS933AA remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties have executed this Amendment as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Amendment being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Amendment, Appendix A - Standard Clauses For New York State Contracts (October 2019), Appendix B (General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

**CONTRACTOR**

Signature:   
Printed Name: Kunal Girotra  
Title: President  
Company Name: Tesla Energy Operations, Inc.  
Federal ID: 02-0781046  
NYS Vendor ID: 1100097395

Date: 08 January 2020

**THE PEOPLE OF THE STATE OF NEW YORK**

Signature:   
Printed Name: Cynthia Miner  
Title: Director of Procurement Services

Date: 3/22/21

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF California }  
 } SS.:  
COUNTY OF Alameda }

On the 08 day of January in the year 2020, before me personally appeared Kunal Gicotra known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at 47700 Kato Road, Fremont, CA 94538, and further that:

[Check One]

- If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.
- If a corporation): he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- If a partnership): he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- If a limited liability company): he is a duly authorized member of \_\_\_\_\_ LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
Notary Public

Registration No.

See attached CA acknowledgement  
BA 01.09.2020

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Alameda )

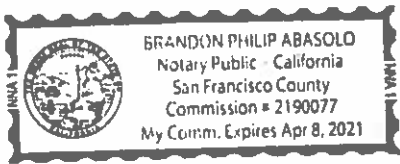
On 08 January 2020 before me, Brandon Abasolo, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Kunal Gindra  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Brandon Abasolo  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: NYOGS Contract Amendment  
Document Date: 08 January 2020 Number of Pages: 3  
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_



**Office of  
General Services**

**Procurement  
Services**

Corning Tower, Empire State Plaza, Albany, NY 12242 | <http://nyspro.ogs.ny.gov> | [customer.service@ogs.ny.gov](mailto:customer.service@ogs.ny.gov) | 518-474-6717

**AGREEMENT FOR**

**SOLAR POWER PURCHASE AGREEMENTS (STATEWIDE)**

**BY AND BETWEEN**

**THE NEW YORK STATE OFFICE OF GENERAL SERVICES**

**AND**

**SOLAR CITY CORPORATION**

**CONTRACT NUMBER PS933AA**

**THIS CONTRACT** (hereinafter “Contract” or “Centralized Contract”) for the acquisition of Solar Power Purchase Agreements is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter “State” or “OGS”) whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law §163, and Solar City Corporation (hereinafter “Contractor”), with its principal place of business at 3055 Clearview Way, San Mateo, California 94402. The foregoing are collectively referred to as the “Parties” or each individually as a “Party.”

**WHEREAS**, OGS issued a Solicitation (the “Solicitation”) seeking proposals from qualified firms with the experience and capability to offer Authorized Users that have the proper structural and geographic potential to have solar panels installed on the Authorized User’s property at no upfront cost, and for the Authorized User to purchase only the solar-generated electricity through a Power Purchase Agreement (“PPA”); and

**WHEREAS**, the services provided by the firms shall include, but may not be limited to, the financing, designing, installing, owning, operating, and maintaining the solar photovoltaic system (“PV System”) through the life of the PPA, and selling the electricity output to the Authorized User at competitive prices through the PPA; and

**WHEREAS**, OGS provided notification of the availability of the Solicitation by placing a notice in the September 19, 2016 edition of the New York State Contract Reporter; and

**WHEREAS**, the Solicitation set forth the minimum requirements that a firm must meet to be eligible for consideration to receive an award; and

**WHEREAS**, the Solicitation was structured with six Lots, containing four Items in each Lot, as further described herein, and the State was divided into five geographic Regions, as further identified herein; and

**WHEREAS**, the Solicitation and resulting Centralized Contracts set forth a two-step process for each project to be conducted under the Centralized Contracts. The first step is the award and establishment of the multiple-award backdrop Centralized Contracts to all responsive and responsible offerors who meet the minimum requirements identified in the Solicitation, pass reference checks and pass a reasonableness of price evaluation. The second step is the mandatory competitive Mini-Bid process, based on the development of a specific project by an Authorized User in accordance with the contractual terms and conditions. Project-specific details and requirements will be identified by an Authorized User and documented in a Mini-Bid Request for Proposal (“Mini-Bid RFP”). The Mini-Bid RFP will then be distributed to eligible Contractors based on applicable Lot(s), Item(s) and Region(s), via the Mini-Bid process. The Authorized User will select and award the Mini-Bid project based on best value. The Mini-Bid award will result in an executed Power Purchase Agreement between the Authorized User and Contractor or Contractor’s subsidiary, subcontractor or partner.

**WHEREAS**, Contractor submitted documentation which met the Solicitation requirements for one or more Items in one or more Lots; and

**WHEREAS**, Contractor agrees to the terms and conditions set forth in this Centralized Contract and the Contractor is willing to provide the services as set forth herein to Authorized Users.

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions set forth herein, the Parties hereby agree as follows:

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**Appendix A – Standard Clauses For New York State Contracts**

**Appendix B – General Specifications**

**Appendix C – Contract Modification Procedure**

**Appendix D – Award Summary**

**Appendix E – Insurance Requirements**

**Appendix F – Model Power Purchase Agreement**

**Appendix G – Model Performance Guarantee Agreement**

**Attachment 1 – Report of Contract Usage**



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# 1 Introduction

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## 1.1 Overview and Scope

This Contract is awarded and executed by the New York State Office of General Services (OGS), a New York State (NYS) agency authorized by law to issue Centralized Contracts for use by NYS Agencies and other Authorized Users. This Contract establishes Centralized Contracts to provide Solar Power Purchase Agreements to Authorized Users on a statewide basis.

