May 18, 2016

SUBJECT: MODIFICATION NO. 3 TO REQUEST FOR PROPOSALS – SOLAR HIGHWAY INITIATIVE SERVICES FOR NYSDOT AND NYSTA Contract # C031426

Dear Interested Party:

As allowed under Modification #2, the Department has received several proposed changes to the language of the PPA. These have been reviewed and it’s been determined there will not be any changes to or variances from the project business model, risk allocations, or the terms and conditions of the PPA as advertised to all potential bidders.

Bidders, as part of their proposal, shall sign and submit Attachment 2: Consultant Information and Certifications, accepting all terms and conditions of the PPA and the RFP. Failure to provide Attachment 2, or the submission of conditional bids, will result in a proposal being deemed non-responsive and disqualified from the procurement. Finally, Attachment 12 must be submitted as provided, without any changes to the costing forms or any formulas. Failure to do so will also result in a proposal being deemed non-responsive.

Reference is made to the subject solicitation wherein the following formal changes are hereby incorporated:

1. An Attachment 12: Revised Cost Worksheet has been uploaded to the project web site. Proposers are to use it when submitting their proposal.
2. For section 3.3, delete “Joint Venture” from the definition of the term “Provider”.
3. For section 4.3.1.6 (page 21), 3rd paragraph, delete the following:
   “NYSDOT and NYSTA Project Managers shall track all such inspections to ensure that they are performed every four years, or as needed based on other circumstances listed above”, and substitute the following:
   “NYSDOT and NYSTA Project Managers shall track all such inspections to ensure that they are performed every two years, or as needed based on other circumstances listed above”
4. For section 5.1.6 (page 41), 1st Paragraph, delete the following sentence:
   “Submit Attachment 8, Provider Key Personnel Resume and References for each Key Personnel title identified in Section 4.4.4”
   and substitute the following:
   “Submit Attachment 7: Key Personnel Resume and References for each Key Personnel title identified in Section 4.4.4”

5. For section 5.1.8 (page 42), the section title is to be changed from “Performance Bond” to “Labor and Material (Payment) Bond”.

6. For section 5.2.1 (Page 43), 1st paragraph, delete the following:
   “Attachment 13 contains instructions to guide completion of this form”
   and substitute the following:
   “Attachment 12 contains instructions to guide completion of this form.”

7. For section 5.2.1 (page 44), add the following:
   “5. By submitting a bid, the Proposer certifies that it will design and develop the System to meet the Required Annual kWh production requirements stated in Appendix 1 for each Load Zone contained within each of the Bundle(s) for which the Proposer provides a price. [Subject to allowable maximum allowable degradation factor of one percent (1%) annually]. Proposer acknowledges that such production shall be subject to the terms of the Performance Guarantee Agreement found in Schedule 6 of the Master Power Purchase Agreement.”

8. For section 6.2 (page 48), delete the following:
   “Production Goal
   Verify that the Production Levels stated in Appendix 1 for each of the Load Zones within the Bundle(s) being bid on is met.”

9. For Attachment 13: Questions and Answers, after Question and Answer #9, insert the attached Questions and Answers.

No other provision of the solicitation is otherwise changed or modified.

Bidders must acknowledge receipt of Modification #3 using Form AOR.
Attachment 13: Questions and Answers

10. Will NYS DOT and NYSTA confirm whether or not the project will be subject to prevailing wage?
   **Answer:** The project is subject to prevailing wages.

11. Is the provider responsible for SEQR? Would NYSDOT/NYSTA be the lead agency?
    **Answer:** NYSDOT/NYSTA are responsible for SEQRA and will serve as the Lead Agency. For NYSTA projects, the Provider will be responsible for submitting Part 1 of the EAF to NYSTA in accordance with 6NYCRRPart617. For NYSDOT SEQR projects, the Provider shall be responsible for working with NYSDOT to determine all affected environmental resources.

