

Appendix E

How to Use This Contract

This document provides the Authorized User general instructions on how to use the Solar Power Purchase Agreements Contract. These instructions assume the Authorized User has a good knowledge of Mini-Bid procurement methodology. An Authorized User must familiarize itself with the OGS Centralized Contract terms and conditions. Additional general procurement information is available on the OGS website.

Section 1. General Information

1.1 OGS CENTRALIZED CONTRACT SCOPE

This award establishes backdrop Contracts for Solar Power Purchase Agreements in various regions across the state which allow Authorized Users that have the structural and geographic potential with a streamlined process to have solar panels installed on the Authorized User's property at no upfront cost, and purchase only the solar generated electricity through a Power Purchase Agreement ("PPA"). The backdrop Contracts allow Contractors to be prequalified to bid on specific projects that will be let by Authorized Users at a later date through the use of a Best Value Mini-Bid Request for Proposals (Mini-Bid RFP).

This award is for use by Authorized Users of OGS Centralized Contracts which includes, but is not limited to, New York State agencies and non-state organizations (political subdivisions, local governments, public authorities, public schools, fire districts, public and nonprofit libraries, community colleges, and certain other nonpublic/nonprofit organizations. Authorized users of this award are strongly encouraged to review the Executed Contracts in their entirety to gain an understanding of requirements for both the Contractor and users.

1.2 LOTS

This award includes the following Lots. A summary of the Lots and Regions awarded can be found under the 'Award Summary' link on the landing page at: (<https://ogs.ny.gov/purchase/spg/awards/0530223017CAN.HTM>).

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 min-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.

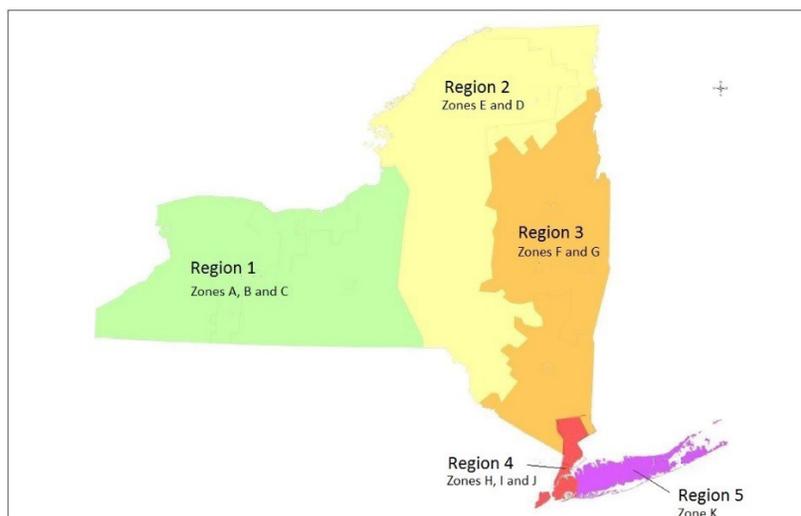
- Item 1: On-Site Net Metered Roof System, less than 200 kW
- Item 2: On-Site Net Metered Roof System, 200 kW to 1000 kW
- Item 3: On-Site Net Metered Roof System, greater than 1000kW
- Item 4: Storage System with smart inverter for On-Site Net Metered Roof System

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.

1.3 REGIONS

This award includes five Regions, with each Region containing the NYISO zones and counties listed below.



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

Section 2. Developing and Distributing the Mini-Bid RFP

The Authorized User is responsible for developing and conducting a Mini-Bid RFP and distributing it to the Contractors awarded the applicable Region, Lot and Item.

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.

Please note that the New York State Power Authority is available to assist Authorized Users with the development, distribution and evaluation of Best Value Mini-Bid RFP (See Section 2.1 herein.

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, and 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.