The Centralized Contract establishes a set of standardized terms and conditions, guidelines, processes, and templates for the development, distribution, and award of a Power Purchase Agreement to be executed with the Authorized User, through a mandatory Mini-Bid process. The Contractor agrees to the terms and conditions set forth in this Centralized Contract and the Contractor is willing to provide such services as set forth herein to Authorized Users.

The Centralized Contract sets forth a two-step process for each project to be conducted under the Centralized Contract. The first step is the award and establishment of the multiple-award backdrop Centralized Contracts to all responsive and responsible offerors who meet the minimum requirements identified in the Solicitation, pass reference checks and pass a reasonableness of price evaluation. The second step is the mandatory competitive Mini-Bid process, based on the development of a specific project by an Authorized User in accordance with the contractual terms and conditions. Project-specific details and requirements will be identified by an Authorized User and documented in a Mini-Bid Request for Proposal (“Mini-Bid RFP”). The Mini-Bid RFP will then be distributed to eligible Contractors based on applicable Lot(s), Item(s) and Region(s), via the Mini-Bid process. The Authorized User will select and award the Mini-Bid project based on best value. The Mini-Bid award will result in an executed Power Purchase Agreement between the Authorized User and Contractor or Contractor’s subsidiary, subcontractor or partner.

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

## 1.2 Estimated Quantities

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

## 1.3 Lots & Items

This Contract is divided into the following Lots and Items. The Lots and Items awarded to Contractor are identified in Appendix D – Award Summary.

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

This lot is for Photovoltaic Systems mounted onto a structural frame consisting of a combination of structural members including but not limited to aluminum or steel poles, rails and channels connected

to multiple rows of individual footings, which is located on the same parcel as the facility for which it will be used to offset electricity.

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

**Lot 2: Remote Net Metered Ground System**

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

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

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

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

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

**Lot 4: Remote Net Metered Pole System**

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

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

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

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

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

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

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

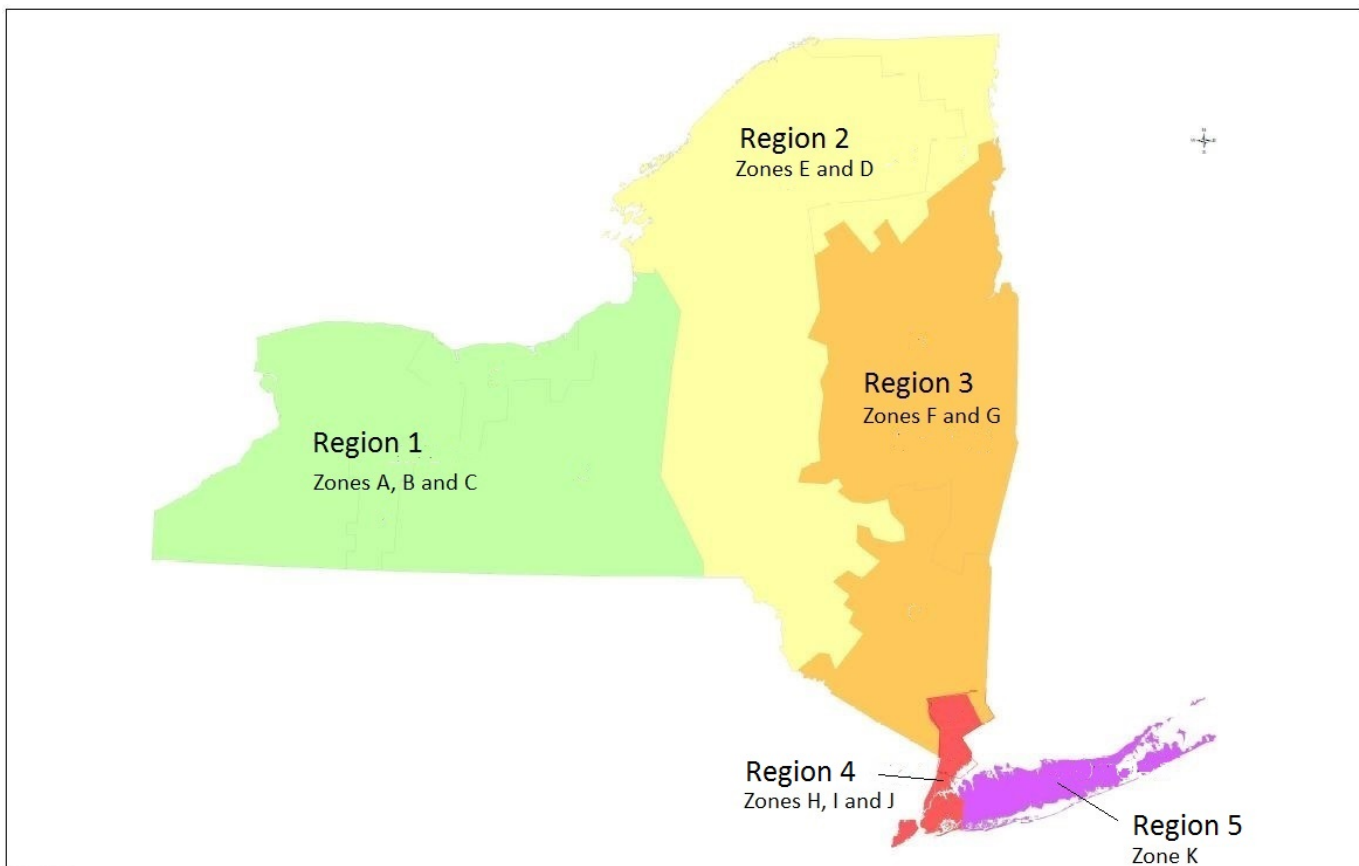
- Item 1: On-Site Net Metered Roof System, less than 200 kW
- Item 2: On-Site Net Metered Roof System, 200 kW to 1000 kW
- Item 3: On-Site Net Metered Roof System, greater than 1000kW
- Item 4: Storage System with smart inverter for On-Site Net Metered Roof System

