

# REQUEST FOR PROPOSALS

**RFP NUMBER: RS900219**  
**INDEX NUMBER: DRC123**  
**UNSPSC CATEGORY: 26131507**

The State of Ohio, through the Department of Administrative Services, Office of Procurement Services, for the Department of Rehabilitation and Correction is requesting proposals for:

## Renewable Energy Purchase Agreement Target of Approximately 12,000,000 kWh/year of Solar Energy Resources

**RFP ISSUED: 12/13/18**  
**INQUIRY PERIOD BEGINS: 12/19/18**  
**SITE VISITS: CRC and PCI 01/15/19**  
**Lima 01/16/19**  
**Grafton 01/17/19**  
**INQUIRY PERIOD ENDS: 01/30/19**  
**PROPOSAL DUE DATE: 03/13/19**

**Proposals received after the due date and time will not be evaluated.**

**OPENING LOCATION: Department of Administrative Services**  
**Office of Procurement Services**  
**ATTN: Bid Desk**  
**4200 Surface Rd.**  
**Columbus, OH 43228-1395**

Offerors must note that all proposals and other material submitted will become the property of the state and may be returned only at the state's option. Proprietary information should not be included in a proposal or supporting materials because the state will have the right to use any materials or ideas submitted in any proposal without compensation to the offeror. Additionally, all proposals will be open to the public after the award of the contract has been posted on the State Procurement Web site. Refer to the Ohio Administrative Code, Section 123:5-1-08 (E).

This RFP consists of five (5) parts, nine (9) attachments and one (1) appendix, totaling 80 consecutively numbered pages. Please verify that you have a complete copy.

## PART ONE: EXECUTIVE SUMMARY

**PURPOSE.** This is a Request for Competitive Sealed Proposals (RFP) under Section 125.071 of the Ohio Revised Code (ORC) and Section 123:5-1-08 of the Ohio Administrative Code (OAC). The Department of Administrative Services (DAS), Office of Procurement Services, on behalf of the Department of Rehabilitation and Correction (the Agency) (DRC), is soliciting competitive sealed proposals (Proposals) for a Renewable Energy Purchase Agreement Totaling up to 100MW of nameplate rated Solar Energy Resources and this RFP is the result of that request. If a suitable offer is made in response to this RFP, the State of Ohio (State), through DAS, may enter into a contract (the Contract) to have the selected Offeror (the Contractor) perform all or part of the Project (the Work). This RFP provides details on what is required to submit a Proposal for the Work, how the State will evaluate the Proposals, and what will be required of the Contractor in performing the Work.

This RFP also gives the estimated dates for the various events in the submission process, selection process, and performance of the Work. While these dates are subject to change, prospective Offerors must be prepared to meet them as they currently stand.

Once awarded, the term of the Contract will be from the award date through 06/30/44. The State may solely renew this Contract at the discretion of DAS for a period of one month. Any further renewals will be by mutual agreement between the Contractor and DAS for any number of times and for any period of time. The cumulative time of all mutual renewals are subject to and contingent upon the discretionary decision of the Ohio General Assembly to appropriate funds for this Contract in each new biennium. DAS may renew all or part of this Contract subject to the satisfactory performance of the Contractor and the needs of the Agency.

Any failure to meet a deadline in the submission or evaluation phases and any objection to the dates for performance of the Project may result in DAS refusing to consider the Proposal of the Offeror.

### **OVERVIEW.**

The Department of Administrative Services (DAS) is requesting proposals on behalf of the Department of Rehabilitation and Corrections (DRC) which will result in obtaining electricity production from solar photovoltaics approximately equal to 12,000,000 kWh/year +/- 2% (equivalent typical first year production before degradation) of Solar Energy Resources (Solar Project, Project). Proposals will be evaluated based on price as well as non-price criteria in combination, including which proposals best satisfy the preferences established herein.

**OBJECTIVES.** The State may execute one or more Renewable Energy Purchase Agreement(s) (REPA) totaling up to approximately 12,000,000 kWh/year (equivalent typical first year production before degradation) of Solar Energy Resources as a result of this RFP. Contractor reserves the right to increase or decrease the total number of kWh/year executed as a result of this RFP. The minimum size for this RFP is approximately 12,000,000 kWh/year +/- 2% (equivalent typical first year production before degradation) of Solar Energy Resources. Suppliers may aggregate multiple sites in a single proposal (with a single price) in order to satisfy the minimum size. The State also reserves the right to execute, remove, or modify REPA agreements over the course of the contract based on the changing requirements of the facility, or facilities, chosen to build the Solar Project.

CALENDAR OF EVENTS. The schedule for the Project is given below, and is subject to change. DAS may change this schedule at any time. If DAS changes the schedule before the Proposal due date, it will do so through an announcement on the State Procurement Web site area for this RFP. The Web site announcement will be followed by an addendum to this RFP, also available through the State Procurement Web site. After the Proposal due date and before the award of the Contract, DAS will make scheduled changes through the RFP addendum process. DAS will make changes in the Project schedule after the Contract award through the change order provisions located in the general terms and conditions of the Contract. It is each prospective Offeror's responsibility to check the Web site question and answer area for this RFP for current information regarding this RFP and its calendar of events through award of the Contract. No contact shall be made with agency/program staff until contract award is announced.

DATES:

Firm Dates

RFP ISSUED: 12/13/18

INQUIRY PERIOD BEGINS: 12/19/18

SITE VISITS:

01/15/19 starting at 9:00am at the

Correctional Reception Center (CRC) 11271 State Route 762, Orient, Ohio 43146, then visiting  
Pickaway Correctional Center (PCI) 11781 State Route 762, Orient, Ohio 43146

01/16/19 at 9:30am

Allen-Oakwood Correctional Institution (AOI) 2338 North West Street, Lima, Ohio 45801

01/17/19 at 11:00am

Grafton Correctional Institution (GCI) 2500 South Avon Belden Road, Grafton, Ohio 44044

INQUIRY PERIOD ENDS: 01/30/19

PROPOSAL DUE DATE: 03/13/19

Estimated Dates

Contract Award Notification:

TBD

NOTE: These dates are subject to change.

There are references in this RFP to the Proposal due date. Prospective Offerors must assume, unless it is clearly stated to the contrary, that any such reference means the date and time (Columbus, OH local time) that the Proposals are due.

Proposals received after 1:00 p.m. on the due date will not be evaluated.

SITE VISIT: A site visit will be held on the following dates at the following locations. Visits will be a maximum of three hours.

Facility Code	Facility Name	Facility Address	Point of Contact	Site Visit Date and Time
CRC PCI	Correctional Reception Center Pickaway Correctional Center	11271 State Route 762, Orient, Ohio 43146 11781 State Route 762, Orient, Ohio 43146	Jacqueline Langhals, 614-752-1273	01/15/18 Starting at 9:00am
AOCI	Allen-Oakwood Correctional Institution	2338 North West Street, Lima, Ohio 45801	Jacqueline Langhals, 614-752-1273	01/16/18 9:30am
GCI	Grafton Correctional Institution	2500 South Avon Belden Road, Grafton, Ohio 44044	Jacqueline Langhals, 614-752-1273	01/17/18 11:00am

Site visits are to survey the facility and discuss the requirements of the RFP. The site visit will commence promptly at the times listed, barring an unforeseen circumstance that results in a delay of the site visit. Attendance will be taken. The state will not be responsible to an offeror for their failure to obtain information discussed during the site visit due to their failure to attend and/or arriving after the site visit has convened.

For entry clearance to the facilities, contact the Point of Contact provided above 48 hours prior to the Site Visits. A valid driver's license or picture ID is required. Dress is business-casual: no shorts, tank tops, or clothing with offensive language or symbols. Cell phones and pagers are prohibited within the facility. Cameras are also prohibited within the facility unless pre-approved by Owner's Representative.

PART TWO: STRUCTURE OF THIS RFPORGANIZATION.PARTS:

Part One	Executive Summary
Part Two	Structure of this RFP
Part Three	General Instructions
Part Four	Evaluation of Proposals
Part Five	Award of the Contract

ATTACHMENTS:

Attachment One	Work Requirements and Special Provisions
Part One	Work Requirements
Part Two	Special Provisions
Attachment Two	Requirements for Proposals
Attachment Three	General Terms and Conditions
Part One	Performance and Payment
Part Two	Work & Contract Administration
Part Three	Ownership & Handling of Intellectual Property & Confidential Information
Part Four	Representations, Warranties, and Liabilities
Part Five	Acceptance and Maintenance
Part Six	Construction
Part Seven	Law & Courts
Attachment Four	Contract
Attachment Five	Offeror Profile Summary
5-A	Offeror Profile Form
5-B	Offeror Prior Project Form
5-C	Offeror Prior Project Form
5-D	Offeror Prior Project Form
5-E	Offeror Prior Project Form
Attachment Six	Offeror References
Attachment Seven	Offeror's Candidate Summary
7-A	Offeror's Candidate References
7-B	Offeror's Candidate Education, Training, Licensure, and Certifications
7-C	Offeror's Candidate Experience
Attachment Eight	Offeror Performance Form
Attachment Nine	Cost Summary Form

APPENDIX:

Appendix A	Power Purchase Agreement
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PART THREE: GENERAL INSTRUCTIONS

The following sections provide details on how to get more information about this RFP and how to respond to this RFP. All responses must be complete and in the prescribed format.

CONTACTS. The following person will represent DAS:

Melissa Anderson  
Ohio Department of Administrative Services  
Office of Procurement Services  
4200 Surface Road  
Columbus, OH 43228-1395

During the performance of the Work, a State representative (the "Agency Project Representative") will represent the Agency and be the primary contact for matters relating to the Work. The Agency Project Representative will be designated in writing after the Contract award.

INQUIRIES. Offerors may make inquiries regarding this RFP any time during the inquiry period listed in the Calendar of Events. To make an inquiry, Offerors must use the following process:

1. Access the State Procurement Web site at <http://www.ohio.gov/procure>.
2. From the Quick Links Menu on the right, select "Bid Opportunities Search".
3. In the "Document/Bid Number" field, enter the RFP number found on the first page of this RFP.
4. Click "Search" button.
5. On the Procurement Opportunity Search Results page, click the hyperlinked Document Number.
6. On the Procurement Opportunity Search Details page, click on the blue box with the words "Submit Inquiry".
7. On the Opportunity Document Inquiry page, complete the required "Personal Information" section by providing:
  - a. First and last name of the prospective Offeror's representative who is responsible for the inquiry.
  - b. Representative's business phone number.
  - c. Representative's company name
  - d. Representative's e-mail address.
8. Type the inquiry in the space provided including:
  - a. Reference the relevant part of this RFP.
  - b. The heading for the provision under question.
  - c. The page number of the RFP where the provision can be found.
9. Enter the Confirmation Number at the bottom of the page
10. Click the "Submit" button.

Offerors submitting inquiries will receive an immediate acknowledgement that their inquiry has been received as well as an e-mail acknowledging receipt of the inquiry. Offerors will not receive a personalized e-mail response to their question, nor will they receive notification when the question has been answered.

Offerors may view inquiries and responses using the following process:

1. Access the State Procurement Web site at <http://www.ohio.gov/procure>.
2. From the "Quick Links" menu on the right, select "Bid Opportunities Search".
3. In the "Document/Bid Number" field, enter the RFP number found on the first page of this RFP.
4. Click the "Search" button.
5. On the Procurement Opportunity Search Detail page, click on the blue box with the words "View Q and A".
6. All inquiries with responses submitted to date are viewable.

DAS will try to respond to all inquiries within 48 hours of receipt, excluding weekends and State holidays. DAS will not respond to any inquiries received after 8:00 a.m. on the inquiry end date.

Offerors are to base their RFP responses, and the details and costs of their proposed projects, on the requirements and performance expectations established in this RFP for the future contract, not on details of any other potentially related contract or project. If Offerors ask questions about existing or past contracts using the Internet Q&A process, DAS will use its discretion in deciding whether to provide answers as part of this RFP process.

DAS is under no obligation to acknowledge questions submitted through the Q&A process if those questions are not in accordance with these instructions or deadlines.

**PROTESTS.** Any Offeror that objects to the award of a Contract resulting from the issuance of this RFP may file a protest of the award of the Contract, or any other matter relating to the process of soliciting the Proposals. Such protest must comply with the following information:

1. The protest must be filed by a prospective or actual offeror objecting to the award of a Contract resulting from the RFP. The protest must be in writing and contain the following information:
  - a. The name, address, and telephone number of the protester;
  - b. The name and number of the RFP being protested;
  - c. A detailed statement of the legal and factual grounds for the protest, including copies of any relevant documents;
  - d. A request for a ruling by DAS;
  - e. A statement as to the form of relief requested from DAS; and
  - f. Any other information the protester believes to be essential to the determination of the factual and legal questions at issue in the written request.
2. A timely protest will be considered by DAS, on behalf of the agency, if it is received by the DAS, Office of Procurement Services (OPS) within the following periods:
  - a. A protest based on alleged improprieties in the issuance of the RFP, or any other event preceding the closing date for receipt of proposals which are apparent or should be apparent prior to the closing date for receipt of proposals, must be filed no later than five (5) business days prior to the proposal due date.
  - b. If the protest relates to the recommendation of the evaluation committee for an award of the Contract, the protest must be filed as soon as practicable after the Offeror is notified of the decision by DAS regarding the Offeror's proposal.
3. An untimely protest may be considered by DAS at the discretion of DAS. An untimely protest is one received by the DAS OPS after the time periods set in paragraph 2 above. In addition to the information listed in paragraph 1, untimely protests must include an explanation of why the protest was not made within the required time frame.
4. All protests must be filed at the following location:

Department of Administrative Services  
Office of Procurement Services  
4200 Surface Road  
Columbus, OH 43228-1395

SUBJECT: RS900219 and DRC123

This protest language only pertains to this RFP offering.

**ADDENDA TO THE RFP.** If DAS decides to revise this RFP before the Proposal due date, an addendum will be announced on the State Procurement Web site.

Offerors may view addenda using the following process:

1. Access the State Procurement Web site at <http://www.ohio.gov/procure>.
2. From the "Quick Links menu on the right, select "Bid Opportunities Search".
3. In the "Document/Bid Number" field, enter the RFP number found on the first page of this RFP.
4. Click the "Search" button.
5. On the Procurement Opportunity Search Results page, click the hyperlinked Document Number.
6. On the Procurement Opportunity Search Detail page, under "Associated PDF Files", links to one or more Addendums, will be displayed. Click on the addenda hyperlink to view.