12. The PPA contract shows a 98% production guarantee. Can you detail how that is calculated? Would the DOT be open to an alternate production guarantee?
    **Answer:** Proposers shall provide the Year 1's expected system energy, using a standard PV performance model incorporating weather information, cell temperature, system rated capacity (DC), the de-rate coefficient, and the degradation factor. For purposes of measuring the Actual kWh, the successful proposer(s) shall use an industry-standard monitoring service, data acquisition system and/or modeling tool during the term of the Power Purchase Agreement (PPA). The PV system shall generate at least 98% of the Year 1's expected system energy output, based upon a specified de-rate factor and panel degradation. (See Schedule 6 Performance Guarantee Agreement for additional details).

13. P10 of the RFP states that NYSTA may decide or seek an exception from the FHWA to break no access locations within the highway ROW to facilitate solar construction. Can NYSTA provide an approx. time allowance bidders should allocate for this process? Also if this is needed, and it impacts the COD goals stated in RFP what happens?
    **Answer:** NYSDOT and NYSTA have provided portfolios of potential selection sites structured to greatly reduce the likelihood that an exception to the no-breaks-in-access policy will be required. At this time, if a request for an exception from FHWA is required, it is difficult to estimate the time-frame needed for such a request as each is a special case and will be evaluated on a case-by-case basis. A break-in-access request may involve the Proposer providing additional information to NSYDOT/NYSTA and may include adding a locked gate access.

    NYSDOT and NYSTA (at their sole discretion) do reserve the right to consider any portion of time solely attributable to the time period from the date of submission of an exception to the no-breaks-in access policy request for review to FHWA, up to and through the date of any approval or disapproval by FHWA, when assessing any eligible liquidated damages under Section 4.2.8 - *Failure To Complete Work On Time.*"
14. Many of the sites are located in NATGRID service territory. NATGRID is currently overwhelmed with interconnection applications and turnaround times have been longer than usual. Interconnection studies, and interconnection approval dictate overall project schedule and can often take over 12 months for projects of like this. NATGRID interconnection process and turnaround times are outside of Bidder control. P13 of RFP states Bundles 1-4 MUST Be operational by JUNE 30 2017. However the RFP schedule on P9 states final approval on PPA may not be received until November 2016. In order for a bidder to mobilize in Spring 2017 and achieve June 2017 COD, interconnection costs and utility interconnection construction schedule must be known before mobilization. As an owner and operator of solar assets, we are motivated to achieve COD as soon as possible, however the projects run the risk of not achieving the June 2017 COD goal for reasons outside of bidder control. How will utility interconnection delays/risks be addressed?

Answer: The Project Phasing presented in the RFP denotes NYSDOT PPA final approval by OSC in early August 2016 (for Bundles 1-4); NYSTA PPA final approval by OSC is November 2016 (for Bundles 5-7). As noted on P13 of the RFP, at least 50% of the sites in Bundles 1-4 must be operational by June 30, 2017. The remaining 50% of the Department installation sites for Bundles 1-4 must be operational by December 31, 2017. All sites in the Thruway Bundles (Bundles 5-7) must be operational by December 31, 2017. The Provider is responsible for all scheduling risks. See section 4.2.8 - Failure to Complete Work On Time - for requirements in relation to completion of work and to any potentially assessable Liquidated Damages.

15. What are the costs and fees associated with each Use & Occupancy Permit, NYSDOT Highway work permit, Thruway Authority Permit? We are seeking a budget allowance all bidders can plug into their models (as well as time needed to obtain each)

Answer: Both NYSDOT and NYSTA will be waiving all permit fees for this project.

16. Can submission consist of select sites within a bundle?

Answer: As shown in the timeline chart in section 4.2.1, the submission of selected sites is done after the Proposals have been submitted and the PPA’s awarded to the designated Provider(s). As detailed in section 5.1.4.2, Proposers are to submit only the details for the Sample Solar Facility.

17. For several properties, the “Approximate Distance to 3-Phase” is TBD (i.e. 1C4, 2F3, 3G3, and 4J1-RK13). For these sites, when will Distance to 3-Phase be confirmed?