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

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

## 1.4 Regions

This Contract includes five Regions, with each Region containing the counties listed below. The Regions awarded to Contractor are identified in Appendix D – Award Summary.



#### Notes:

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

**NYS Counties by NYISO Zone:**

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

**1.5 Definitions**

Additional definitions applicable to this Contract can be found in Appendix B.

Term	Definition
Best Value	The basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency among responsive and responsible offerers. Such basis shall reflect, wherever possible, objective and quantifiable analysis. (State Finance Law §163 (1) (j)).
Centralized Contract Price or Price	The maximum Not-to-Exceed prices awarded for the Centralized Contract as set forth in Appendix D – Award Summary. See also, Not-to-Exceed Price (NTE).
Incentives	Financial incentives or rebates provided to the PV developer to encourage the development of solar power. Examples include but are not limited to tax credits, accelerated depreciation schedules, tax deductions, Solar Renewable Energy Credits, sales tax exemptions, direct rebates, direct incentives, grants, etc.
Mini-Bid	A type of Bid document used by the Authorized User to conduct a competitive Request for Proposal from eligible Contractors and then make an award based on best value and obtain Services under the Centralized Contracts.

Term	Definition
Not-to-Exceed Price (NTE)	The bid prices provided by the Bidder in response to this Solicitation and awarded for the Centralized Contract. Not to Exceed Pricing includes all costs associated with the implementation of the PPA including, but not limited to financing, designing, installing, owning, operating, and maintaining solar photovoltaic systems (“PV Systems”) through the life of the PPA, but does not include Third Party Consulting Fees or government incentives or subsidies. Pricing submitted by the Contractor in response to Mini-Bids shall not exceed the Not to Exceed prices with the exception of Third Party Consulting Fees, which may be incorporated into the PPA rate at the discretion of the Authorized User. See Mini-Bid RFP Pricing, section 7. Also referred to as ‘Not to Exceed PPA Price’.
NYISO	The New York Independent System Operator.
NYPA	The New York Power Authority
PGA	The Performance Guarantee Agreement entered into and executed by the Authorized User and the Contractor or its subsidiary, subcontractor or partner.
PPA	The Solar Power Purchase Agreement entered into and executed by the Authorized User and the Contractor or its subsidiary, subcontractor or partner.
Photovoltaic (“PV”) System	A device that generates electricity directly from sunlight via an electronic process.
Solicitation	The document issued by the New York State Office of General Services seeking offerors for Solar Power Purchase Agreements and resulting in the award of Centralized Contracts.
Third Party Consulting Fees	Fees incurred by the Authorized User for assistance provided by the New York State Power Authority or other third party energy or engineering consultant in performing tasks including but not limited to developing, conducting and evaluating Mini-Bids and in negotiating and executing PPA and/or PGA's.

## 2 Contract Information

### 2.1 Centralized Contract Term

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

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

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

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

### 2.2 Order of Precedence/Conflict of Terms

This Contract consists of the following documents: Appendix A – Standard Clauses for New York State Contracts, the Centralized Contract (this document), Appendix B – General Specifications, Appendix C – Contract Modification Procedure, Appendix D – Award Summary, Appendix E – Insurance Requirements, Appendix F – Model Power Purchase Agreement, and Appendix G – Model Performance Guarantee Agreement (PGA). The Model PPA and Model PGA documents are models only. Each Solar PV project is unique and the requirements for each project should be modified as

appropriate to fit the specific project, in consultation with agency or municipal counsel, NYPA and/or other third party consultation, as applicable.

In the case of a conflict or inconsistency among the elements of this Contract, such conflict or inconsistency shall be resolved by giving precedence to the documents in the following order:

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Centralized Contract (this document);
3. Appendix B, General Specifications
4. Appendix D – Award Summary;
5. Appendix E - Insurance Requirements
6. Appendix C – Contract Modification Procedure
7. The Power Purchase Agreement and/or Performance Guarantee Agreement executed by the Authorized User and Contractor or Contractor's subsidiary, subcontractor or partner, including all schedules or attachments thereto.

### **2.3 Centralized Contract Effective Date, Term and Extension**

The Parties agree that this Contract term commences upon execution of the Contract by OGS as evidenced by the date accompanying the OGS signature line, and the term runs through April 30, 2022.

A Contractor is eligible to respond to Mini-Bid RFPs and participate in the Mini-bid process upon the OGS Commissioner's mailing or electronic communication to the address in the contract of the fully executed Contract.