When an addendum to this RFP is necessary, DAS may extend the Proposal due date through an announcement on State Procurement Web site. It is the responsibility of each prospective Offeror to check for announcements and other current information regarding this RFP.

After the submission of Proposals, addenda will be distributed only to those Offerors whose submissions are under active consideration. When DAS issues an addendum to the RFP after Proposals have been submitted, DAS will permit Offerors to withdraw their Proposals.

This withdrawal option will allow any Offeror to remove its Proposal from active consideration should the Offeror feel that the addendum changes the nature of the transaction to the extent that the Offeror's Proposal is no longer in its interests. Alternatively, DAS may allow Offerors that have Proposals under active consideration to modify their Proposals in response to the addendum, as described below.

Whenever DAS issues an addendum after the Proposal due date, DAS will tell all Offerors whose Proposals are under active consideration whether they have the option to modify their Proposals in response to the addendum. Any time DAS amends the RFP after the Proposal due date, an Offeror will have the option to withdraw its Proposal even if DAS permits modifications to the Proposals. If the Offerors are allowed to modify their Proposals, DAS may limit the nature and scope of the modifications. Unless otherwise stated in the notice by DAS, modifications and withdrawals must be made in writing and must be submitted within ten (10) business days after the addendum is issued. If this RFP provides for a negotiation phase, this procedure will not apply to changes negotiated during that phase. Withdrawals and modifications must be made in writing and submitted to DAS at the address and in the same manner required for the submission of the original Proposals. Any modification that is broader in scope than DAS has authorized may be rejected and treated as a withdrawal of the Offeror's Proposal.

**PROPOSAL SUBMITTAL.** Each Offeror must submit a Technical Proposal and a Cost Proposal as part of its Proposal package. Proposals must be submitted as two (2) separate components (Technical Proposal and Cost Proposal) in separate sealed envelopes/packages. Each Technical Proposal package must be clearly marked "RS900219 RFP – Technical Proposal" on the outside of each Technical Proposal package's envelope. Each Cost Proposal package must be clearly marked "RS900219 RFP"– Cost Proposal" on the outside of each Cost Proposal package's envelope. Each Offeror must submit one (1) original, completed and signed in blue ink, and five (5) copies for a total of six (6) Proposal packages.

The Offeror must also submit, in the sealed package, a complete copy of the Proposals on CD-ROM in Microsoft Office (Word, Excel, or Project) 2003 or higher, format and/or PDF format as appropriate. In the event there is a discrepancy between the hard copy and the electronic copy, the hard copy will be the official Proposal. Proposals are due no later than the proposal due date, at 1:00 p.m. Proposals submitted by e-mail or fax are not acceptable and will not be considered.

If an Offeror includes in its proposal confidential, proprietary, or trade secret information, it must also submit a complete redacted version of its Technical Proposal in accordance with Confidential, Proprietary or Trade Secret Information that follows. Offerors shall only redact (black out) language that is exempt from disclosure pursuant to Ohio Public Records Act. Offerors must also submit an itemized list of each redaction with the corresponding statutory exemption from disclosure. The redacted version must be submitted as a paper copy as well as an electronic copy on CD ROM in a searchable PDF format. The redacted version, as submitted, will be available for inspection and released in response to public records requests. If a redacted version is not submitted, the original submission of the proposal will be provided in response to public records requests.

Proposals must be submitted to:

Department of Administrative Services  
Office of Procurement Services - Bid Desk  
4200 Surface Road  
Columbus, OH 43228-1395

DAS will reject any Proposals or unsolicited Proposal addenda that are received after the deadline. An Offeror that mails its Proposal must allow adequate mailing time to ensure its timely receipt. DAS recommends that Offerors submit proposals as early as possible. Proposals received prior to the deadline are stored, unopened, in a secured area until 1:00 p.m. on the due date. Offerors must also allow for potential delays due to increased security. DAS will reject late proposals regardless of the cause for the delay.

Each Offeror must carefully review the requirements of this RFP and the contents of its Proposal. Once opened, Proposals cannot be altered, except as allowed by this RFP.

By submitting a Proposal, the Offeror acknowledges that it has read this RFP, understands it, and agrees to be bound by its requirements. DAS is not responsible for the accuracy of any information regarding this RFP that was gathered through a source different from the inquiry process described in the RFP.

ORC Section 9.24 prohibits DAS from awarding a Contract to any Offeror(s) against whom the Auditor of State has issued a finding for recovery if the finding for recovery is "unresolved" at the time of award. By submitting a Proposal, the Offeror warrants that it is not now, and will not become subject to an "unresolved" finding for recovery under Section 9.24, prior to the award of a Contract arising out of this RFP, without notifying DAS of such finding. ORC Section 9.231 applies to this contract.



DAS may reject any Proposal if the Offeror takes exception to the terms and conditions of this RFP, fails to comply with the procedure for participating in the RFP process, or the Offeror's Proposal fails to meet any requirement of this RFP. Any question asked during the inquiry period will not be viewed as an exception to the Terms and Conditions.

CONFIDENTIAL, PROPRIETARY OR TRADE SECRET INFORMATION. DAS procures goods and services through a RFP in a transparent manner and in accordance with the laws of the State of Ohio. All proposals provided to DAS in response to this RFP

become records of DAS and as such, will be open to inspection by the public after award unless exempt from disclosure under the Ohio Revised Code or another provision of law.

Unless specifically requested by the State, an Offeror should not voluntarily provide to DAS any information that the Offeror claims as confidential, proprietary or trade secret and exempt from disclosure under the Ohio Revised Code or another provision of law. Additionally, the Offeror must understand that all Proposals and other material submitted will become the property of the State and may be returned only at the State's option. Confidential, proprietary or trade secret information should not be voluntarily included in a Proposal or supporting materials because DAS will have the right to use any materials or ideas submitted in any Proposal without compensation to the Offeror.

However, if the State requests from the Offeror, or if the Offeror chooses to include, information it deems confidential, proprietary or trade secret information, the Offeror may so designate information as such and request that the information be exempt from disclosure under the Ohio Revised Code or another provision of law. The Offeror must clearly designate the part of the proposal that contains confidential, proprietary or trade secret information in order to claim exemption from disclosure by submitting both an unredacted copy and a redacted copy of its proposal in both electronic and paper (hard) format. Both electronic and paper (hard) copies shall be clearly identified as either 'ORIGINAL COPY' or "REDACTED COPY". Failure to properly redact and clearly identify all copies will result in the State treating all information in the original proposal as a public record.

DAS will review the claimed confidential, proprietary or trade secret information to determine whether the material is of such nature that confidentiality is warranted.

The decision as to whether such confidentiality is appropriate rests solely with DAS. If DAS determines that the information marked as confidential, trade secret, or proprietary does not meet a statutory exception to disclosure, DAS will inform the Offeror, in writing, of the information DAS does not consider confidential.

Upon receipt of DAS' determination that all or some portion of the Offeror's designated information will not be treated as exempt from disclosure, the Offeror may exercise the following options:

1. Withdraw the Offeror's entire Proposal;
2. Request that DAS evaluate the Proposal without the claimed confidential, proprietary or trade secret information; or
3. Withdraw the designation of confidentiality, trade secret, or proprietary information for such information.

In submitting a proposal, each Offeror agrees that DAS may reveal confidential, proprietary and trade secret information contained in the proposal to DAS staff and to the staff of other state agencies, any outside consultant or other third parties who serve on an evaluation committee or who are assisting DAS in development of specifications or the evaluation of proposals. The State shall require said individuals to protect the confidentiality of any specifically identified confidential, proprietary or trade secret information obtained as a result of their participation in the evaluation.

Finally, if information submitted in the Proposal is not marked as confidential, proprietary or trade secret, it will be determined that the Offeror waived any right to assert such confidentiality.

DAS will retain all Proposals, or a copy of them, as part of the Contract file for at least ten (10) years. After the retention period, DAS may return, destroy, or otherwise dispose of the Proposals or the copies.

WAIVER OF DEFECTS. DAS may waive any defects in any Proposal or in the submission process followed by an Offeror. DAS will only do so if it believes that it is in the State's interests and will not cause any material unfairness to other Offerors.

MULTIPLE OR ALTERNATE PROPOSALS. DAS accepts multiple Proposals from a single Offeror, but DAS requires each such Proposal be submitted separately from every other Proposal the Offeror makes. Additionally, the Offeror must treat every Proposal submitted as a separate and distinct submission and include in each Proposal all materials, information, documentation, and other items this RFP requires for a Proposal to be complete and acceptable. No alternate Proposal may incorporate materials by reference from another Proposal made by the Offeror or refer to another Proposal. DAS will judge each alternate Proposal on its own merit.

ADDENDA TO PROPOSALS. Addenda or withdrawals of Proposals will be allowed only if the addendum or withdrawal is received before the Proposal due date. No addenda or withdrawals will be permitted after the due date, except as authorized by this RFP.

PROPOSAL INSTRUCTIONS. Each Proposal must be organized in an indexed binder ordered in the same manner as the response items are ordered in Attachment Two of this RFP.

DAS wants clear and concise Proposals. Offerors should, however, take care to completely answer questions and meet the RFP's requirements thoroughly. All Offerors, including current contract holders, if applicable, must provide detailed and complete responses as Proposal evaluations, and subsequent scores, are based solely on the content of the Proposal.

No assumptions will be made or values assigned for the competency of the Offeror whether or not the Offeror is a current or previous contract holder.

The requirements for the Proposal's contents and formatting are contained in an attachment to this RFP.

DAS will not be liable for any costs incurred by an Offeror in responding to this RFP, regardless of whether DAS awards the Contract through this process, decides not to go forward with the Project, cancels this RFP for any reason, or contracts for the Project through some other process or by issuing another RFP.

#### PART FOUR: EVALUATION OF PROPOSALS

EVALUATION OF PROPOSALS. The evaluation process consists of, but is not limited to, the following steps:

1. Certification. DAS shall open only those proposals certified as timely by the Auditor of State.
2. Initial Review. DAS will review all certified Proposals for format and completeness. DAS normally rejects any incomplete or incorrectly formatted Proposal, though it may waive any defects or allow an Offeror to submit a correction. If the Offeror meets the formatting and mandatory requirements listed herein, the State will continue to evaluate the proposal.
3. Proposal Evaluation. The DAS procurement representative responsible for this RFP will forward all timely, complete, and properly formatted Proposals to an evaluation committee, which the procurement representative will chair. The evaluation committee will rate the Proposals submitted in response to this RFP based on criteria and weight assigned to each criterion.

The evaluation committee will evaluate and numerically score each Proposal that the procurement representative has determined to be responsive to the requirements of this RFP. The evaluation will be according to the criteria contained in this Part of the RFP. An attachment to this RFP may further refine these criteria, and DAS has a right to break these criteria into components and weight any components of a criterion according to their perceived importance.

The evaluation committee may also have the Proposals or portions of them reviewed and evaluated by independent third parties or various State personnel with technical or professional experience that relates to the Work or to a criterion in the evaluation process. The evaluation committee may also seek reviews of end users of the Work or the advice or evaluations of various State committees that have subject matter expertise or an interest in the Work. In seeking such reviews, evaluations, and advice, the evaluation committee will first decide how to incorporate the results in the scoring of the Proposals. The evaluation committee may adopt or reject any recommendations it receives from such reviews and evaluations.

The evaluation will result in a point total being calculated for each Proposal. At the sole discretion of DAS, any Proposal, in which the Offeror received a significant number of zeros for sections in the technical portions of the evaluation, may be rejected.

DAS will document all major decisions in writing and make these a part of the Contract file along with the evaluation results for each Proposal considered.

4. Clarifications & Corrections. During the evaluation process, DAS may request clarifications from any Offeror under active consideration and may give any Offeror the opportunity to correct defects in its Proposal if DAS believes doing so does not result in an unfair advantage for the Offeror and it is in the State's best interests. Any clarification response that is broader in scope than what DAS has requested may result in the Offeror's proposal being disqualified.
5. Interviews, Demonstrations, and Presentations. DAS may require top Offerors to be interviewed. Such presentations, demonstrations, and interviews will provide an Offeror with an opportunity to clarify its Proposal and to ensure a mutual understanding of the Proposal's content. This will also allow DAS an opportunity to test or probe the professionalism, qualifications, skills, and work knowledge of the proposed candidates. The presentations, demonstrations, and interviews will be scheduled at the convenience and discretion of DAS. DAS may record any presentations, demonstrations, and interviews. There will not be a limitation on the number of Proposals that may be requested to present an oral presentation of their proposed Work Plan to the evaluation committee.
6. Contract Negotiations. Negotiations will be scheduled at the convenience of DAS. The selected Offeror(s) are expected to negotiate in good faith.
  - a. General. Negotiations may be conducted with any Offeror who submits a competitive Proposal, but DAS may limit discussions to specific aspects of the RFP. Any clarifications, corrections, or negotiated revisions that may occur during the negotiations phase will be reduced to writing and incorporated in the RFP, or the Offeror's Proposal, as appropriate. Negotiated changes that are reduced to writing will become a part of the Contract file open to inspection to the public upon award of the Contract. Any Offeror whose response continues to be competitive will be accorded fair and equal treatment with respect to any clarification, correction, or revision of the RFP and will be given the opportunity to negotiate revisions to its Proposal based on the amended RFP.
  - b. Top-ranked Offeror. Should the evaluation process have resulted in a top-ranked Proposal, DAS may limit negotiations to only that Offeror and not hold negotiations with any lower-ranking Offeror. If negotiations are unsuccessful with the top-ranked Offeror, DAS may then go down the line of remaining Offerors, according to rank, and negotiate with the next highest-ranking Offeror. Lower-ranking Offerors do not have a right to participate in negotiations conducted in such a manner.

- c. Negotiation with Other Offerors. If DAS decides to negotiate with all the remaining Offerors, or decides that negotiations with the top-ranked Offeror are not satisfactory and negotiates with one or more of the lower-ranking Offerors, DAS will then determine if an adjustment in the ranking of the remaining Offerors is appropriate based on the negotiations. The Contract award, if any, will then be based on the final ranking of Offerors, as adjusted.

Negotiation techniques that reveal one Offeror's price to another or disclose any other material information derived from competing Proposals are prohibited. Any oral modification of a Proposal will be reduced to writing by the Offeror as described below.

- d. Post Negotiation. Following negotiations, DAS may set a date and time for the submission of best and final Proposals by the remaining Offeror(s) with which DAS conducted negotiations. If negotiations were limited and all changes were reduced to signed writings during negotiations, DAS need not require the submissions of best and final Proposals.