2.1 REQUIREMENTS

- A competitive Best Value Mini-Bid Request for Proposals (Mini-Bid RFP) is required for every transaction under this Centralized Contract, including Regions where only one Contractor is awarded the applicable Item and Lot.
- The Authorized User is responsible for developing and distributing a Mini-Bid RFP to all Contractors awarded the applicable Region, Lot and Item.
- **Please note that the New York State Power Authority is available to assist Authorized Users with the development, distribution and evaluation of Mini-Bid RFPs. (See Section 2.1 herein.)**
- **During the Mini-Bid RFP, it is the Authorized User's responsibility to check the Contractor's compliance with Professional Liability Insurance coverage. (See Appendix E - Insurance Requirements.)**
- **During the Mini-Bid RFP, if a Contractor forms a new Legal entity such as a subsidiary or partnership, it is the Authorized User's responsibility to ensure the new entity's compliance with insurance, vendor responsibility and MWBE requirements. (See section 4.7 of the Executed Contracts.)**
- A Mini-Bid RFP can only include one Region.
- A Mini-Bid may include multiple locations and buildings provided that they are in the same Region.
- A Mini-Bid may include multiple Lots and Items.
- The Authorized User must distribute the Mini-Bid to all qualified Contractors awarded the applicable Region, Lot and Item. However, Contractors are not required to respond to a Mini-Bid RFP request.
- Contact information for all awarded Contractors can be found on the OGS website for this Contract. (<https://ogs.ny.gov/purchase/spg/awards/0530223017CAN.HTM>)
- **The Authorized User is responsible for forwarding each of its distributed Mini-Bid RFP, the Mini-Bid updates and the Mini-Bid award to the current OGS Contract Management Specialist.**

2.2 ASSISTANCE WITH THE DEVELOPMENT OF MINI-BIDS: NEW YORK POWER AUTHORITY/THIRD PARTY CONSULTANTS

The New York Power Authority (NYPA) is available to assist Authorized Users in the development, distribution and evaluation of Best Value Mini-Bid RFP's.

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.

2.3 FEASIBILITY STUDIES AND STAKEHOLDER CONSIDERATIONS

The Authorized User is responsible for performing feasibility studies and obtaining all necessary stakeholder approvals prior to conducting the Mini-Bid RFP. 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.

2.4 DEVELOPMENT OF THE MINI-BID RFP

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 and Technical Considerations

State entities subject to Executive Order No. 4 are advised to become familiar with the specification for Photovoltaic (PV) Systems (available at: <https://ogs.ny.gov/greenny/photovoltaic-pv-systems>) 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.

i. Project Plan

The Authorized User may require Bidders to provide implementation, construction or risk management plans. These items may include schedules and timetables for the project along with an installation approach, staging solution for construction, management of any sub-Contractors and identifying project risks and how the Bidder will minimize the impacts of those risks.

j. 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://apps.labor.ny.gov/wpp/showFindProject.do?method=showlt>

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 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: <https://labor.ny.gov/workerprotection/publicwork/PWOSHA10Info.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.

2.5 AUTHORIZED USER COMPLIANCE WITH MWBE PARTICIPATION GOALS AND EQUAL EMPLOYMENT OPPORTUNITIES

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 unless the Contractor forms a new legal entity such as a subsidiary or partnership. If a new legal entity is formed, it is the Authorized User’s responsibility to collect, review and approve the MWBE Utilization Plan for the new entity and monitor goal compliance.

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

2.6 CONTRACT TERMS AND CONDITIONS

An Authorized User must understand the terms and conditions of the OGS Centralized Contract prior to project development.

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.

2.7 **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.

2.8 **CONTRACT, INTERNAL AND STATUTORY REQUIREMENTS**

An Authorized User of this Contract:

- Must adhere to the procedures of this Contract.
- Must adhere to Authorized User's internal policies and procedures.
- Must adhere to all federal, State and/or local statutes, as applicable.

2.9 **EVALUATION CRITERIA**

It is the responsibility of the Authorized User to develop the evaluation tools and evaluation criteria. All evaluation tools, criteria and weighting must be finalized prior to the Mini-Bid RFP bid opening date. Best practice is that evaluation tools, criteria and scoring factors are finalized prior to Mini-Bid release.