All Centralized Contracts resulting from the Solicitation or any subsequent Periodic Recruitment period shall have a co-terminus end date. This Centralized Contract shall be in effect for an initial term as set forth above, with the option for one extension, under the same terms and conditions, for a period of up to five additional years. 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 processed under this section.

### **2.4 Periodic Recruitment**

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

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

Periodic Recruitments are open to either new Contractors or Contractors who already hold a Centralized Contract and wish to bid on Lots, Items or Regions not awarded. No bids will be accepted via Periodic Recruitment from current Contractors who submit a bid for a currently awarded Item within a Lot and Region already awarded.

### **2.5 Short Term Extension**

In the event that a replacement contract has not been issued, the Centralized Contracts may be extended unilaterally by the State for an additional period of up to three (3) months upon notice to the

Contractor with the same terms and conditions as the original contract including, but not limited to, prices. Any such extension terminates upon award of a replacement contract.

### 3 Centralized Contract Terms and Conditions

The terms and conditions set forth in this section are expressly incorporated in and applicable to the Centralized Contract and any Mini-Bids conducted by Authorized Users under the Centralized Contracts.

#### 3.1 Appendix A

Appendix A, Standard Clauses for New York State Contracts, dated January 2014, attached hereto, is hereby incorporated in, and expressly made a part of, this Contract as fully as if set forth at length herein.

#### 3.2 Appendix B

Appendix B, Office of General Services General Specifications, dated April 2016, attached hereto, is hereby incorporated in, and expressly made a part of this Contract as fully as if set forth at length herein. Unless otherwise provided by mutual agreement of the Authorized User and the Contractor or Contractor's subsidiary, subcontractor or partner in the executed Power Purchase Agreement, and in accordance with Appendix B, *Modification of Contract Terms*, the provisions of Appendix B shall apply to all transactions by Authorized Users under the Contract.

##### 3.2.1 Appendix B Amendments

Appendix B is hereby amended as follows:

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

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

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

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

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

- h) Section 44, *Savings/Force Majeure*, is hereby deleted and replaced with the following:

“The occurrence of any Force Majeure event and any results thereof on the rights, obligations or liabilities of the Authorized User and the Contractor shall be governed by the Power Purchase Agreement.”

- i) Section 46, *Default – Authorized User*, is hereby amended as follows:

The following sentence is added to the beginning of this Section: “The following obligations and procedures governing breaches are in addition to any obligations and breach procedures in the Power Purchase Agreement.”

- j) Section 48, *Remedies for Breach*, is hereby amended as follows:

The following sentence is added to the beginning of this Section: “The following remedies for breach are in addition to any remedies for breach in the Power Purchase Agreement.”

- k) Section 54, *Warranties*, is hereby amended as follows:

The following sentence is added to the beginning of this Section: “The following warranties are in addition to any warranties set forth in the Power Purchase Agreement or Performance Guarantee, as applicable.”

### 3.3 Appendix C

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

### 3.4 Appendix D

Appendix D, Award Summary, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein. The Parties expressly agree that the prices set forth in Appendix D are established as maximum Not-To-Exceed prices. The Contractor acknowledges that rates proposed in response to any Mini-Bid RFP may not exceed the maximum Not-To-Exceed rates of the Centralized Contract, and that any response to a Mini-Bid RFP which includes rates exceeding the applicable maximum Not-To-Exceed rate of the Centralized Contract shall be rejected by the Authorized User.

### 3.5 Appendix E

Appendix E, Insurance Requirements, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.



### **3.6 Appendix F**

Appendix F – Model Power Purchase Agreement (PPA) provides a sample document for use by the Authorized User in developing the Mini-Bid RFP and/or resulting PPA. This document is a model only. Each Solar PV project is unique and the requirements for each project should be modified as appropriate to fit the specific project, in consultation with agency or municipal counsel, NYPA and/or other third party consultation, as applicable.

### **3.7 Appendix G**

Appendix G – Model Performance Guarantee Agreement (PGA) provides a sample document for use by the Authorized User in developing the Mini-Bid RFP and/or resulting PGA. This document is a model only. Each Solar PV project is unique and the requirements for each project should be modified as appropriate to fit the specific project, in consultation with agency or municipal counsel, NYPA and/or other third party consultation, as applicable.

### **3.8 New York State Vendor Responsibility**

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, 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 Contractor agrees that the provisions of this section shall apply to any subsidiary, subcontractors or other partnerships formed for the purposes of developing, installing or maintaining the Solar PV System or executing the PPA on a particular project. As part of the Mini-Bid process, the Contractor and/or its subcontractors, subsidiaries or partnerships agrees to submit a New York State Vendor Responsibility Questionnaire and undergo a Vendor Responsibility Review prior to the award of the Mini-Bid if required by the Authorized User.

The Commissioner of OGS or his or her designee, 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 or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that the 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 or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or his or her designee to be non-responsible. In such event, the Commissioner of OGS or his or her designee 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.

### **3.9 Vendor File Registration**

Prior to being awarded a Contract, Contractor and any subsidiaries, subcontractors or partners who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit Vendor Identification Number (Vendor ID) will be assigned to the company and Vendor IDs will be assigned to any subsidiaries, subcontractors or partners accepting payments (if applicable) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York.