It is entirely within the discretion of DAS whether to permit negotiations. An Offeror must not submit a Proposal assuming that there will be an opportunity to negotiate any aspect of the Proposal. DAS is free to limit negotiations to particular aspects of any Proposal, to limit the Offerors with whom DAS wants to negotiate, and to dispense with negotiations entirely.

DAS generally will not rank negotiations. The negotiations will normally be held to correct deficiencies in the preferred Offeror's Proposal. If negotiations fail with the preferred Offeror, DAS may negotiate with the next Offeror in ranking. Alternatively, DAS may decide that it is in the interests of the State to negotiate with all the remaining Offerors to determine if negotiations lead to an adjustment in the ranking of the remaining Offerors.

From the opening of the Proposals to the award of the Contract, everyone working on behalf of the State to evaluate the Proposals will seek to limit access to information contained in the Proposals solely to those people with a need to know the information. They will also seek to keep this information away from other Offerors, and the evaluation committee will not be allowed to tell one Offeror about the contents of another Offeror's Proposal in order to gain a negotiating advantage.

Before the award of the Contract or cancellation of the RFP, any Offeror that seeks to gain access to the contents of another Offeror's Proposal may be disqualified from further consideration.

The written changes will be drafted and signed by the Offeror and submitted to DAS within a reasonable period of time. If DAS accepts the change, DAS will give the Offeror written notice of DAS' acceptance. The negotiated changes to the successful offer will become a part of the Contract.

- e. Failure to Negotiate. If an Offeror fails to provide the necessary information for negotiations in a timely manner, or fails to negotiate in good faith, DAS may terminate negotiations with that Offeror and collect on the Offeror's proposal bond, if a proposal bond was required in order to respond to this RFP.
7. Best and Final Offer. If best and final proposals, or best and final offers (BAFOs), are required, they may be submitted only once; unless DAS makes a determination that it is in the State's interest to conduct additional negotiations. In such cases, DAS may require another submission of best and final proposals. Otherwise, discussion of or changes in the best and final proposals will not be allowed. If an Offeror does not submit a best and final proposal, the Offeror's previous Proposal will be considered the Offeror's best and final proposal.
  8. Determination of Responsibility. DAS may review the highest-ranking Offerors or its key team members to ensure that the Offeror is responsible. The Contract may not be awarded to an Offeror that is determined not to be responsible. DAS' determination of an Offeror's responsibility may include the following factors: the experience of the Offeror and its key team members; past conduct and past performance on previous contracts; ability to execute this contract properly; and management skill. DAS will make such determination of responsibility based on the Offeror's Proposal, reference evaluations, and any other information DAS requests or determines to be relevant.
  9. Reference Checks. DAS may conduct reference checks to verify and validate the Offeror's or proposed candidate's past performance. Reference checks indicating poor or failed performance by the Offeror or proposed candidate may be cause for rejection of the proposal. In addition, failure to provide requested reference contact information may result in DAS not including the referenced experience in the evaluation process.

The reference evaluation will measure the criteria contained in this part of the RFP as it relates to the Offeror's previous contract performance including, but not limited to, its performance with other local, state, and federal entities. DAS reserves the right to check references other than those provided in the Offeror's Proposal. DAS may obtain information relevant to criteria in this part of the RFP, which is deemed critical to not only the successful operation and management of the Project, but also the working relationship between the State and the Offeror.

10. Financial Ability. Part of the Proposal evaluation criteria is the qualifications of the Offeror which may include, as a component, the Offeror's financial ability to perform the Contract. This RFP may expressly require the submission of financial statements from all Offerors in the Proposal contents attachment. If the Proposal contents attachment does not make this an expressed requirement, the State may still request that an Offeror submit audited financial statements for up to the past three (3) years if the State is concerned that an Offeror may not have the financial ability to carry out the Contract.

In evaluating an Offeror's financial ability, if requested, the State will review the documentation provided by the Offeror to determine if the Offeror's financial position is adequate or inadequate. If the State believes the Offeror's financial ability is not adequate, the State may reject the Proposal despite its other merits.

DAS will decide which phases are necessary. DAS has the right to eliminate or add phases at any time in the evaluation process.

To maintain fairness in the evaluation process, all information sought by DAS will be obtained in a manner such that no Offeror is provided an unfair competitive advantage.

MANDATORY REQUIREMENTS. The following Table 1 contains items that are considered minimum requirements for this RFP.

Determining the Offeror's ability to meet the minimum requirements is the first step of the DAS evaluation process. The Offeror must demonstrate, to DAS, it meets all minimum requirements listed in the Mandatory Requirements section (Table 1). The Offeror's response to the minimum requirements must be clearly labeled "Mandatory Requirements" and collectively contained in Tab 1 of the Offeror's Proposal in the "Cover Letter and Mandatory Requirements" section. (Refer to Attachment Two of the RFP document for additional instructions.)

DAS will evaluate Tab 1, alone, to determine whether the Proposal meets all Mandatory Requirements. If the information contained in Tab 1 does not clearly meet every Mandatory Requirement, the Proposal may be disqualified by DAS and DAS may not evaluate any other portion of the Proposal.

TABLE 1 - MANDATORY PROPOSAL REQUIREMENTS

Mandatory Requirements	Accept	Reject
1. N/A		
2.		
3.		
4.		

If the State receives no Proposals meeting all of the Mandatory Requirements, the State may elect to cancel this RFP.

PROPOSAL EVALUATION CRITERIA. If the Offeror provides sufficient information to DAS, in Tab 1, of its proposal, demonstrating it meets the Mandatory Requirements, the Offeror's Proposal will be included in the next part of the evaluation process which involves the scoring of the Proposal Technical Requirements, followed by the scoring of the Cost Proposals. In the Proposal evaluation phase, the evaluation committee rates the Proposals submitted in response to this RFP based on the following listed criteria and the weight assigned to each criterion. The maximum available points allowed in this RFP are distributed as indicated in Table 2 - Scoring Breakdown.

TABLE 2 - SCORING BREAKDOWN

Criteria	Maximum Available Points
Proposal Technical Requirements	350 Points
Proposal Cost	50 Points
Maximum Available Points	400 Points

DAS will apply the Veterans Friendly Business Enterprise preference as required by ORC 9.318 and OAC 123:5-1-16.

The scale below (0-5) will be used to rate each proposal on the criteria listed in the Technical Proposal Evaluation table.

DOES NOT MEET 0 POINTS	WEAK 1 POINT	WEAK TO MEETS 2 POINTS	MEETS 3 POINTS	MEETS TO STRONG 4 POINTS	STRONG 5 POINTS
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DAS will score the Proposals by multiplying the score received in each category by its assigned weight and adding all categories together for the Offeror's Total Technical Score in Table 3. Representative numerical values are defined as follows:

DOES NOT MEET (0 pts.): Response does not comply substantially with requirements or is not provided.

WEAK (1 pt.): Response was poor related to meeting the objectives.

WEAK TO MEETS (2 pts.): Response indicates the objectives will not be completely met or at a level that will be below average.

MEETS (3 pts.): Response generally meets the objectives (or expectations).

MEETS TO STRONG (4 pts.): Response indicates the objectives will be exceeded.

STRONG (5 pts.): Response significantly exceeds objectives (or expectations) in ways that provide tangible benefits or meets objectives (or expectations) and contains at least one enhancing feature that provides significant benefits.

**TABLE 3 - TECHNICAL PROPOSAL EVALUATION**

Criterion	Weight	Rating (0=Does not Meet to 5=Strong)	Extended Score
<b>Supplier Requirements</b>			
1. Company Profile a. Number of years in business b. Relevant experience with PPA/REPA c. Relevant experience with Solar Panel Installation and Maintenance	10		
2. Staffing Plan a. Number of employees dedicated to project b. Personnel Profile	5		
<b>3. Offeror References</b>			
Offeror must provide a minimum of three (3) references from previous jobs similar to this Project and provide details of similarities. Offeror must complete all areas of Attachment Six for each of the three (3) references provided. These references must relate to work that was completed within the past five (5) years. If fewer than three (3) references are provided, the Offeror must include information as to why fewer than three (3) references were provided.	5		
4. Financial Capacity a. Rebates and Tax Credits b. Lenders	10		
<b>Deliverables</b>			
1. Project Requirements 2. Commitment to Recidivism Plan	5		
<b>Work Requirements</b>			
1. Implementation Plan and Schedule a. Assessment b. Design c. Milestones	15		
2. Work Plan a. Construction b. Maintenance	15		
3. End of Term Plan and Buyout Plan-Closeout	5		

Total Technical Score: \_\_\_\_\_

In this RFP, DAS asks for responses and submissions from Offerors, most of which represent components of the above criteria. While each criterion represents only a part of the total basis for a decision to award the Contract to an Offeror, a failure by an Offeror to make a required submission or meet a mandatory requirement will normally result in a rejection of that Offeror's Proposal. The value assigned above to each criterion is only a value used to determine which Proposal is the most advantageous to the State in relation to the other Proposals that DAS received.

Once the technical merits of a Proposal are evaluated, the costs of that Proposal will be considered. It is within DAS' discretion to wait to factor in a Proposal's cost until after any interviews, presentations, demonstrations or discussions. Also, before evaluating the technical merits of the Proposals, DAS may do an initial review of costs to determine if any Proposals should be rejected because of excessive cost. DAS may reconsider the excessiveness of any Proposal's cost at any time in the evaluation process.

**COST PROPOSAL POINTS.** DAS will calculate the Offeror's Cost Proposal points after the Offeror's total technical points are determined, using the following method:

Cost points = (lowest Offeror's cost/Offeror's cost) x Maximum Available Cost Points as indicated in the "Scoring Breakdown" table. The value is provided in the Scoring Breakdown table. "Cost" = Total Not to Exceed Cost identified in the Cost Summary section of Offeror Proposals. In this method, the lowest cost proposed will receive the Maximum Available Cost Points.

The number of points assigned to the cost evaluation will be prorated, with the lowest accepted cost proposal given the maximum available points possible for this criterion. Other acceptable cost proposals will be scored as the ratio of the lowest price proposal to the proposal being scored, multiplied by the maximum available points possible for this criterion.

An example for calculating cost points, where Maximum Available Cost Points Value = 60 points, is the scenario where Offeror X has proposed a cost of \$100.00. Offeror Y has proposed a cost of \$110.00 and Offeror Z has proposed a cost of \$120.00. Offeror X, having the lowest cost, would get the maximum available 60 cost points. Offeror Y's cost points would be calculated as \$100.00 (Offeror X's cost) divided by \$110.00 (Offeror Y's cost) equals 0.909 times 60 maximum points, or a total of 54.5 points. Offeror Z's cost points would be calculated as \$100.00 (Offeror X's cost) divided by \$120.00 (Offeror Z's cost) equals 0.833 times 60 maximum available points, or a total of 50 points.

Cost Score: \_\_\_\_\_



FINAL STAGES OF EVALUATION. The Offeror with the highest point total from all phases of the evaluation (Technical Points + Cost Points) will be recommended for the next phase of the evaluation.

Technical Score: \_\_\_\_\_ + Cost Score: \_\_\_\_\_ = Total Score: \_\_\_\_\_

If DAS finds that one or more Proposals should be given further consideration, DAS may select one or more of the highest-ranking Proposals to move to the next phase. DAS may alternatively choose to bypass any or all subsequent phases and make an award based solely on the proposal evaluation phase.

REJECTION OF PROPOSALS. DAS may reject any Proposal that is not in the required format, does not address all the requirements of this RFP, or that DAS believes is excessive in price or otherwise not in its interests to consider or to accept. In addition, DAS may cancel this RFP, reject all the Proposals, and seek to do the Project through a new RFP or by other means.

DISCLOSURE OF PROPOSAL CONTENTS. DAS will seek to open the Proposals in a manner that avoids disclosing their contents. Additionally, DAS will seek to keep the contents of all Proposals confidential until the Contract is awarded. DAS will prepare a registry of Proposals containing the name and address of each Offeror. That registry will be open for public inspection after the Proposals are opened

PART FIVE: AWARD OF THE CONTRACT

CONTRACT AWARD. DAS plans to award the Contract based on the schedule in the RFP, if DAS decides the Project is in the best interests of the State and has not changed the award date.

The signature page for the Contract is included as Attachment Four of this RFP. In order for an Offeror's Proposal to remain under active consideration, the Offeror must sign, the two (2) copies enclosed, in blue ink and return the signed Contracts to DAS with its response. Submittal of a signed Contract does not imply that an Offeror will be awarded the Contract. In awarding the Contract, DAS will issue an award letter to the selected Contractor. The Contract will not be binding on DAS until the duly authorized representative of DAS signs both copies and returns one (1) to the Contractor, the Agency issues a purchase order, and all other prerequisites identified in the Contract have occurred.

DAS expects the Contractor to commence work upon receipt of a state issued purchase order. If DAS awards a Contract pursuant to this RFP and the Contractor is unable or unwilling to commence the work, DAS reserves the right to cancel the Contract and return to the original RFP process and evaluate any remaining Offeror Proposals reasonably susceptible of being selected for award of the Contract. The evaluation process will resume with the next highest ranking, viable Proposal.

CONTRACT. If this RFP results in a Contract award, the Contract will consist of this RFP including all attachments, written addenda to this RFP, the Contractor's accepted Proposal and written authorized addenda to the Contractor's Proposal. It will also include any materials incorporated by reference in the above documents and any purchase orders and change orders issued under the Contract. The general terms and conditions for the Contract are contained in Attachment Three of this RFP. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

1. This RFP, as amended;
2. The documents and materials incorporated by reference in the RFP;
3. The Offeror's proposal, as amended, clarified, and accepted by DAS; and
4. The documents and materials incorporated by reference in the Offeror's Proposal.

Notwithstanding the order listed above, change orders and amendments issued after the Contract is executed may expressly change the provisions of the Contract. If they do so expressly, then the most recent of them will take precedence over anything else that is part of the Contract.

ATTACHMENT ONE: WORK REQUIREMENTS AND SPECIAL PROVISIONS  
PART ONE: WORK REQUIREMENTS

SCOPE OF WORK.

Purpose

DRC is requesting proposals from qualified Contractors which will result in obtaining electricity production from solar photovoltaics approximately equal to 12,000,000 kWh/year +/- 2% (equivalent typical first year production before degradation) of Solar Energy Resources. Proposals will be evaluated based on price as well as non-price criteria in combination, including which proposals best satisfy the preferences established herein. Proposals must be structured to satisfy the requirements established in this RFP.