The OGS Centralized Contract requires that a Mini-Bid be completed and an award made on the basis of "best value". Thus, a Mini-Bid award must be made to the Contractor who offers the best value solution. State Finance Law § 163(4)(d) mandates that a Contract for services be awarded on the basis of best value which takes into consideration cost as well as technical or non-cost factors. For certain service and technology procurements, best value can be equated to lowest price, where all requirements have been met by the Contractor. The evaluation weight assigned to the Technical evaluation shall not exceed 70% of the total score, and Cost evaluation shall be no less than 30% of the total score.

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

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

The following requirements must be followed when developing evaluation weights:

Technical/financial weighting

- Technical weighting can be no more than 70%, including consideration whether to use the quantitative factors set forth in State Finance Law section 163(1)(j), if applicable
- Financial weighting can be no less than 30%
- Authorized Users are encouraged to develop a weighting ratio within these parameters that will provide Best Value – for example 60% Technical / 40% Financial
- Best Value may also be based on Contractor meeting the mandatory requirements (pass/fail) and lowest cost (100% financial weighting)

2.10 **CONDUCTING THE MINI-BID**

After the development of the Mini-Bid RFP is completed, the process for conducting a Mini-Bid is as follows:

- The Authorized User will review the location of their facility(s) to determine what region they are located in. Please note that if an Authorized User is seeking services at multiple sites located in several regions, then a separate Mini-Bid must be conducted for each project site.
- The Authorized User will provide a copy of the Mini-Bid RFP to all eligible Contractors for the applicable Region, Lot and Item.
- The Authorized User will forward a copy of Mini-Bid RFP, to the current OGS Contract Management Specialist.
- Contractors shall complete the Mini-Bid and submit it to the Authorized User by the bid opening date. Note: Contractors are not required to respond to a Mini-Bid RFP.

Section 3. EVALUATION AND AWARD OF MINI-BIDS

3.1 EVALUATION OF MINI-BIDS

It is the responsibility of the Authorized User to evaluate the Mini-Bids. Mini-Bids must be evaluated in accordance with the following:

- The Mini-Bid must be evaluated based on the Authorized User's pre-defined methodology as it relates to the services required.
- **Evaluation tools cannot be altered after Bid opening.**
- All evaluation tool notes and extraneous items must be included in the Authorized User's procurement record.
- The Authorized User shall reject any Mini-Bid which includes pricing that does not meet the pricing requirements contained in the Executed Contract (See 'How to Use' Section 3.2 for more information on Mini-Bid pricing requirements).
- The Authorized User must verify that the Contractor meets insurance requirements at the time of the Mini-Bid. See 'How to Use' Section 3.3 for Mini-Bid insurance requirements.
- In accordance with Contract Section 4.5, the Authorized User must verify that all Contractors or Sub Contractors performing installation of Photovoltaic Systems 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>
- In accordance with Contract Section 4.7, if a Contractor forms a new legal entity such as a subsidiary or partnership for the purposes of developing, installing or maintaining the Solar PV System or executing the PPA, the Authorized User must verify that the new legal entity complies with the following requirements:
 - New York State Vendor Responsibility (See Executed Contract Section 3.8)
The new legal entity must submit a New York State Vendor Responsibility Questionnaire and undergo a responsibility review.
 - Contractor Requirements for EEO and MWBE (See Executed Contract Section 3.13)
The new legal entity must submit forms EEO100 and MWBE 100 'MWBE Utilization Plan', and the Authorized User must review and approve of the plan prior to award.
 - Contractor's Insurance Requirements (See Executed Contract Section 3.15)
The new legal entity must submit proof of compliance with the insurance requirements.
- If a Contractor forms a new legal entity such as a subsidiary or partnership and is awarded a Mini-Bid Contract, it is the responsibility of the Authorized User to obtain a New York State Vendor Identification Number (VIN) for the entity. (See Executed Contract Section 3.9.)