For more information on the Vendor File please visit the following website:

[http://www.osc.state.ny.us/vendor\\_management/](http://www.osc.state.ny.us/vendor_management/)

### **3.10 Contractor Responsibility for Subsidiaries, Subcontractors or Partners**

The Contractor may be permitted, subject to any applicable requirements of the Mini-Bid and subject to the approval of the Authorized User, to form subsidiaries or engage subcontractors or other partners for the purposes of developing, installing or maintaining the Solar PV System or executing the PPA on a particular project, provided that Contractor remains responsible for Contract performance by any such subsidiaries, subcontractors or partners.

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

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

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

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

Section 5-a of the Tax Law, requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to the 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 are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Vendor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Vendor filed the ST-220-TD with the NYS Department of Taxation and Finance (DTF). Please note that the NYS Department of Taxation and Finance should receive the completed Form ST-220-TD, not OGS. OGS should only receive the Form ST-220-CA. Proposed Contractors should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Vendor Submission). Failure to make either of these filings may render a Vendor non-responsive and non-responsible. Each Vendor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Contractor certification forms and instructions are provided below. Form No. ST-220-TD must be filed with and returned directly to DTF and can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf).

Vendors may call DTF at 518-485-2889 for any and all questions relating to §5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.tax.ny.gov>.

### **3.13 Contractor Requirements and Procedures for EEO and MWBE**

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

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

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

## II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State Certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section and/or enforcement proceedings as allowed by the Contract.
- E. The Contractor agrees that the provisions of Section 3.13 shall apply to any subsidiary, subcontractors or other partnerships formed for the purposes of developing, installing or maintaining the Solar PV System or executing the PPA on a particular project.

## III. Equal Employment Opportunity (EEO)

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses and Community Relations. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

**V. MWBE Utilization Plan**

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

## VI. Request for Waiver

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

## VII. Required Good Faith Efforts

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

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.

5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

### VIII. Monthly MWBE Contractor Compliance Report

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

OGS MWBE Office, 29<sup>th</sup> floor Corning Tower, Empire State Plaza, Albany, NY 12242.  
Phone: 518-486-9284; Fax: 518-486-9285.

- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

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

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

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

### **3.14 NYS Department of Labor Prevailing Wage Rates**

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

Work being bid is subject to the prevailing wage rate provisions of New York State Labor Law. See Appendix B, *Prevailing Wage Rates - Public Works and Building Services Contracts*. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility, rejection of bid, suspension or termination of Contract.

For bidding purposes, the applicable Prevailing Wage Rate Schedule for the Solicitation is **PRC # 2016003284**



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

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

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

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

### **Worker Notification**

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

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

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

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

Further information may be found at:

[www.labor.state.ny.us/workerprotection/publicwork/PWContents.shtm](http://www.labor.state.ny.us/workerprotection/publicwork/PWContents.shtm)

### **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.

## **3.15 Contractor’s Insurance Requirements**

During the term of this Contract, the Contractor shall maintain in force, at its sole cost and expense, policies of insurance as required by Appendix E – Insurance Requirements. At the time of Mini-Bid award, Contractor shall provide satisfactory proof of compliance with all requirements of Appendix E, in addition to any other insurance requirements contained in the Mini-Bid Request for Proposals, and as applicable, proof of compliance for any subsidiary, subcontractor or partner executing the Power Purchase Agreement.

### **3.16 Contractor Staff**

All employees of the Contractor, or of its subsidiaries, subcontractors, or partners who perform services under the Contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform services under the Contract on behalf of Contractor shall, in performing services, comply with all applicable Federal, State, and local laws.

For reasons of safety and public policy, in the performance of any services under this Contract, the use of illegal drugs and/or alcoholic beverages by the Contractor or its agents, employees, partners or subcontractors shall not be permitted while performing any phase of required services.

The State and the Authorized User shall not be liable for any expense incurred by the Contractor or its agents, employees, partners or subcontractors for any parking or towing fees or as a consequence of any traffic infraction or parking violations attributable to Contractor or its agents, employees, partners or subcontractors.

### **3.17 Contractor Information**

The Contractor will provide and maintain updated contact information for each of the following, in the form and manner specified by OGS:

1. A designated Account Manager for the Centralized Contract. The Account Manager is responsible for the overall relationship with the State during the course of the Contract and shall act as the central point of contact on behalf of the Contractor.
2. A designated Email Address for this Contract. This Email address will be published on the OGS website for this Contract for use by all Authorized Users when distributing Mini-Bid Request for Proposals. This can be the email of a designated Account Manager or a dedicated generic email account that multiple employees can access.

The Contractor is responsible for promptly notifying OGS of any updates to its designated Account Manager or designated Email Address.

### **3.18 Mercury-Added Consumer Products**

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

### **3.19 Report of Contract Usage**

Contractor shall submit Attachment 1 - Report of Contract Usage including total solar Power Purchase Agreements (PPA's) for Photovoltaic Systems awarded by State agency and other Authorized Users no later than the fifteenth of the month following the end of each six month period of the Contract start date.

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

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

### **3.20 Centralized Contract Modification Process**

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.

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.

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.

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

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.

### **3.21 Performance/Bid Bond and Letter Of Credit**

There are no bonds required for the Contract resulting from this Solicitation. In accordance with Appendix B, *Performance/Bid Bond*, 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 shall be required at any time during the initial term, or any renewal term, for the resulting Contract and Authorized User Agreements.