The State may execute one or more Renewable Energy Purchase Agreement (REPA) totaling up to approximately 12,000,000 kWh/ year (equivalent typical first year production before degradation) of Solar Energy Resources as a result of this RFP. The Company reserves the right to increase or decrease the total number of kWh/year executed as a result of this RFP. The minimum size for this RFP is approximately 12,000,000 kWh/year +/- 2% (equivalent typical first year production before degradation) of Solar Energy Resources. Suppliers may aggregate multiple sites in a single proposal (with a single price) in order to satisfy the minimum size. State also reserves the right to execute, remove, or modify REPA agreements over the course of the contract based on the changing requirements of the facility, or facilities, chosen to build the Solar Project.

I. DEFINITIONS

A. REPA-Renewable Energy Purchase Agreement. A REPA is a type of Power Purchase Agreement specific to Developers who are supplying renewable energy.

B. NERC – North American Electric Reliability Corporation. NERC is a not-for-profit international regulatory authority whose mission is to assure the effective and efficient reduction of risks to the reliability and security of the grid. NERC develops and enforces Reliability Standards; annually assesses seasonal and long-term reliability; monitors the bulk power system through system awareness; and educates, trains, and certifies industry personnel. In the terms of this RFP, NERC is the regulatory authority in which project references must have performed under.

C. Power Purchase Agreement (PPA)- A PPA is legal agreement that should be analyzed to ensure the technical calculations, financials, and legal terms are sound and do not place unnecessary risk on the organization. Viewed from a strictly cash flow basis, a PPA is roughly equivalent to an interest loan. However, a PPA offers more specific benefits such as putting the risk of system installation, maintenance and production on a different entity, and the simplicity of just buying electricity as the State traditionally does. A PPA allows a third party to own, finance, and install the system and sell the electricity to the State while taking advantage of accelerated depreciation, tax credits, or low-interest financing.

The PPA attached as Appendix D is meant for example only to demonstrate a PPA that was completed by another State entity.

D. PJM - PJM Interconnection is a regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia.

E. A Feasibility Study assesses project practicality and developer cost to interconnect to PJM and is the first study in the interconnection process. The scope of the study comprises short-circuit and power flow analysis to test the PJM bulk electric system against NERC-defined reliability standards. Study results provide preliminary estimates of upgrade type, scope, cost and construction lead time.

II. SUPPLIER REQUIREMENTS

A. Company Profile

1. Offeror shall provide information showing that it has substantial experience in developing, engineering, procuring equipment, constructing and commissioning solar powered electric generation facilities projects of similar size or scope in the United States or any portion of Canada within the jurisdiction of NERC. Offeror shall demonstrate experience with both solar installation as well as PPA management. A minimum of two prior projects must detail experience with PPA management.

2. If a joint venture is applicable the awarded offeror must be the prime contractor. The State will not enter into joint venture contracts with multiple entities.

#### B. Staffing Plan

Staffing plan should include the following components:

1. Number of employees dedicated to project  
Outline the number of employees (including subcontractors) involved in each phase of the project, including transition periods.
2. Personnel Profile  
Detail the education and experience of each employee working on the project and who will be the Point of Contact for DRC and DAS during each phase of the project.

#### C. References

Offeror must provide a minimum of three (3) references from previous projects similar to this Project and provide details of similarities. Offeror must complete all areas of Attachment Six for each of the three (3) references provided. These references must relate to work that was completed within the past five (5) years. If fewer than three (3) references are provided, the Offeror must include information as to why fewer than three (3) references were provided.

#### D. Financial Capacity

Proposal shall include a finance plan including the following elements:

1. Offeror's financial capacity to support the proposed project.
2. Letters of support, previous correspondence with banks / lenders intending to provide financing for the Project including the contact information.
3. On-going debt-equity ratio to be carried by the Project during implementation and operation.
4. Offeror's Credit-Related Information.
5. As a separate attachment, please list all lawsuits, regulatory proceedings, or arbitration in which the Offeror or its affiliates or predecessors have been, or are, engaged that could affect the Offeror's performance of its proposal. Identify the parties involved in such lawsuits, proceedings, or arbitration, and the final resolution or present status of such matters.
6. Please provide copies of the Annual Reports for the three most recent fiscal years and quarterly reports for the most recent quarter ended, if available.
7. Identify the tax credits, rebates and any other incentives anticipated to file. Provide the documentation and estimated dollar value.

### III. DELIVERABLES

#### A. Project Requirements

Awarded contractor will provide turnkey installation of a solar panel system that follows all codes, technical requirements of the equipment manufacturer, and industry standards at the proposed combination of the below sites to produce the requirements of this RFP.

Facility Code	Facility Name	Facility Address	FY17 Annual kWh usage	Available Acreage
CRC	Correctional Reception Center	11271 State Route 762, Orient, Ohio 43146	5,813,449	50
PCI	Pickaway Correctional Center	11781 State Route 762, Orient, OH 43146	15,337,711	1,803
AOCI	Allen-Oakwood Correctional Institution	2338 North West Street, Lima, Ohio 45801	6,364,732	77
GCI	Grafton Correctional Institution	2500 South Avon Belden Road, Grafton, Ohio 44044	7,988,233	1,782

1. The Solar Project must be interconnected to the PJM RTO system.
2. The Solar Project will be ground-mounted.
3. Upon acceptance from DRC of the installation of the Solar Panel Array, the awarded supplier may begin monthly billing to DRC for the kWh energy used by the DRC building location only.

#### B. Commitment to Recidivism Plan

Proposal must include approach for Offeror's plan to address willingness to hire formerly incarcerated and/or displaced workers. All Projects must show commitment to hiring formerly incarcerated individuals. The commitment to hiring former offenders may be demonstrated by participation in programs creating jobs and/or training for Ohio offenders, as specified by DRC, or an equivalent, nationally or regionally recognized programs. For additional information review Ohio Revised Code (ORC) 5145.16; ORC 5145.161; ORC 5120.01 and Internal Policy 02-REN-06.

Enforcement example:

Seller shall provide to Purchaser within 30 days of each calendar year a Jobs Summary Report for the previous calendar year. If during the first five (5) Contract Years the Seller is unable to achieve the level of Committed Jobs as described, then liquidated damage will be applied.

1. List company qualifications for performing this plan.
2. Briefly explain the management plan and technical approach for the plan.
3. Identify the resources needed for the plan.
4. State the number of inmates and/or those under community supervision that this project will serve (male and/or female). Also, please include the counties this proposal will target.
5. Define the role and responsibility DRC has in your proposal.
6. Describe your community outreach for this proposal.
7. What is your planned compensation to the offender? Please list the anticipated pay rate and/or incentives for work performed or training certifications that may be acquired.
8. Will this partnership jeopardize the stability of a competing Ohio based company? Will this partnership replace any existing job(s)?

#### IV. WORK REQUIREMENTS

##### A. Implementation Plan and Schedule

###### 1. Assessment

- a. Awarded contractor will perform an analysis to ensure the solar system proposed will not exceed the facility of installation's electricity usage during the year.
- b. Proposals should address any potential problem areas and include possible solutions
- c. Proposal should include a copy of all interconnection studies and/or the expected completion date(s).

###### 2. Design

- a. Proposal must provide the source and basis of the solar irradiance data used in the development of energy projections for the Project. In addition, describe all assumptions used in forecasted generation calculations.
- b. Proposals should include an annual energy forecast for all 8,760 calendar hours, net of all losses.
- c. Awarded contractor will perform the following list of activities, which is not exhaustive, during the implementation of this project:
  - (1) Soil Borings
  - (2) Procure Panels

- (3) Hire Subcontractors
- (4) Coordination with utility companies
- (5) Feasibility study

d. Proposal shall include the acreage necessary for submitted plan and answer the following:

Is there potential for expansion (Y / N):                      If Yes; acres available:

e. Proposals must include a diagram identifying anticipated placement of major equipment and other Project facilities, including interconnection to PJM.

f. Proposals should include Consulting Meteorologist Information such as Name, Address, E-mail, Contact Number and resume.

g. Offeror shall include with its Proposal a detailed plan and target dates for obtaining Ohio Power Siting Board approval of site(s), as applicable.

h. On an additional sheet, list and describe all city, county, state and federal permits required for this Project. Including status, duration, planned steps, critical milestones and timeline.

i. Describe any known or potential environmental issues; or any expected impacts to the environment or wildlife. Please include a plan for how Offeror will include an \*environmentally preferable approach to design, construction, and maintenance.

### 3. Milestones

- a. Awarded contractor must break ground and begin panel installation within 45 days after receipt of purchase order. Failure to do so will result in penalties up to liquidated damages.
- b. Panel installation should be completed within 90 days receipt of purchase order. Failure to do so will result in penalties up to liquidated damages.
- c. Please include a project schedule, including details on account transitions and construction milestones.

### B. Work Plan-Construction and Maintenance

1. Proposed solutions should consider minimizing security risks and maintenance activities. Examples could include, but are not limited to, installing a fence around the array, gravel or pollinated seed to eliminate the requirement of mowing.
2. Proposal must explain how installation will impact the power factor at the site and if power correction is part of the installation. In addition, clarify if and how the proposed system will be net-metered and how that will impact proposal.
3. Please include plan for preventative, routine, and non-routine maintenance and repairs. Address items such as cleaning, snow removal, grounds maintenance around the system, system down-time, and notification plans.
4. The Supplier is responsible for all costs associated with transmission interconnections and system upgrades as required by PJM.
5. The Supplier is responsible for following the established PJM and interconnecting utility policies and procedures that are in effect regarding facility operation associated with the distribution or transmission system, as applicable.

### C. End of Term Plan and Buyout Plan-Closeout

Offeror must describe end of term or buyout plan for contract end date. Provide any considerations for system decommissioning, system purchase, or renewal opportunities. Provide detail options for buy-down clauses after year seven.

**CONTRACTOR RESPONSIBILITIES.** The Contractor must meet all RFP requirements and perform Work as defined in the Scope of Work.

ATTACHMENT ONE: WORK REQUIREMENTS AND SPECIAL PROVISIONS  
PART TWO: SPECIAL PROVISIONS

THE OFFEROR'S FEE STRUCTURE. The Contractor will be paid as proposed on the Cost Summary Form after the Agency approves the receipt of product(s) and continued completion of all deliverables.

REIMBURSABLE EXPENSES. None.

BILL TO ADDRESS.

770 West Broad Street  
Columbus, Ohio  
43222

## ATTACHMENT TWO: REQUIREMENTS FOR PROPOSALS

**PROPOSAL FORMAT.** Each Proposal must include sufficient data to allow the State to verify the total cost for the Project and all of the Offeror's claims of meeting the RFP's requirements. Each Proposal must respond to every request for information in this attachment whether the request requires a simple "yes" or "no" or requires a detailed explanation. Simply repeating the RFP's requirement and agreeing to comply will be an unacceptable response and may cause the Proposal to be rejected.

These instructions describe the required format for a responsive Proposal. The Offeror may include any additional information it believes is relevant. An identifiable tab sheet must precede each section of a Proposal, and each Proposal must follow the format outlined below. All pages, except pre-printed technical inserts, must be sequentially numbered. Any material deviation from the format outlined below may result in a rejection of the non-conforming Proposal.

Each Proposal must contain the following information, chronologically in order, with tabbed sections as listed below:

1. Cover Letter and Mandatory Requirements
2. Certification
3. Signed Contracts
4. Offeror Profile and Prior Projects
5. Offeror References
6. Staffing Plan
7. Personnel Profile Summary
8. Work Plan
9. Support Requirements
10. Conflict of Interest Statement
11. Assumptions
12. Proof of Insurance
13. Payment Address
14. Contract Performance
15. W-9 Form and Additional Supplier Information Form
16. Affirmative Action Plan
17. Banning the Expenditure of Public Funds on Offshore Services
18. Cost Summary Form(s)
19. PJM Feasibility Study

### REQUIREMENTS:

1. **Cover Letter.** The cover letter must be in the form of a standard business letter and must be signed by an individual authorized to legally bind the Offeror. The cover letter will provide an executive summary of the solution the Offeror plans to provide. The letter must also have the following:
  - a. A statement regarding the Offeror's legal structure (e.g., an Ohio corporation), Federal tax identification number, and principal place of business.
  - b. A list of the people who prepared the Proposal, including their titles.
  - c. The name, phone number, fax number, e-mail address, and mailing address of a contact person who has authority to answer questions regarding the Proposal.
  - d. A list of all subcontractors, if any, that the Offeror will use on the Project if the Offeror is selected to do the Work.
  - e. For each proposed subcontractor, the Offeror must attach a letter from the subcontractor, signed by someone authorized to legally bind the subcontractor, with the following included in the letter:
    - 1) The subcontractor's legal status, tax identification number, and principal place of business address.
    - 2) The name, phone number, fax number, e-mail address, and mailing address of a person who is authorized to legally bind the subcontractor to contractual obligations.
    - 3) A description of the work the subcontractor will do.
    - 4) A commitment to do the work if the Offeror is selected.
    - 5) A statement that the subcontractor has read and understood the RFP and will comply with the requirements of the RFP.
    - 6) A statement that the Subcontractor will maintain any permits, licenses, and certifications required to perform work.



- f. A statement that the Offeror's proposed solution for the Project meets all the requirements of this RFP.
- g. A statement that the Offeror has not taken any exception to the Terms and Conditions.
- h. A statement that the Offeror does not assume there will be an opportunity to negotiate any aspect of the proposal.
- i. A statement indicating the Offeror will comply with all Federal and Ohio (Ohio Revised Code) Laws and Rules of the Ohio Administrative Code as those law and rules are currently enacted and promulgated, and as they may subsequently be amended and adopted.
- j. A statement that the Contractor shall not substitute, at Project start-up, different personnel from those evaluated by the State except when a candidate's unavailability is no fault of the Contractor (e.g., Candidate is no longer employed by the Contractor, is deceased, etc.).
- k. A statement that the Offeror is not now, and will not become subject to an "unresolved" finding for recovery under Revised Code Section 9.24, prior to the award of a Contract arising out of this RFP, without notifying DAS of such finding.
- l. A statement that all the Offerors personal and business associates are in compliance with Chapter 3517 of the Revised Code regarding limitations on political contributions and will remain in compliance for the duration of the Contract and with all applicable provisions that extend beyond the expiration of the Contract. Refer to the Political Contributions paragraph in Attachment Three, Part Seven of this RFP document.
- m. All contractors from whom the State or any of its political subdivisions make purchases in excess of \$2500.00 shall have a written affirmative action program for the employment and effective utilization of economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Revised Code. Annually, each such contractor shall file a description of the affirmative action program and a progress report on its implementation with the Equal Employment Opportunity office of the Department of Administrative Services. Provide a statement that the Offeror has been approved through this affirmative action program. Refer to the Affirmative Action paragraph in Attachment Two and to the Equal Employment Opportunity paragraph in Attachment Three, Part Seven of this RFP.
- n. Registration with the Secretary of State. By the signature affixed to this Offer, the Offeror attests that the Offeror is:
  - 1) An Ohio corporation that is properly registered with the Ohio Secretary of State; or
  - 2) A foreign corporation, not incorporated under the laws of the State of Ohio, but is registered with the Ohio Secretary of State pursuant to Ohio Revised Code Sections 1703.01 to 1703.31, as applicable.