3.2 Mini-Bid Pricing

Mini-Bid pricing shall meet Executed Contract Section 4.8 'Mini-Bid RFP Pricing' which contains the following requirements:

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:

(Total PPA price per kWh) <= (Not to Exceed Price) + (Third Party Consulting Fees) - (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.

3.3 Mini-Bid Insurance Requirements

The OGS Bureau of Risk Management (BRIM) has conducted an initial review of the awarded Contractors to ensure compliance with Appendix E - Insurance Requirements, and monitors the Contractors to ensure coverage at the centralized Contract level. In accordance with Appendix E, proof of compliance with the Professional Liability Coverage is due at the time of the Mini-Bid.

As a result, it is the responsibility of the Authorized User to verify the Contractor's compliance with the Professional Liability insurance requirement. In addition, if the Contractor forms a new Legal entity such as a subsidiary or partnership for the Mini-Bid, it is the responsibility of the Authorized User to verify that this new entity meets all of the insurance requirements contained in Appendix E.

3.4 NOTIFICATION OF MINI-BID RESULTS

The Authorized User must notify the tentative awardee, all non-awardees and the current OGS Contract Management Specialist of tentative Mini-Bid results in writing.

3.5 BID PROTESTS

It is the responsibility of the Authorized User to conduct debriefings and resolve all bid protests.

3.6 ISSUANCE OF 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 generated by the Authorized User and issued in accordance with the following:

For State Agency Authorized Users:

- 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.

- A State Agency Authorized User will issue encumbrance documents or other written orders that are effective and binding upon the Authorized User's mailing or electronic communication to the Contractor at the address shown on the signature page. For State Agencies, the Agency is responsible for generating a Single Transaction Summary (STS) and entering the PPA and PGA Contracts into SFS. Mini-Bid Contracts are not subject to OSC audit and are entered as a "TNT" audit type.

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

- The Authorized User will issue encumbrance documents or other written orders in accordance with their organization's procurement rules that are effective and binding on the Contractor when placed in the mail or electronically communicated and addressed to the Contractor at the address shown on the signature page.

Section 4. DOCUMENTATION

4.1 PROCUREMENT RECORD

An Authorized User must adhere to the procedures of this OGS Centralized Contract, its own internal procurement policies and procedures and all federal, State and/or local statutes, when applicable.

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

- Approved Requisition or Purchase Order; *
- DOB 1184 Attachment A or B (<https://www.budget.ny.gov>)
- Bid distribution and announcements;
- Pre-bid Conference Sign-In Sheet and Transcript;
- Bid Protests and Responses;
- Documentation of any debriefings requested and provided
- Justification for Rejecting Bids or Proposals;
- Blank Solicitation Document (including appendices);
- Bidder Questions & Agency Answers;
- Evaluation Instruments;
- Completed Evaluation Score Sheets & Evaluation Summary;
- Bid Tabulation;
- Bidders List;
- Reasonableness of Price;
- Price Lists, if applicable;
- Awarded Bid;
- Proposals Received;
- If less than 3 Bids received, No-Bid/No-Reply Survey;
- Any Contractor Correspondence (e.g. clarifications);
- Rejected Bids with Justification;
- Tentative Award letters;
- Non-award letters;
- Power Purchase and/or Guaranteed Savings Agreements

***Requirement for State Agency**

4.2 OFFICE OF THE STATE COMPTROLLER

For the purchase of services available from Centralized Contracts, the Authorized User may award a Mini-Bid directly to the Contractor without prior approval by the Office of the State Comptroller (OSC).

The State retains the right to post-audit any procurement, including those executed from this Contract. Authorized Users are reminded to follow all applicable laws, regulations and procurement guidelines.

4.3 NEW YORK STATE PROCUREMENT GUIDELINES

Additional information relating to a Best Value procurement is available in “The New York State Procurement Guidelines”, which can be found at:

<https://ogs.ny.gov/system/files/documents/2018/08/psnys-procurement-guidelines.pdf>.