## **4 Mini-Bid Process and Additional Considerations**

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### **4.1 General Considerations**

After Centralized Contracts are awarded under this Solicitation, Authorized Users must create and conduct a Best Value Mini-Bid Request for Proposals (Mini-Bid RFP) among all Contractors awarded the applicable Item, Lot and Region on the Centralized Contract. This process includes, but is not limited to, studying the feasibility of implementing a Solar Power Purchase Agreement, obtaining all

necessary stakeholder approvals, gathering site and billing data, developing the Mini-Bid Request for Proposals document, developing evaluation criteria and tools for the technical and cost proposals, distributing the Mini-Bid RFP, evaluating responses, choosing the winning proposal, making an award, executing all necessary agreements and overseeing the construction of the system.

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

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

## **4.2 New York Power Authority/Third Party Consultant Assistance**

The New York Power Authority (NYPA) has worked closely, in partnership with OGS, to assist in the production of the Solicitation and resulting Centralized Contracts. NYPA has been tasked with executing Governor Cuomo's Executive Order 88, requiring all State Agencies to reduce their energy usage by 20% by 2020. NYPA has had extensive experience in developing and administering Mini-Bid processes for public entities implementing solar installations and has delivered significant value to those projects. NYPA has established streamlined processes, created precedential Mini-Bid documents including industry acceptable PPAs and PGAs that protect customers, developed relationships with the solar industry, and established an understanding of the practical nuances of developing solar projects.

Under the authority granted by Executive Order 88, Section III.A(1), NYPA will require all Affected State Entities, as defined in the Order, to utilize NYPA when conducting the Mini-Bid process. For all other Authorized Users, it is highly recommended that NYPA be utilized for the Mini-Bid process, given NYPA's level of expertise and experience in the solar industry.

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

Evan Kolkos  
914-681-6431  
Solar@NYPA.gov

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

### 4.3 Feasibility Studies/Stakeholder Considerations

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

Considerations for State Agency Authorized Users:

New York State Division of Budget	Inform their Budget Examiner of the proposed projects; include location and type of Solar project (roof, ground, etc.). It is recommended that Authorized users review the costs associated with the project. Consider the present worth of the lower cost electricity over the term of the agreement.
Office of General Services Design & Construction	Inform Design & Construction of their proposed projects; include location and type of Solar project (roof, ground, etc.). Upon final OK to move forward with projects, obtain a permit from OGS Design and Construction, or other Construction-Permitting Agency. Although the contractor is responsible for obtaining all required permits and licenses, the final development plans must be reviewed, approved, and stamped by the Office of General Services Design and Construction, or other Construction-Permitting Agency. 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), shall provide all Uniform Code services which shall include (i) the issuances of all permits and certificates, (ii) inspections, and (iii) reporting.”
Office of General Services Real Estate	Inform, for inventory purposes and lease considerations, the OGS Real Estate Center of intent to install Solar Panel System on property owned by the state and include the address, and specific proposed location of the panels (i.e., rooftop, or ground mount). Post installation: provide a copy of the signed PPA, and approved design plans to

	Real Property Management to keep on record.
Legal Review	Authorized users should have the final PPA reviewed by agency counsel.

Considerations for other Authorized Users:

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

#### 4.4 Development of the Mini-Bid

After Centralized Contracts are awarded, Authorized Users must create and conduct a Best Value Mini-Bid Request for Proposals (Mini-Bid RFP) among all Contractors awarded the applicable Item, Lot and Region on the Centralized Contract. A competitive Mini-Bid is required for every transaction under this Centralized Contract.

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

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

**a. Project Organization Chart**

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

**b. Licensing**

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

**c. Proposed Equipment Warranties**

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

**d. References**

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

**e. Operations and Maintenance Plan**

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

#### **f. Decommissioning Plan**

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

#### **g. PV System Performance Guarantee Agreement**

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

#### **h. Environmental Considerations**

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

This specification includes the following requirements:

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

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

Affected entities are encouraged to:

- Purchase higher efficiency units when available.
- Provide routine inspection (recommended yearly at a minimum) as well as cleaning and servicing per manufacturer's recommendations.
- Install performance monitoring equipment that will allow quantification of savings.



- Investigate available government and private funding sources, many of which will be in the form of loans repaid with savings realized by converting to a renewable energy source.
- Reduce the State's carbon footprint by procuring local or regional products.
  - For projects registered with a LEED rating system, some contribution to achievement of credits may be realized in purchasing units that are manufactured within 500 miles of the project site.