Any foreign corporation required to be licensed under Sections 1703.01 to 1703.31 of the Ohio Revised Code, which transacts business in the State of Ohio, without being so licensed, or when its license has expired or been canceled, shall forfeit not less than \$250 nor more than ten thousand dollars. No officer of a foreign corporation shall transact business in the State of Ohio, if such corporation is required by Section 1703.01 to 1703.31 of the Revised Code to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree.

Offeror attests that it is registered with the Ohio Secretary of State.

The Offeror's Charter Number is: \_\_\_\_\_.

Questions regarding registration should be directed to (614) 466-3910 or visit the Web site at:  
<http://www.sos.state.oh.us>

All Offerors who seek to be considered for a contract award must submit a response that contains an affirmative statement using the language in paragraph(s) a. through n. above.

Responses to all Mandatory Requirements from Table 1 must be included in this section (Tab 1).

2. **Certification.** Each Proposal must include the following certification signed by the individual Offeror.

*(Insert Company name)* affirms they are the prime Offeror.

*(Insert Company name)* affirms it shall not and shall not allow others to perform work or take data outside the United States without express written authorization from DAS.

*(Insert Company name)* affirms that all personnel provided for the Project, who are not United States citizens, will have executed a valid I-9 form and presented valid employment authorization documents.

*(Insert Company name)* affirms that any small business program participants will provide necessary data to ensure program reporting and compliance.

*(Insert Company name)* agrees that it is a separate and independent enterprise from the State of Ohio, the Agency, and the Department of Administrative Services. *(Insert Company name)* has a full opportunity to find other business and has

made an investment in its business. Moreover (*Insert Company name*) will retain sole and absolute discretion in the judgment of the manner and means of carrying out its obligations and activities under the Contract. This Contract is not to be construed as creating any joint employment relationship between (*Insert Company name*) or any of the personnel provided by (*Insert Company name*), the Agency, or the Department of Administrative Services.

(*Insert Company name*) affirms that the individuals supplied under the Contract are either: (1) employees of (*Insert Company name*) with (*Insert Company name*) withholding all appropriate taxes, deductions, or contributions required under law; or (2) independent contractors to (*Insert Company name*).

*If the Offeror's personnel are independent Contractors to the Offeror, the certification must also contain the following sentence:*

(*Insert Company name*) affirms that it has obtained a written acknowledgement from its independent Contractors that they are separate and independent enterprises from the State of Ohio and the Department of Administrative Services and the Agency for all purposes including the application of the Fair Labor Standards Act, Social Security Act, Federal Unemployment Tax Act, Federal Insurance Contributions Act, the provisions of the Internal Revenue Code, Ohio tax law, worker's compensation law and unemployment insurance law.

*If the Offeror qualifies as a Veteran Friendly Business Enterprise as defined by ORC 9.318 and OAC 123:5-1-01 (KK), the certification must also contain the following sentence:*

(*Insert Company name*) affirms that they are certified as a Veteran Friendly Business Enterprise as defined by Ohio Revised Code 9.318 and Ohio Administrative Code 123:5-1-01(KK).

3. **Signed Contracts.** The Offeror must provide two (2) originally signed, blue ink copies of the included Contract, Attachment Four. Offeror must complete, sign and date both copies of the Contract and include it with their Proposal. (Attachment Four).
4. **Offeror Profile and Prior Projects.** Each Proposal must include a profile of the Offeror's capability, capacity, and relevant experience working on projects similar to this Work. The profile must also include the Offeror's legal name; address; telephone number; fax number; e-mail address; home office location; date established; ownership (such as public firm, partnership, or subsidiary); firm leadership (such as corporate officers or partners); number of employees; number of employees engaged in tasks directly related to the Work; and any other background information that will help the State gauge the ability of the Offeror to fulfill the obligations of the Contract. The financial stability of the company should also be described and is considered a necessary component of this portion of the Proposal's response. This RFP includes Offeror Profile Summary Form as Attachment Five A which must be completed for the Offeror. The Offeror must use this form and fill it out completely to provide the Offeror requirement information.

The Offeror shall also provide information on the firm's background as well as evidence that it has in place the personnel, internal procedures, and any other resources required under the terms of the Contract to ensure successful performance and contract compliance. Offerors must describe current operational capacity of the organization and the Offeror's ability to absorb the additional workload resulting from this Project. Failure to recreate the form accurately to include all fields, may lead to the rejection of the Offeror's Proposal.

The Offeror must document previous experience and expertise in providing a minimum of four (4) previous projects, similar in size and complexity, in the previous five (5) years. These projects must be of similar size, scope and nature. Details of the similarities must be included. Attachment Five B, C, D and E must be filled out completely for each of the four (4) projects provided. The Offeror must use these forms and fill them out completely to provide the Offeror requirement information. Failure to recreate the form accurately to include all fields, may lead to the rejection of the Offeror's Proposal. A minimum of two (2) prior projects must detail experience with power purchase agreement management.

#### Offeror

The Offeror must include a minimum of three (3) references for organizations and/or clients for whom the Offeror has successfully provided services on projects that were similar in their nature, size, and scope to the Work. These references must relate to work that was completed within the past five (5) years. This RFP includes an Offeror Reference Form as Attachment Six. Failure to recreate the form accurately may lead to the rejection of the Offeror's Proposal.

The State does not assume that since the experience requirement is provided at the top of the page that all descriptions on that page relate to that requirement. Offerors must reiterate the experience being described, including the capacity in which the experience was performed and the role of the Offeror on the Project. It is the Offeror's responsibility to customize the description to clearly substantiate the qualification. Previous experience must include the conduct, management, and coordination of projects. Incumbents must ensure specifics are addressed. Evaluations will not be based on intrinsic knowledge of evaluation committee members.

The description of the related service shows the Offeror's experience, capability, and capacity to develop this Project's deliverables and/or to achieve this Project's milestones. Details such as the size of the contracting organizations, duration of involvement, level of responsibility, significant accomplishments, as well as a thorough description of the nature of the experience will be required for appropriate evaluation by the committee.

- a. Contact Information. The contact name, title, phone number, e-mail address, company name, and mailing address must be completely filled out. If the primary contact cannot be reached, the same information must be included for an alternate contact in lieu of the primary contact. Failure to provide requested contact information may result in the State not including the reference in the evaluation process.
- b. Project Name. The name of the project where the mandatory experience was obtained and/or service was provided.
- c. Dates of Experience. Must be completed to show the length of time the Offeror performed the experience being described, not the length of time the Offeror was engaged for the reference. The Offeror must complete these dates with a beginning month and year and an ending month and year.
- d. Description of the Related Service Provided. The State does not assume that since the experience requirement is provided at the top of the page that all descriptions on that page relate to that requirement. Offerors must reiterate the experience being described, including the capacity in which the experience was performed and the role of the Offeror on the Project. It is the Offeror's responsibility to customize the description to clearly substantiate the qualification.
- e. Description of how the related service shows the Offeror's experience, capability and capacity to develop this Project's deliverables and/or to achieve this Project's milestones.
- f. The Offeror's project experience must be listed separately and completely every time it is referenced, regardless of whether it is on the same or different pages of the form.

When contacted, each reference must be willing to discuss the Offeror's previous performance on projects that were similar in their nature, size, and scope to the Work.

6. Staffing Plan. The Offeror must provide a staffing plan that identifies all key personnel required to do the Project and their responsibilities on the Project. The State is seeking a staffing plan that matches the proposed Project personnel and qualifications to the activities and tasks that will be completed on the Project. In addition, the plan must have the following information:
  1. A matrix matching each key team member to the staffing requirements in this RFP.
  2. A contingency plan that shows the ability to add more staff if needed to ensure meeting the Project's due date(s).
  3. A discussion of the Offeror's ability to provide qualified replacement personnel.
  4. The Offeror must submit a statement and chart that clearly indicate the time commitment of the proposed work team, including the Project Manager, to the Project and any other, non-related work during the term of the Contract. The Offeror must also include a statement indicating to what extent, if any, the Project Manager may be used on other projects during the term of the Contract. The evaluation committee may reject any Proposal that commits the proposed Project Manager to other work during the term of the Contract if the evaluation committee believes that doing so will be detrimental to the Offeror's performance.
7. Personnel Profile Summary. This RFP includes Offeror Candidate Forms as Attachments Seven A, B and C. The Offeror must use these forms and fill them out completely for each key candidate referenced. The forms must be completed using typewritten or electronic means. The forms may be recreated electronically, but all fields and formats must be retained. Failure to recreate the forms accurately may lead to the rejection of the Offeror's Proposal.

All candidate requirements must be provided using the Offeror Candidate Forms (See Attachments Seven A, B and C.) The various sections of the form are described below:

- a. Candidate References. If fewer than three (3) projects are provided, the Offeror must include information as to why fewer than three (3) projects were provided. The State may disqualify the proposal if fewer than three (3) projects are given. (Refer to Attachment Seven A.)

For each reference the following information must be provided:

- 1) Candidate's Name.
- 2) Contact Information. The contact name, title, phone number, e-mail address, company name, and mailing address must be completely filled out. If the primary contact cannot be reached, the same information must be included for an alternate contact in lieu of the primary contact. Failure to provide requested contact information may result in the State not including the reference experience in the evaluation process.
- 3) Dates of Experience. Must be completed to show the length of time the candidate performed the technical experience being described, not the length of time the candidate worked for the company. The Offeror must complete these dates with a beginning month and year and an ending month and year.
- 4) Description of the Related Service Provided. The State does not assume that since the technical requirement is provided at the top of the page that all descriptions on that page relate to that requirement. Contractors must reiterate the technical experience being described, including the capacity in which the experience was performed

and the role of the candidate in the reference project as it relates to this RFP Project. It is the Contractors' responsibility to customize the description to clearly substantiate the candidate's qualification.

- b. **Education and Training.** This section must be completed to list the education and training of the proposed candidates and will demonstrate, in detail, the proposed candidate's ability to properly execute the Contract based on the relevance of the education and training to the requirements of the RFP. Must include copies of any pertinent licenses and or certificates. (Refer to Attachment Seven B.)
- c. **Required Experience and Qualifications.** This section must be completed to show how the candidate meets the required experience requirements. If any candidate does not meet the required requirements for the position the candidate has been proposed to fill, the Offeror's Proposal may be rejected as non-responsive. (Refer to Attachment Seven C.)

The candidate's project experience must be listed separately and completely every time it is referenced, regardless of whether it is on the same or different pages of the form.

One of the criteria on which the State may base the award of the Contract is the quality of the Offeror's Work Team. Switching personnel after the award will not be accepted without due consideration. The Offeror must propose a Work Team that collectively meets all the requirements in this RFP. Additionally, each team member may have mandatory requirements listed in this RFP that the team member must individually meet. All candidates proposed must meet the technical experience for the candidate's position and be named.

8. **Work Plan.** Offeror must fully describe its current capacity, approach, methods, and specific work steps for doing the Work on this Project. The State encourages responses that demonstrate a thorough understanding of the nature of the Project and what the Contractor must do to complete the Project satisfactorily. To this end, the Offeror must submit for this section of the Proposal the Project plan that will be used to create a consistent, coherent management plan of action that will be used to guide the Project. The Project plan should include detail sufficient to give the State an understanding of the Offeror's knowledge and approach, including Gantt charts documenting the successful completion of all of the deliverables to complete the Project.

The Work Plan must demonstrate an understanding of the requirements of the project as described in Attachment One Part One Work Requirements. Describe the methodologies, processes and procedures it will utilize in the implementation and production of the Scope of Work. Provide a comprehensive Work Plan that gives ample description and detail as to how it proposes to accomplish this project and what resources are necessary to meet the deliverables.

The State seeks insightful responses that describe proven state-of-the-art methods. Recommended solutions should demonstrate that the Offeror would be prepared to immediately undertake and successfully complete the required tasks. The Offeror's Work Plan should clearly and specifically identify key personnel assignments. (NOTE: The staffing plan should be consistent with the Work plans).

Additionally, the Offeror should address potential problem areas, recommended solutions to the problem areas, and any assumptions used in developing those solutions.

Please include the Equipment Manufacturer Selection for the Solar Panels, Inverters, and Racking, including the Item number, Manufacturer and Model number as well as manufacturing location. Include all warranty information in the proposal submission.

9. **Support Requirements.** The Offeror must describe the support it wants from the State other than what the State has offered in this RFP. Specifically, the Offeror should address the following:
  - a. Nature and extent of State support required in terms of staff roles, percentage of time available, etc.;
  - b. Assistance from State staff and the experience/qualification level required; and
  - c. Other support requirements.

The State may not be able or willing to provide the additional support the Offeror lists in this part of its Proposal. The Offeror must therefore indicate whether its request for additional support is a requirement for its performance. If any part of the list is a requirement, the State may reject the Offeror's Proposal if the State is unwilling or unable to meet the requirements.

10. **Conflict of Interest Statement.** Each Proposal must include a statement indicating whether the Offeror or any people that may work on the Project through the Offeror have a possible conflict of interest (e.g., employed by the State of Ohio, etc.) and, if so, the nature of that conflict. The State has the right to reject a Proposal in which a conflict is disclosed or cancel the Contract if any interest is later discovered that could give the appearance of a conflict.
11. **Assumptions.** The Offeror must provide a comprehensive listing of any and all of the assumptions that were made in preparing the proposal. If any assumption is unacceptable to the State, it may be cause for rejection of the Proposal. No assumptions shall be included regarding negotiation, terms and conditions, and requirements.