Answer: Although the Department and NYSTA have conducted site surveys and other due diligence, there are some locations where the distance to the nearest 3-phase connection was not known. In those instances where that information is not provided, it will need to be determined by the Proposer. Proposers should note that the information provided by NYSDOT/NYSTA is intended to provide a basic understanding based on what was the best available information at the time the RFP was issued. Neither
NYSDOT nor NYSTA will be held liable for the accuracy on any such information.

18. Are proposers required to submit an actual performance bond for each bundle with our proposals, or merely the consent of surety?
   **Answer:** References to a Performance bond have been removed. Proposers shall provide a letter from a surety or insurance company indicating that the Proposer is capable of obtaining the Labor and Material (Payment) Bond as described in section 4.4.6 of the RFP. The letter must state that the surety or insurance company is rated AA-/Aa3 by two nationally recognized rating agencies or at least A-VII by A.M. Best and Company, be listed on Treasury Department Circular 570 and be on the list of companies approved by the State of New York. The letter must specifically state that the surety/insurance company has evaluated the team’s backlog and work-in-progress in determining its bonding capacity and the letter must expressly identify the team’s amount of current backlog and utilized bonding capacity. Letters indicating “unlimited” bonding/security capability are not acceptable.

19. If the Provider is a project developer that is not currently eligible for NY-Sun Contractor/Installer status, can the Provider partner with an eligible party?
   **Answer:** Prime/Subcontractor relationships are allowed, however the Prime must be a NYSERDA NY-Sun approved contractor under either of the programs specified in section 4.4.5.

20. If allowable, must the legal entity (SPV/JV etc) be established at the time of the bid submission?
   **Answer:** SPV’s are not allowed for this project. Joint Ventures (JV’s) are not allowed on this project due to the long-term obligations involved

21. New York's remote net metering law allows the host account to designate any additional credits to properties that are owned / leased by the customer. Given the Provider is expected to own and operate the projects, by what mechanism is the Provider expected to apply net metering credits to the DOT / STA accounts?
   "...such customer-generator may designate all or a portion of the net metering credits generated by such equipment to meters at any property owned or leased by such customer-generator within the service territory of the same electric corporation to which the customer-generator's net energy meters are interconnected.... - See more at: [http://codes.findlaw.com/ny/public-service-law/pbs-sect-66-j.html#sthash.RUa78WaP.dpuf](http://codes.findlaw.com/ny/public-service-law/pbs-sect-66-j.html#sthash.RUa78WaP.dpuf)
   **Answer:** Proposer’s are expected to read, review, and conform to all PSC codes and requirements regarding net-metering. Provider must structure any meter installations and interconnectivity agreements with utility providers to ensure net metering credits are applied to NYSDOT and NYSTA energy bills.
22. Given the question above, and the fact that within each bundle there are multiple sites with different utilities, can the applicants be provided with a summary of the kWh to be offset in each utility?
   **Answer:** A summary is not available. The annual kWh production requirements in each load zone are all far below NYSDOT and NYSTA’s average annual energy usage in each load zone. Therefore facilities designed to meet the annual production requirements will not exceed the available energy usage against which to offset at any utility.

23. Should the applicant structure the bid to offset the stated kWh as shown in the Bundle Summary (i.e. Bundle 1 = 4,000,000 kWh/year).
   **Answer:** Yes. For each of the seven Bundles there is an aggregate annual production requirement that must be met. Within each Bundle there is an annual production requirement for each Load Zone within that particular Bundle.

24. What deliverable should be submitted for the performance bond section of the proposal? Is a letter from our surety showing intend to bond sufficient?
   **Answer:** See the answer to Question #18. References to Performance bonds have been removed.

25. The RFP states that NYSTA and/or NYSDOT will retain the environmental attributes for the project(s). It is our understanding that under NY SUN, NYSERDA retains the environmental attributes. Will this be acceptable?
   **Answer:** Provider is the owner of all Environmental Incentives and is entitled to the benefit of all Tax Credits. The State of New York, acting by and through NYSERDA, NYSTA, and/or NYSDOT shall be the owner of any and all Environmental Attributes as determined amongst NYSERDA, NYSTA and NYSDOT.