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

- The Authorized User may require that the Bidder use solar panels, equipment and supplies that meet the RoHS2 (Restrictions of Hazardous Substances) criteria adopted by the European Union in 2011. Specifically, RoHS restricts the amount of lead; mercury; cadmium; hexavalent chromium; polybrominated biphenyls; polybrominated diphenyl ether; bis(2-ethylhexyl) phthalate; butyl benzyl phthalate; dibutyl phthalate; and diisobutyl contained in electrical and electronic products. Thus, solar panels, equipment and supplies must not contain more than 0.01% (by weight) cadmium and 0.1% (by weight) of any of the other listed substance.
- The Authorized User may require that the Bidder commit, and subsequently certify, as part of the Power Purchase Agreement, to take-back, collect and recycle or redirect for reuse Photovoltaic Systems, equipment and supplies at the end of their life and/or at the end of the PPA term unless the end user takes possession.
- The Authorized User may require that the Bidder utilize photovoltaic panels that have earned a total score of 50 points or more on the Solar Scorecard created by the Silicon Valley Toxics Coalition for the most recent year in which such scores are available.
- The Authorized User may require that the Bidder use installers and service technicians that are based within 500 miles of the installation site.
- The Authorized User may require that the Bidder use solar panels, equipment and supplies that are manufactured in a facility that is certified to the International Organization for Standardization (ISO) 14001 standard for environmental management systems; or by a company that has signed on to the Solar Energy Industries Association Commitment to Environmental and Social Responsibility, finalized in 2013 by the Solar Industries Association Environment, Health and Safety Committee; or by a company that has adopted a corporate sustainability program certified by an independent, third party certification program.
- The Authorized User may require a minimum inverter efficiency rating or a minimum overall system efficiency rating.

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

All contractors or subcontractors performing installation of Photovoltaic Systems shall appear on the New York State Energy Research and Development Authority's (NYSERDA) list of Commercial/Industrial Solar Electric Installers located at:

<https://www.nyserda.ny.gov/All-Programs/Programs/NY-Sun/Customers/Guide-to-Evaluate-and-Install-Solar/Commercial-Installer>

## 4.6 Authorized User Compliance with MWBE Participation Goals

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

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

## 4.7 Mini-Bid Insurance, Vendor Responsibility and MWBE Requirements

To the extent that Contractor may be permitted under a Mini-Bid RFP to form subsidiaries or engage subcontractors or other partners for the purposes of developing, installing or maintaining the Solar PV System or executing the PPA on a particular project, such subsidiaries, subcontractors or partners may be required to submit proof of compliance with Sections 3.15 ‘Contractor’s Insurance Requirements’, 3.8 ‘New York State Vendor Responsibility’, 3.13 ‘Contractor Requirements for EEO and MWBE’ or other requirements prior to award of the Mini-Bid RFP.

## 4.8 Mini-Bid RFP Pricing

Power Purchase Agreements may have a flat or escalating kWh rate at the discretion of the Authorized User.

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

$(\text{Total PPA price per kWh}) \leq (\text{Not to Exceed Price}) + (\text{Third Party Consulting Fees}) - (\text{Incentives})$

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

For Mini-Bids that include a combination of a Solar PV System (Items 1, 2 or 3) and a storage system with smart inverter (Item 4), the Not-to-Exceed Price in the above equation is equal to the sum of the Not-to-Exceed Price for the Solar PV System plus the Not-to-Exceed price for the storage system with smart inverter. Only Contractors awarded Item 4 will be eligible to participate in Mini-Bids that include that item.

## 4.9 Reasonableness of Price

An Authorized User will be required to demonstrate reasonableness of price for each project as part of the evaluation prior to the execution of a Power Purchase Agreement. The Centralized Contract includes “Not-to-Exceed” rates which were evaluated during the Centralized Contract award phase.

The Contractor acknowledges that rates proposed in response to any Mini-Bid RFP may not exceed the maximum Not-To-Exceed rates of the Centralized Contract, and that any response to a Mini-Bid RFP which includes rates exceeding the applicable maximum Not-To-Exceed rate of the Centralized Contract shall be rejected by the Authorized User.

Authorized Users are encouraged to negotiate for better pricing than is listed in the Centralized Contract, as the rates established in the Centralized Contracts are Not-to-Exceed rates only. An Authorized User must follow all internal procurement guidelines of their organization and obtain all required control agency approvals when purchasing from Centralized Contracts.

#### **4.10 Mini-Bid Procurement Rights**

The following New York State Procurement Rights identified in the Solicitation are also applicable to and reserved by the Authorized User when conducting a Mini-Bid RFP:

New York State or other Authorized User reserves the right to:

1. Reject any or all Proposals or separable portions of Proposals received in response to the Solicitation or Mini-Bid RFP;
2. Withdraw the Solicitation or Mini-Bid RFP at any time, at the sole discretion of the State or Authorized User, as applicable;
3. Make an award under the Solicitation or Mini-Bid RFP in whole or in part;
4. Disqualify any Bidder/Contractor whose conduct and/or Proposal fails to conform to the requirements of the Solicitation or Mini-Bid RFP;
5. Seek clarifications and revisions of Proposals;
6. Prior to the bid opening, amend the Solicitation or Mini-Bid RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
7. Prior to the bid opening, direct Bidders/Contractors to submit Proposal modifications addressing subsequent Solicitation or Mini-Bid RFP amendments;
8. Change any of the schedule dates, with notification through the NYS Contract Reporter as applicable;
9. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders/Contractors;
10. Waive any requirements that are not material;
11. Reject illegible, incomplete or vague Proposals;
12. Utilize any and all ideas submitted in the Proposals received;
13. Adopt all or any part of a Bidder's/Contractor's Proposal in selecting the optimum configuration;
14. Negotiate with the Bidder(s)/Contractor(s) responding to the Solicitation or Mini-Bid RFP within the requirements to serve the best interests of the State or Authorized User. This includes requesting clarifications of any or all Bidders'/Contractors' Proposals;
15. Request any information deemed necessary for proper evaluation of Proposals from all Bidders/Contractors deemed to be eligible for Contract award. Failure to provide requested information may result in rejection of the Proposal;
16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's/Contractor's Proposal and/or to determine a Bidder's/Contractor's compliance with the requirements of the Solicitation or Mini-Bid RFP;
17. Select and award the Contract to other than the selected Bidder/Contractor in the event that the State or Authorized User is unsuccessful in negotiating a Contract with the selected Bidder/Contractor within 30 days of Contract award notification or, optionally, in other specified circumstances as detailed in the Solicitation or Mini-Bid requirements;