12. Proof of Insurance. In this section, the Offeror must provide the certificate of insurance required by the General Terms & Conditions, Attachment Three, Part Two. The policy may be written on an occurrence or claims made basis.
13. Payment Address. The Offeror must provide the address to which payments to the Offeror will be sent.
14. Contract Performance. The Offeror must complete Attachment Eight, Offeror Performance Form.
15. W-9 Form and Supplier Information Form. The Offeror must complete Federal Form W-9, Request for Taxpayer Identification Number and Certification form and the Supplier Information Form (OBM-5657) in their entirety. At least one (1) original of each form (signed in blue ink) must be submitted in the "original" copy of the Proposal. All other copies of the Proposal may contain duplicates of these completed forms. If a subsidiary company is involved, Offerors must have an original W-9 for both the parent and subsidiary companies. These documents and directions can be found on the OBM Web site under the heading "Supplier Forms" at <http://www.supplier.obm.ohio.gov/>.
16. Affirmative Action. Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be completed using:

<http://das.ohio.gov/Divisions/EqualOpportunity/AffirmativeActionProgramVerification/tabid/133/Default.aspx>.

Approved Affirmative Action Plans can be found by going to the Equal Opportunity Department's Web site:

<http://eodreporting.oit.ohio.gov/searchAffirmativeAction.aspx>

Copies of approved Affirmative Action plans shall be supplied by the Offeror as part of its Proposal or inclusion of an attestation to the fact that the Offeror has completed the process and is pending approval by the EOD office.

17. Governing The Expenditure Of Public Funds For Offshore Services. The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

The Offeror must complete the attached Contractor/Subcontractor [Affirmation and Disclosure](#) to abide with Executive Order 2011-12K affirming no services of the Contractor or its subcontractors under this Contract will be performed outside the United States. During the performance of this Contract, the Contractor must not change the location(s) of the country where the services are performed, change the location(s) of the country where the data are maintained, or made available unless a duly signed waiver from the State has been attained to perform the services outside the United States.

18. Cost Summary Form. The Cost Summary Form (Attachment Nine) must be submitted with the Offeror's Proposal. The Offeror's total costs for each of the options presented, including the alternate must be represented as the firm fixed price, for a not-to-exceed fiscal year cost. Offerors shall provide a comprehensive cost analysis; this cost must include all ancillary costs. All costs for furnishing the services must be included in the Cost Proposals as requested. No mention of or reference to, the Cost Proposals may be made in responses to the general, technical, performance, or support requirements of this RFP.

All prices, costs, and conditions outlined in the proposal shall remain fixed and valid for acceptance for 120 days, starting on the due date for proposals. The awarded contractor must hold the accepted prices and/or costs for the initial term of the contract. No price change shall be effective without prior written consent from DAS, OPS.

NOTE: Offeror's should ensure Cost Proposals are submitted separately from the Technical Proposals, as indicated the Proposal Submittal paragraph of this RFP (see Part Three). This information should not be included in the Technical Proposal.

The State shall not be liable for any costs the Offeror does not identify in its Proposal.

ATTACHMENT THREE: GENERAL TERMS AND CONDITIONS  
PART ONE: PERFORMANCE AND PAYMENT

STATEMENT OF WORK. The RFP and the Offeror's Proposal (collectively referred to as the "RFP") are a part of this Contract and describe the Work (the "Project") the Contractor will do and any materials the Contractor will deliver (the "Deliverables") under this Contract. The Contractor will do the Project in a professional, timely, and efficient manner and will provide the Deliverables in a proper fashion. The Contractor will also furnish its own support staff necessary for the satisfactory performance of the Project.

The Contractor will consult with the appropriate State representatives and others necessary to ensure a thorough understanding of the Project and satisfactory performance. The State may give instructions to or make requests of the Contractor relating to the Project. The Contractor will comply with those instructions and fulfill those requests in a timely and professional manner. Those instructions and requests will be for the sole purpose of ensuring satisfactory completion of the Project and will not amend or alter the scope of the Project.

TERM. Unless this Contract is terminated, or expires without renewal, it will remain in effect until the Project is completed to the satisfaction of the State and the Contractor is paid. The current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of each biennium. The State however, may renew this Contract in the next biennium by issuing written notice to the Contractor of the decision to do so. This expiration and renewal procedure will also apply to the end of any subsequent biennium during which the Project continues. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before termination or limit the State's rights in such.

It is understood that the State's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments and other obligations due as part of this Contract, the State's obligations under this Contract are terminated as of the date that the funding expires without further obligation of the State.

The Project has a completion date that is identified in the RFP. The RFP may also have several dates for delivery of Deliverables or reaching certain milestones in the Project. The Contractor must make those deliveries, meet those milestones, and complete the Project within the times the RFP and the mutually agreed to Work Plan requires. If the Contractor does not meet those dates, the Contractor will be in default, and the State may terminate this Contract under the termination provision contained below. The State may also have certain obligations to meet. Those obligations, if any, are also listed in the RFP. If the State agrees that the Contractor's failure to meet the delivery, milestone, or completion dates in the RFP is due to the State's failure to meet its own obligations in a timely fashion, then the Contractor will not be in default, and the delivery, milestone, and completion dates affected by the State's failure to perform will be extended by the same amount of time as the State's delay. The Contractor may not rely on this provision unless the Contractor has in good faith exerted all professional management skill to avoid an extension and has given the State meaningful written notice of the State's failure to meet its obligations within five (5) business days of the Contractor's realization that the State's delay will impact the Project. The notice to the State must be directed at making the State aware of its delay and the impact of its delay. It must be sent to the Agency Project Representative and the State Procurement Representative. Remedies resulting from the State's delay will be at the State's discretion.

The State seeks a complete Project. Any incidental items omitted in the RFP will be provided as part of the Contractor's not-to-exceed fixed price. The Contractor must fully identify, describe, and document all systems that are delivered as a part of the Project. All hardware, software, supplies, and other required components (such as documentation, conversion, training, and maintenance) for the Project to be complete and useful to the State are included in the Project and the not-to-exceed fixed price.

ECONOMIC PRICE ADJUSTMENT. The Contract prices(s) will remain firm throughout the initial term of the Contract. Thereafter, prior to Contract renewal, the Contractor may submit a request to adjust their price(s) to be effective on the effective date of the Contract's renewal. No price adjustment will be permitted prior to the effective date; on purchase orders that are already being processed; or on purchase orders that have been filled.

Price increases must be supported by a general price increase in the cost of the materials/services rendered due to documented increases in the cost of related materials/services. Detailed documentation, to include a comparison list of the Contract items and proposed price adjustments must be submitted to support the requested adjustment. Supportive documentation should include, but is not limited to: copies of the old and the current price lists or similar documents which indicate the original base cost of the product to the Contractor and the corresponding adjustment, and/or copies of correspondence sent by the Contractor's supplier on the supplier's letterhead, which contain the above price information and explains the source of the adjusted costs in such areas as raw materials, freight, fuel or labor, etc.

Should there be a decrease in the cost of the finished product due to a general decline in the market or some other factor, the Contractor is responsible to notify DAS immediately. The price decrease adjustment will be incorporated into the Contract and will be effective on all purchase orders issued after the effective date of the decrease. If the price decrease is a temporary decrease, such should be noted on the invoice. In the event that the temporary decrease is revoked, the Contract pricing will be returned to the pricing in effect prior to the temporary decrease. Failure to comply with this provision will be considered as a default and will be subject to the Suspension and Termination section contained herein.

**COMPENSATION.** In consideration of the Contractor's promises and satisfactory performance, the State will pay the Contractor the amount(s) identified in the RFP (the "Fee"), plus any other expenses identified as reimbursable in the RFP. In no event will payments under this Contract exceed the "not-to-exceed" amount in the RFP without the prior, written approval of the State and, when required, the Ohio Controlling Board and any other source of funding. The Contractor's right to the Fee is contingent on the complete and satisfactory performance of the Project or, in the case of milestone payments or periodic payments of an hourly, daily, weekly, monthly, or annual rate, all relevant parts of the Project tied to the applicable milestone or period. Payment of the Fee is also contingent on the Contractor delivering a proper invoice and any other documents required by the RFP.

An invoice must comply with the State's then-current policies regarding invoices and their submission. The State will notify the Contractor in writing within fifteen (15) business days after it receives a defective invoice of any defect and provide the information necessary to correct the defect.

The Contractor will send all invoices under this Contract to the "bill to" address in the RFP or in the applicable purchase order.

The State will pay the Contractor interest on any late payment as provided in Section 126.30 of the Ohio Revised Code (the "Revised Code"). If the State disputes a payment for anything covered by an invoice, within 15 business days after receipt of that invoice, the State will notify the Contractor, in writing, stating the grounds for the dispute. The State may then deduct the disputed amount from its payment as a non-exclusive remedy. If, in the opinion of the State, a material breach has occurred by the Contractor, the State retains the right to withhold payment from the Contractor. Both parties agree that an attempt at resolution of any claims or material breach or disputes will first be made jointly by the Contractor Project Manager, the Contractor Project Principal, the Agency Project Representative and the State Procurement Administrator. If, within 30 calendar days following the above notification, the claim or dispute has not been resolved, only then will it be submitted to non-binding mediation (pursuant to the rules as stipulated by the American Arbitration Association). A claim or dispute must be submitted to non-binding mediation prior to the initiation of any formal legal process. The State will consult with the Contractor as early as reasonably possible about the nature of the claim or dispute and the amount of payment affected. When the Contractor has resolved the matter to the State's satisfaction, the State will pay the disputed amount within 30 business days after the matter is resolved. No payments are required to be made by the State until the matter is resolved.

If the State has already paid the Contractor on an invoice but later disputes the amount covered by the invoice, and if the Contractor fails to correct the problem within 30 calendar days after written notice, the Contractor will reimburse the State for that amount at the end of the 30 calendar days as a non-exclusive remedy for the State. On written request from the Contractor, the State will provide reasonable assistance in determining the nature of the problem by giving the Contractor reasonable access to the State's facilities and any information the State has regarding the problem.

**REIMBURSABLE EXPENSES.** The State will pay all reimbursable expenses identified in the RFP, if any, in accordance with the terms in the RFP and, where applicable, Section 126.31 of the Revised Code. The Contractor will assume all expenses that it incurs in the performance of this Contract that are not identified as reimbursable in the RFP.

In making any reimbursable expenditure, the Contractor will always comply with the more restrictive of its own, then-current internal policies for making such expenditures or with the State's then-current policies. All reimbursable travel will require the advance written approval of the State's Agency Project Representative. All reimbursable expenses will be billed monthly and paid by the State within 30 business days of receiving the Contractor's invoice.

**CERTIFICATION OF FUNDS.** None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance, until all the following conditions have been met:

1. All statutory provisions under ORC Section 126.07, have been met.
2. All necessary funds are made available by the appropriate state agencies.
3. If required, approval of this Contract is given by the Controlling Board of Ohio.

If the State is relying on Federal or third-party funds for this Contract, the State gives the Contractor written notice that such funds have been made available.

EMPLOYMENT TAXES. Each party will be solely responsible for reporting, withholding, and paying all employment related taxes, payments, and withholdings for its own personnel, including, but not limited to, Federal, state and local income taxes, social security, unemployment or disability deductions, withholdings, and payments (together with any interest and penalties not disputed with the appropriate taxing authority). All people the Contractor provides to the State under this Contract will be deemed employees of the Contractor for purposes of withholdings, taxes, and other deductions or contributions required under the law.

SALES, USE, EXCISE, AND PROPERTY TAXES. The State is exempt from any sales, use, excise, and property tax. To the extent sales, use, excise, or any similar tax is imposed on the Contractor in connection with the Project, such will be the sole and exclusive responsibility of the Contractor. The Contractor will pay such taxes, together with any interest and penalties not disputed with the appropriate taxing authority, whether they are imposed at the time the services are rendered or at a later time.

NOTICE ON THE USE OF SOCIAL SECURITY NUMBERS AS FEDERAL TAX IDENTIFICATION NUMBERS. DAS requires suppliers and contractors wishing to do business with the State to provide their Federal Taxpayer Identification Number to the Department. The Department does this so that it can perform statutorily required "responsibility" analyses on those suppliers and contractors doing business with the State and, under limited circumstances, for tax reporting purposes. If you are a supplier or contractor using your Social Security Number as your Federal Taxpayer Identification Number, please be aware that the information you submit is a public record, and the Department may be compelled by Ohio law to release Federal Taxpayer Identification Numbers as a public record. If you do not want to have your Social Security Number potentially disclosed as a Federal Taxpayer Identification Number, the Department encourages you to use a separate Employer Identification Number (EIN) obtained from the United States Internal Revenue Service's to serve as your Federal Taxpayer Identification Number.

ELECTRONIC COMMERCE PROGRAM. The State of Ohio is an active participant in E-Commerce to include Electronic Data Interchange (EDI). This program will benefit both the State and the Contractor by reducing time delays in receiving invoices and making payments that are associated with the existing manual processes. The contractor is encouraged to move toward compliance with electronic commerce technologies as this will be the preferred method of doing business with the State of Ohio. Information regarding E-Commerce is available on the Office of Budget and Management's website at <http://obm.ohio.gov/StateAccounting/edi/default.aspx> for additional information regarding E-Commerce.



ATTACHMENT THREE: GENERAL TERMS AND CONDITIONS  
PART TWO: WORK & CONTRACT ADMINISTRATION

RELATED CONTRACTS. The Contractor warrants that the Contractor has not and will not enter into any contracts without written approval of the State to perform substantially identical services for the State such that the Project duplicates the work done or to be done under the other contracts.

BANNING THE EXPENDITURE OF PUBLIC FUNDS ON OFFSHORE SERVICES.

1. Executive Order Requirements. The Contractor affirms to have read and understands [Executive Order 2011-12K](#) and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

The Offeror must complete the attached Contractor/Subcontractor Affirmation and Disclosure form attachment to abide with Executive Order 2011-12K, affirming no services of the Contractor or its subcontractors under this Contract will be performed outside the United States. During the performance of this Contract, the Contractor must not change the location(s) of the country where the services are performed, change the location(s) of the country where the data are maintained, or made available unless a duly signed waiver from the State has been attained to perform the services outside the United States.

2. Termination, Sanction, Damages. If Contractor or any of its subcontractors perform services under this Contract outside of the United States, the performance of such services shall be treated as a material breach of the Contract. The State is not obligated to pay and shall not pay for such services. If Contractor or any of its subcontractors perform any such services, Contractor shall immediately return to the State all funds paid for those services. The State may also recover from the Contractor all costs associated with any corrective action the State may undertake, including but not limited to an audit or a risk analysis, as a result of the Contractor performing services outside the United States.

The State may, at any time after the breach, terminate the Contract, upon written notice to the Contractor. The State may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Contract and costs associated with the acquisition of substitute services from a third party.

If the State determines that actual and direct damages are uncertain or difficult to ascertain, the State in its sole discretion may recover a payment of liquidated damages in the amount of one percent (1.0 %) of the value of the Contract.

The State, in its sole discretion, may provide written notice to Contractor of a breach and permit the Contractor to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, the State may buy substitute services from a third party and recover from the Contractor any costs associated with acquiring those substitute services.

Notwithstanding the State permitting a period of time to cure the breach or the Contractor's cure of the breach, the State does not waive any of its rights and remedies provided the State in this Contract, including but not limited to recovery of funds paid for services the Contractor performed outside of the United States, costs associated with corrective action, or liquidated damages.

3. Assignment / Delegation. The Contractor will not assign any of its rights, nor delegate any of its duties and responsibilities under this Contract, without prior written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

SUBCONTRACTING. The Contractor may not enter into subcontracts for the Work after award without written approval from the State. The Contractor will not need the State's written approval to subcontract for the purchase of commercial goods that are required for satisfactory completion of the Work. All subcontracts will be at the sole expense of the Contractor unless expressly stated otherwise in the RFP.

The State's approval of the use of subcontractors does not mean that the State will pay for them. The Contractor will be solely responsible for payment of its subcontractor and any claims of subcontractors for any failure of the Contractor or any of its other subcontractors to meet the performance schedule or performance specifications for the Project in a timely and professional manner. The Contractor will hold the State harmless for and will indemnify the State against any such claims.

The Contractor will assume responsibility for all Deliverables whether it, a subcontractor, or third-party manufacturer produces them in whole or in part. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of all charges resulting from the Contract. The Contractor will be fully responsible for any default by a subcontractor, just as if the Contractor itself had defaulted.

If the Contractor uses any subcontractors, each subcontractor must have a written agreement with the Contractor. That written agreement must incorporate this Contract by reference. The agreement must also pass through to the subcontractor all provisions of this Contract that would be fully effective only if they bind both the subcontractor and the Contractor. Among such provisions are the limitations on the Contractor's remedies, the insurance requirements, record keeping obligations, and audit rights. Some sections of this Contract may limit the need to pass through their requirements to subcontracts to avoid placing cumbersome obligations on minor subcontractors. This exception is applicable only to sections that expressly provide exclusions for small-dollar subcontracts. Should the Contractor fail to pass through any provisions of this Contract to one of its subcontractors and the failure damages the State in any way, the Contractor will indemnify the State for the damage.

**RECORD KEEPING.** The Contractor will keep all financial records in accordance with generally accepted accounting procedures consistently applied. The Contractor will file documentation to support each action under this Contract in a manner allowing it to be readily located. The Contractor will keep all Project-related records and documents at its principal place of business or at its office where the work was performed.

The Contractor will keep a separate account for the Project (the "Project Account"). All payments made from the Project Account will be only for obligations incurred in the performance of this Contract and will be supported by contracts, invoices, vouchers, and any other data needed to audit and verify the payments. All payments from the Project Account will be for obligations incurred only after the effective date of this Contract unless the State has given specific written authorization for making prior payments from the Project Account.

**AUDITS.** During the term of this Contract and for three (3) years after the payment of the Contractor's Fee, on reasonable notice and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Project. This audit right will also apply to the State's duly authorized representatives and any person or organization providing financial support for the Project.

Unless it is impracticable to do so, all records related to this Contract must be kept in a single location, either at the Contractor's principle place of business or its place of business where the work was done. If this is not practical, the Contractor will assume the cost of collecting, organizing, and relocating the records and any technology needed to access the records to the Contractor's office nearest Columbus whenever the State or anyone else with audit rights requests access to the Contractor's Project records. The Contractor will do so with all due speed, not to exceed five (5) business days.

If any audit reveals any material deviation from the Project's specifications, any misrepresentation, or any overcharge to the State, the State will be entitled to recover damages, as well as the cost of the audit.

For each subcontract in excess of \$25,000, the Contractor will require its subcontractors to agree to the requirements of this section and of the record-keeping section. Subcontracts with smaller amounts involved need not meet this requirement. The Contractor may not artificially break up contracts with its subcontractors to take advantage of this exclusion.

**INSURANCE.** Until all obligations under this Agreement or any Order are satisfied, and without limiting Contractor's indemnification obligations under Indemnity, Contractor shall provide and maintain the insurance policies set forth below. All commercial insurance required shall be provided by insurers with a rating of not less than A-VII from AM Best or a comparable rating agency. Contractor shall also cause each of its Subcontractors to comply with all requirements in this Section.

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): written on an "occurrence" basis, including products and completed operations, blanket contractual liability, property damage, bodily injury and personal & advertising injury with limits no less than \$10,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. The defense costs shall be outside the policy limit.
2. Automobile Liability insurance covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit no less than \$5,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. If Contractor is a sole proprietor, partnership or has no statutory requirement for workers' compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold State of Ohio harmless from loss or liability for such.
4. Pollution Liability and Contractors' Professional Liability (Errors and Omissions) Insurance, with limits not less than \$5,000,000 per occurrence or claim, for applicable Contractor personnel or subcontractors who perform professional services, including but not limited to, engineering work, design and build services and environmental consulting.

5. Installation Floater: An Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken or destroyed during the performance of the work, including during transit, installation and testing at the State site.

6. Property Insurance: Contractor shall maintain all-risk commercial property insurance covering the full replacement cost of all real property constructed or installed under this agreement, until the ownership of said property transfers to the State of Ohio.

7. In the event the Services involve the use of cranes, heavy lift equipment, or rigging, then Contractor shall provide liability insurance of not less than \$10,000,000 per occurrence and \$20,000,000 in the aggregate for bodily injury or property damage resulting from crane or rigging operations. Coverage can be combined with other required coverage above. In the event Contractor subcontracts load lift engineering or crane operations, then Contractor shall require all subcontractors performing such work to provide the required coverage for crane and rigging operations.

8. In the event Contractor will utilize Unmanned Aerial Vehicles (UAVs) for any portion of the work associated with this contract, Contractor shall procure and maintain Aviation Liability insurance on an occurrence basis, including products and completed operations, property damage and bodily injury, with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. All use of UAVs on state property shall be in full compliance with FAA rules governing the commercial use of such aircraft (14 CFR Part 107). The State may, at any time, request documentation of the FAA Registration, Airmen Certificates and/or COAs. The Insurance obligations under this agreement shall be the minimum Insurance coverage requirements and/or limits shown in this agreement. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the State of Ohio. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### Additional Insured Status

Except for Workers' Compensation and Professional Liability insurance, the State of Ohio, its officers, officials and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. Coverage can be provided in the form of an endorsement to the Contractor's insurance.

#### Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance. Any insurance or self-insurance maintained by the State of Ohio, its officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with it.

#### Umbrella or Excess Insurance Policies

Umbrella or excess commercial liability policies may be used in combination with primary policies to satisfy the limit requirements above. Such Umbrella or excess commercial liability policies shall apply without any gaps in the limits of coverage and be at least as broad as and follow the form of the underlying primary coverage required above.

#### Notice of Cancellation

Contractor shall provide State of Ohio with 30 days' written notice of cancellation or material change to any insurance policy required above, except for non-payment cancellation. Material change shall be defined as any change to the insurance limits, terms or conditions that would limit or alter the State's available recovery under any of the policies required above. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

#### Waiver of Subrogation

Contractor hereby grants to State of Ohio a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State of Ohio by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State of Ohio has received a waiver of subrogation endorsement from the insurer.

#### Deductibles and Self-Insured Retentions

Deductibles and self-insured retentions must be declared to and approved by the State. The State may require the Contractor to provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the deductible or self-insured retention may be satisfied by either the named insured or the State.

#### Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work. The Discovery Period must be active during the Extended Reporting Period.

#### Verification of Coverage

Contractor shall furnish the State of Ohio with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the State of Ohio before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State of Ohio reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

#### Special Risks or Circumstances

State of Ohio reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

STATE PERSONNEL. During the term of this Contract and for one (1) year after completion of the Project, the Contractor will not hire or otherwise contract for the services of any state employee involved with the Project.

REPLACEMENT PERSONNEL. If the Offeror's Proposal contains the names of specific people who will work on the Project, then the quality and professional credentials of those people were material factors in the State's decision to enter into this Contract. Therefore, the Contractor will use all commercially reasonable efforts to ensure the continued availability of those people. Also, the Contractor will not remove those people from the Project without the prior, written consent of the State except as provided below.

The Contractor may remove a person listed in its Proposal from the Project if doing so is necessary for legal or disciplinary reasons. The Contractor must make a reasonable effort to give the State 30 calendar days' prior, written notice of the removal.

The Contractor must have qualified replacement people available to replace any people listed by name in its Proposal. When the removal of a listed person is permitted under this Section, or if a person becomes unavailable, the Contractor will submit the resumes for two (2) replacement people for each person removed or who otherwise becomes unavailable. The Contractor will submit the two (2) resumes, along with such other information as the State may reasonably request, within five (5) business days after the decision to remove a person is made or the unavailability of a listed person becomes known to the Contractor.

The State will select one of the two proposed replacements or will reject both of them within ten business days after the Contractor has submitted the proposed replacements to the State. The State may reject the proposed replacements for any legal reason(s). Should the State reject both replacement candidates due to their failure to meet the minimum qualifications identified in the RFP, or should the Contractor fail to provide the notice required under this Section or fail to provide two (2) qualified replacement candidates for each removed or unavailable person, the Contractor will be in default and the cure period for default specified elsewhere in this Contract will not apply. In the event of such a default, the State will have the right to terminate this Contract and to have the damages specified elsewhere in this Contract for termination due to default.

The State may determine that proposed replacement candidates meet the minimum qualifications of this Contract and still substantially reduce the value the State perceived it would receive through the work of the original individual(s) the Contractor proposed and on whose credentials the State decided to enter into this Contract. Therefore, the State will have the right to reject any candidate that the State determines will provide it with diminished value.

Should the State reject both proposed candidates for any legal reason other than their failure to meet the minimum qualifications identified in the RFP, then such rejection may be deemed a termination for convenience.

The State has an interest in providing a healthy and safe environment for its employees and guests at its facilities. The State also has an interest in ensuring, and right to ensure, that its operations are carried out in an efficient, professional, legal, and secure manner. The State, therefore, will have the right to require the Contractor to remove any individual working on the Project if the State determines that any such individual has or may interfere with the State's interests identified above. In such a case, the request for removal will be treated as a case in which an individual providing services under this Contract has become unavailable, and the Contractor will follow the procedures identified above for replacing unavailable people. This provision applies to people engaged by the Contractor's subcontractors if they are listed as key people in the Proposal.

CONTRACT NON-COMPLIANCE. A primary goal of the Agency is to assure that the program receives high quality services from the Contractor. To this end, the Agency will work in partnership with the Contractor(s) to meet this goal. The partnership is defined by the Contract and it is important that communication between the Contractor and state agencies be open and supportive. Should contract non-compliance be an issue, the Agency shall make every effort to resolve the problem.

1. Non-Compliance Issues. Contractor non-compliance with the specifications and terms and conditions outlined in the Contract may result in the imposition of remedies as explained below in paragraph 2.

The Agency must be promptly notified of any procedural changes outside the technical requirements listed herein.

2. Resolution for Contract Non-Compliance. The Agency will be responsible for monitoring the Contractor's performance and compliance with the terms, conditions, and specifications of the contract.
  - a. For any infractions not immediately remedied by the Contractor, the Agency will notify DAS through a Complaint to Supplier (CTV) to help resolve the infraction.
  - b. DAS will impose upon the Contractor remedies for non-compliance regarding contract specifications and terms and conditions. Remedies imposed will be in proportion with the severity of the non-compliance and may be progressive in nature.

SUSPENSION AND TERMINATION. The State may terminate this Contract if the Contractor defaults in meeting its obligations under this Contract and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy (or similar proceeding) has been filed by or against the Contractor. The State may also terminate this Contract if the Contractor violates any law or regulation in doing the Project, or if it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In any such case, the termination will be for cause, and the State's rights and remedies will be those identified below for termination for cause.

On written notice, the Contractor will have 30 calendar days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 calendar days after written notice or if the breach is not one that is curable, the State will have the right to terminate this Contract. The State may also terminate this Contract in the case of breaches that are cured within 30 calendar days but are persistent. "Persistent" in this context means that the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligations three (3) times. After the third notice, the State may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three (3) notices do not have to relate to the same obligation or type of failure. Some provisions of this Contract may provide for a shorter cure period than 30 calendar days or for no cure period at all. Those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

The State may also terminate this Contract for its convenience and without cause or if the Ohio General Assembly fails to appropriate funds for any part of the Project. If a third party is providing funding for the Project, the State may also terminate this Contract should that third party fail to release any Project funds. The RFP identifies any third party source of funds for the Project.

The notice of termination, whether for cause or without cause, will be effective as soon as the Contractor receives it. Upon receipt of the notice of termination, the Contractor will immediately cease all work on the Project and take all steps necessary to minimize any costs the Contractor will incur related to this Contract. The Contractor will also immediately prepare a report and deliver it to the State. The report must be all-inclusive; no additional information will be accepted following the initial submission. The report must detail the work completed at the date of termination, the percentage of the Project's completion, any costs incurred in doing the Project to that date and any Deliverables completed or partially completed but not delivered to the State at the time of termination. The Contractor will also deliver all the completed and partially completed Deliverables to the State with its report. If delivery in that manner would not be in the State's interest, then the Contractor will propose a suitable alternative form of delivery.

If the State terminates this Contract for cause, it will be entitled to cover for the Project by using another Contractor on such commercially reasonable terms as it and the covering contractor may agree. The Contractor will be liable to the State for all costs related to covering for the Project to the extent that such costs, when combined with payments already made to the Contractor for the Project before termination, exceed the costs that the State would have incurred under this Contract. The Contractor will also be liable for any other direct damages resulting from its breach of this Contract or other action leading to termination for cause.

If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any work on the Project that the Contractor has performed before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined to be owing to the Contractor by the State. The State will make that determination based on the lesser of the percentage of the Project completed or the hours of work performed in relation to the estimated total hours required to perform the entire applicable unit(s) of Work.