18. Use Proposal information obtained through the State's or Authorized User's investigation of a Bidder's/Contractor's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder/Contractor in response to a request for clarifying information in the course of evaluation and/or selection under the Solicitation or Mini-Bid RFP;
19. Request current Bidder/Contractor financial statement(s) that demonstrate Bidder's/Contractor's ability to service a Contract of similar size and scope as the Solicitation or Mini-Bid RFP;
20. Request additional documentation from the Bidder/Contractor or request reports on financial stability from independent financial rating services;
21. Reject any Proposal or portion(s) thereof determined to have been altered or modified from the original format by the Bidder/Contractor. Such alterations or modifications include but are not limited to: any changes to document headers, footers and/or cells, unprotecting worksheets or workbooks, hiding or un-hiding cells, columns, rows, or worksheets, and locking or unlocking cells;
22. Reject an unbalanced Proposal, or a Proposal containing incomplete, unreasonable or unrealistic pricing, as determined by the State or Authorized User;
23. Offer a Bidder/Contractor the opportunity to provide supplemental information or clarify its Proposal, including the opportunity to explain or justify the balance, realism and/or reasonableness of its pricing;
24. Accept or reject a conditional or revocable Proposal which clearly communicates the terms or limitations of acceptance;
25. Consider and utilize the proper alternative or corrected reference/parameter/component/product/etc. in instances where an incorrect reference/parameter/component/product/etc. is stated by the State or Authorized User or by the Bidder/Contractor.
26. These reserved rights are also applicable to an Authorized User's individual Mini-Bid Agreements and associated Contractor responses.

#### **4.11 Mini-Bid Contract Numbers**

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

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

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

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

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## 4.12 Modification of Contract Terms

In accordance with Appendix B, *Modification of Contract Terms*, the terms and conditions set forth in the Centralized Contract shall govern all transactions by Authorized Users. An Authorized User may add additional required terms and conditions to the Centralized Contract Mini-Bid RFP and resultant Power Purchase Agreement only if such terms and conditions (1) are more favorable to the Authorized User and (2) do not conflict with the Centralized Contract terms and conditions.

## 4.13 PPA Survival

Any validly executed Power Purchase Agreements entered into between an Authorized User and a Contractor or Contractor's subsidiary, subcontractor or partner prior to the expiration of the Centralized Contract shall survive the expiration or termination of the Centralized Contract.

## 4.14 Mini-Bid Protests

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

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# 5 General Provisions

## 5.1 Notices

Any notice or communication by any Party to the other required or permitted hereunder shall be in writing and shall be deemed duly served as of (a) the date it is delivered by hand or by fax (with appropriate acknowledgement of receipt), (b) three business days after having been mailed by certified mail, postage prepaid, return receipt requested, or (c) the next business day after having been sent for delivery on the next business day, shipping prepaid, by a nationally recognized overnight courier, in each case to the receiving Party and addressed to the designated contact at the address identified on page 2 of this Contract or at such other address as a Party may designate by written notice to the other Party sent in the manner set forth herein.

## 5.2 Captions

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

## 5.3 Severability

In the event that any one or more of the provisions of this Contract shall for any reason be declared unenforceable under the laws or regulations in force, such provision will have no effect on the validity of the remainder of this Contract, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Contract.

## 5.4 Counterparts

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Contract. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Contract, and shall bind such Party.

## **5.5 Entire Agreement**

This Contract and any referenced appendices and attachments constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings of the Parties, whether written or oral, with respect to the subject matter hereof. No statement, promise, condition, understanding, inducement or representation, oral or written, express or implied, which is not contained herein shall be binding or valid and the Contract may not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor.

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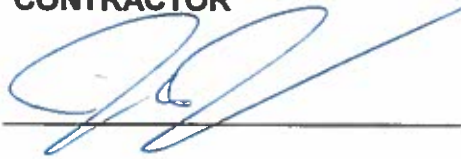
**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Contract being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

**CONTRACTOR**

**THE PEOPLE OF THE STATE OF NEW YORK**

Signature:



Signature:



Printed Name:

Jesse Jones

Printed Name:

Jill McCabe

Title:

Sr. Director, Project Development Programs

Title:

Assistant Director  
Procurement Services

Company Name:

Solar City Corporation.

Date:

4/26/17

Federal ID:

02-0781046

NYS Vendor ID:

1100097395

Date:

April 24, 2017







**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

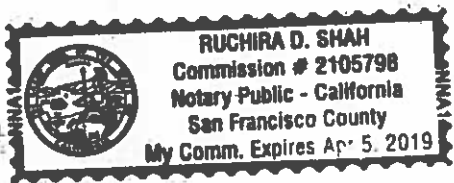
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Francisco )  
On Apr 24, 2017 before me, Ruchira Shah, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Jesse Jones  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature \_\_\_\_\_  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Agreement for seller PPA's with 2 MYOGS E Solar Document Date: 4/24/17  
Number of Pages: 27 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_