The State will have the option of suspending rather than terminating the Project where the State believes that doing so would better serve its interests. In the event of a suspension for the convenience of the State, the Contractor will be entitled to receive payment for the work performed before the suspension. In the case of suspension of the Project rather than termination for cause, the Contractor will not be entitled to any compensation for any work performed. If the State reinstates the Project after suspension for cause, rather than terminating this Contract after the suspension, the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the State resulting from the Contractor's breach of this Contract or other fault. Any amount due for work before or after the suspension for cause will be offset by any damage to the State from the default or other event giving rise to the suspension.

In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the State's

convenience. The Contractor will not be entitled to compensation for any other costs associated with a suspension for the State's convenience. No payment under this provision will be made to the Contractor until the Contractor submits a proper invoice.

Any notice of suspension, whether with or without cause, will be effective immediately on the Contractor's receipt of the notice. The Contractor will prepare a report concerning the Project just as is required by this Section in the case of termination. After suspension of the Project, the Contractor will perform no work without the consent of the State and will resume work only on

written notice from the State to do so. In any case of suspension, the State retains its right to terminate this Contract rather than to continue the suspension or resume the Project. If the suspension is for the convenience of the State, then termination of the Contract will be a termination for convenience. If the suspension is with cause, the termination will also be for cause.

The State will not suspend the Project for its convenience more than once during the term of this Contract, and any suspension for the State's convenience will not continue for more than 30 calendar days. If the Contractor does not receive notice to resume or terminate the Project within the 30-day period, then this Contract will terminate automatically for the State's convenience at the end of the 30 calendar day period.

Any default by the Contractor or one of its subcontractors will be treated as a default by the Contractor and all of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the State for any liability to them. Each subcontractor will hold the State harmless for any damage caused to them from a suspension or termination. They will look solely to the Contractor for any compensation to which they may be entitled.

The Contractor may, at its discretion, request termination with a minimum 60 day notice in writing. The State will review the request and respond in writing to the Contractor with its findings.

#### CONTRACT REMEDIES.

1. **Actual Damages.** Contractor is liable to the State of Ohio for all actual and direct damages caused by Contractor's default. The State may buy substitute supplies or services, from a third party, for those that were to be provided by Contractor. The State may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Contractor's default, from Contractor.
2. **Liquidated Damages.** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages in the amount of 1% of the value of the order, deliverable or milestone that is the subject of the default, for every day the default is not cured by Contractor.
3. **Deduction of Damages from Contract Price.** The State may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on the contract, upon prior written notice being issued to the Contractor by the State.

REPRESENTATIVES. The State's representative under this Contract will be the person identified in the RFP or a subsequent notice to the Contractor as the "Agency Project Representative". The Agency Project Representative will review all reports made in the performance of the Project by the Contractor, will conduct all liaison with the Contractor, and will accept or reject the Deliverables and the complete Project. The Agency Project Representative may assign to a manager, responsibilities for individual aspects of the Project to act as the Agency Project Representative for those individual portions of the Project.

The Contractor's Project Manager under this Contract will be the person identified in the Proposal as the "Project Manager." The Project Manager will conduct all liaisons with the State under this Contract. Either party, upon written notice to the other party, may designate another representative. The Project Manager may not be replaced without the approval of the State if that individual is identified in the Proposal as a key individual on the Project.

WORK RESPONSIBILITIES. The State will be responsible for providing only those things expressly identified, if any, in the RFP. If the State has agreed to provide facilities or equipment, the Contractor, by signing this Contract, warrants that the Contractor has either inspected the facilities and/or equipment or has voluntarily waived an inspection and will work with the equipment and/or facilities on an "as is" basis.

The Contractor will assume the lead in the areas of management, design, and development of the Project. The Contractor will coordinate the successful execution of the Project and direct all Project activities on a day-to-day basis, with the advice and consent of the Agency Project Representative. The Contractor will be responsible for all communications regarding the progress of the Project and will discuss with the Agency Project Representative any issues, recommendations, and decisions related to the Project.

If the Project, or parts of it, requires installation on the State's property, the State will provide the Contractor with reasonable access to the installation site for the installation and any site preparation that is needed. After the installation is complete, the Contractor will complete an installation letter and secure the signature of Agency Project Representative certifying that

installation is complete and the Project, or applicable portion of it, is operational. The letter will describe the nature, date, and location of the installation, as well as the date it was certified as installed and operational by the Agency Project Representative. Unless otherwise provided in the RFP, the Contractor will be responsible for obtaining all official permits, approvals, licenses, certifications, and similar authorizations required by any local, state, or Federal agency for the Project and maintaining them throughout the duration of this Contract.

**CHANGES.** The State may make reasonable changes, within the general scope of the Project. The State will do so by issuing a written order under this Contract describing the nature of the change ("Change Order"). Additionally, if the State provides directions or makes requests of the Contractor without a change order, and the Contractor reasonably believes the directions or requests are outside the specifications for the Project, the Contractor will have the right to request a Change Order from the State. Scope of Work changes will be managed as follows: pricing will be provided from the Contractor to the State. The State will execute a Change Order once it and the Contractor have agreed on the description of and specifications for the change as well as any equitable adjustments that need to be made in the Contractor's Fee or the performance schedule for the Work. Within five (5) business days after receiving the Change Order, the Contractor will sign it to signify agreement.

If a change causes an increase in the cost of, or the time required for, the performance of the Project, the Contractor will notify the State in writing and request an equitable adjustment in the Contractor's Fee, the delivery schedule, or both before the Contractor signs the Change Order. If the Contractor claims an adjustment under this section in connection with a change to the Project not described in a written Change Order, the Contractor must notify the State of the claim within five (5) business days after the Contractor is notified of the change and before work on the change begins. Otherwise, the Contractor will have waived the claim. In no event will the State be responsible for any increase in the Fee or revision in any delivery schedule unless the relevant change was specifically ordered in writing by the State and the Contractor has complied with the requirements of this section. Provided the State has complied with the procedure for Change Orders in this section, nothing in this clause will excuse the Contractor from proceeding with performance of the Project, as changed.

Where an equitable adjustment to the Contractor's Fee is appropriate, the State and the Contractor may agree upon such an adjustment. If the State and the Contractor are unable to agree, and the Contractor seeks an equitable adjustment in its Fee, either party may submit the dispute to the senior management of the Contractor and the State for resolution. If, within 30 calendar days following referral to senior management, the claim or dispute has not been resolved, only then will it be submitted to non-binding mediation (pursuant to the rules as stipulated by the American Arbitration Association). A claim or dispute must be submitted to non-binding mediation prior to the initiation of any formal legal process. Costs of mediation will be shared equally. Both parties further agree to use best efforts to resolve any claims or disputes arising during the performance of this Contract within 30 calendar days following the initiation of the dispute process. The resolved amount will be the not-to-exceed amount of the Change Order. If the change involves removing a requirement from the Project or replacing one part of the Project with the change, the State will get a credit for the work no longer required under the original scope of the Project. The credit will be calculated in the same manner as the Contractor's Fee for the change, and the not-to-exceed amount will be reduced by this credit.

The Contractor will be responsible for coordinating changes with its subcontractors and adjusting their compensation and performance schedule. The State will not pay any subcontractor for the Change Order. If a subcontractor will perform any work under a Change Order, that work must be included in the Contractor's not-to-exceed amount and calculated in the same manner as the Contractor's equitable adjustment for the portion of the work the Contractor will perform. The Contractor will not receive an overhead percentage for work a subcontractor will do under a Change Order.

**EXCUSABLE DELAY.** Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date as soon as practicable after notice of delay. In the event of any such excusable delay, the date of performance or of delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party must also describe the cause of the delay and what steps it is taking to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Contractor's subcontractors will be considered controllable by the Contractor, except for third-party manufacturers supplying commercial items and over whom Contractor has no legal control.

**INDEPENDENT STATUS OF THE CONTRACTOR.** It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative Services. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.

Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in O.R.C. 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business") Contractor shall have any individual performing services under the agreement complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement found at the following link: <https://www.opers.org/forms-archive/PEDACKN.pdf#zoom=80>.

Contractor's failure to complete and submit the Independent Contractor/Worker Acknowledgement prior to commencement of the work, service or deliverable, provided under this contract, shall serve as Contractor's certification that Contractor is a "Business entity" as the term is defined in O.R.C. 145.037.

Publicity. The Contractor will not advertise or publicize that it is doing business with the State or use this Contract or the Contractor's relationship with the State as a marketing or sales tool, unless the State agrees otherwise in writing.



ATTACHMENT THREE: GENERAL TERMS AND CONDITIONS  
PART THREE: OWNERSHIP & HANDLING OF INTELLECTUAL PROPERTY & CONFIDENTIAL INFORMATION

CONFIDENTIALITY. The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor must treat such Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. By way of example, information should be treated as confidential if it includes any proprietary documentation, materials, flow charts, codes, software, computer instructions, techniques, models, information, diagrams, know-how, trade secrets, data, business records, or marketing information. By way of further example, the Contractor also must treat as confidential materials such as police and investigative records, files containing personal information about individuals or employees of the State, such as personnel records, tax records, and so on, court and administrative records related to pending actions, any material to which an attorney-client, physician-patient, or similar privilege may apply, and any documents or records expressly excluded by Ohio law from public records disclosure requirements.

The Contractor agrees not to disclose any Confidential Information to third parties and to use it solely to do the Project. The Contractor will restrict circulation of Confidential Information within its organization and then only to people in the Contractor's organization that have a need to know the Confidential Information to do the Project. The Contractor will be liable for the disclosure of such information whether the disclosure is intentional, negligent, or accidental, unless otherwise provided below.

The Contractor will not be liable for any unintentional disclosure of Confidential Information that results despite the Contractor's exercise of at least the same degree of care as it normally takes to safeguard its own secrets, except when the Contractor's procedures are not reasonable given the nature of the Confidential Information or when the disclosure nevertheless results in liability to the State.

The Contractor will not incorporate any portion of any Confidential Information into any work or product, other than a Deliverable, and will have no proprietary interest in any of the Confidential Information. Furthermore, the Contractor will cause all of its employees who have access to any Confidential Information to execute a confidentiality agreement incorporating the obligations in this section.

The Contractor's obligation to maintain the confidentiality of the Confidential Information will not apply where such: (1) Was already in the Contractor's possession before disclosure by the State, and such was received by the Contractor without obligation of confidence; (2) Is independently developed by the Contractor; (3) Is or becomes publicly available without breach of this Contract; (4) Is rightfully received by the Contractor from a third party without an obligation of confidence; (5) Is disclosed by the Contractor with the written consent of the State; or (6) Is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) Notifies the State of such order immediately upon receipt of the order and (b) Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The Contractor will return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

The Contractor may disclose Confidential Information to its subcontractors on a need-to-know basis, but they will be obligated to the requirements of this section.

HANDLING OF THE STATE'S DATA. The Contractor must use due diligence to ensure computer and telecommunications systems and services involved in storing, using, or transmitting State data are secure and to protect that data from unauthorized disclosure, modification, or destruction. To accomplish this, the Contractor must:

1. Apply appropriate risk management techniques to ensure security for all sensitive data, including but not limited to any data identified as Confidential Information elsewhere in this Contract.
2. Ensure that its internal security policies, plans, and procedures address the basic security elements of confidentiality, integrity, and availability.
3. Maintain plans and policies that include methods to protect against security and integrity threats and vulnerabilities, as well as to detect and respond to those threats and vulnerabilities.
4. Maintain appropriate identification and authentication process for information systems and services associated with State data.
5. Maintain appropriate access control and authorization policies, plans, and procedures to protect system assets and other information resources associated with State data.
6. Implement and manage security audit logging on information systems, including computers and network devices.

The Contractor must maintain a robust boundary security capacity that incorporates generally recognized system hardening techniques. This includes determining which ports and services are required to support access to systems that hold State data, limiting access to only these points, and disable all others. To do this, the Contractor must use assets and techniques such as properly configured firewalls, a demilitarized zone for handling public traffic, host-to-host management, Internet protocol specification for source and destination, strong authentication, encryption, packet filtering, activity logging, and implementation of system security fixes and patches as they become available. The Contractor must use two-factor authentication to limit access to systems that contain particularly sensitive State data, such as personally identifiable data.

Unless the State instructs the Contractor otherwise in writing, the Contractor must assume all State data is both confidential and critical for State operations, and the Contractor's security policies, plans, and procedure for the handling, storage, backup, access, and, if appropriate, destruction of that data must be commensurate to this level of sensitivity. As part of the Contractor's protection and control of access to and use of data, the Contractor must employ appropriate intrusion and attack prevention and detection capabilities. Those capabilities must track unauthorized access and attempts to access the State's data, as well as attacks on the Contractor's infrastructure associated with the State's data. Further, the Contractor must monitor and appropriately address information from its system tools used to prevent and detect unauthorized access to and attacks on the infrastructure associated with the State's data.

The Contractor must use appropriate measures to ensure that State's data is secure before transferring control of any systems or media on which State data is stored. The method of securing the data must be appropriate to the situation and may include erasure, destruction, or encryption of the data before transfer of control. The transfer of any such system or media must be reasonably necessary for the performance of the Contractor's obligations under this Contract.

The Contractor must have a business continuity plan in place. The Contractor must test and update the IT disaster recovery portion of its business continuity plan at least annually. The plan must address procedures for response to emergencies and other business interruptions. Part of the plan must address backing up and storing data at a location sufficiently remote from the facilities at which the Contractor maintains the State's data in case of loss of that data at the primary site. The plan also must address the rapid restoration, relocation, or replacement of resources associated with the State's data in the case of a disaster or other business interruption. The Contractor's business continuity plan must address short- and long-term restoration, relocation, or replacement of resources that will ensure the smooth continuation of operations related to the State's data. Such resources may include, among others, communications, supplies, transportation, space, power and environmental controls, documentation, people, data, software, and hardware. The Contractor also must provide for reviewing, testing, and adjusting the plan on an annual basis.

The Contractor may not allow the State's data to be loaded onto portable computing devices or portable storage components or media unless necessary to perform its obligations under this Contract properly. Even then, the Contractor may permit such only if adequate security measures are in place to ensure the integrity and security of the data. Those measures must include a policy on physical security for such devices to minimize the risks of theft and unauthorized access that includes a prohibition against viewing sensitive or confidential data in public or common areas. At a minimum, portable computing devices must have anti-virus software, personal firewalls, and system password protection. In addition, the State's data must be encrypted when stored on any portable computing or storage device or media or when transmitted from them across any data network. The Contractor also must maintain an accurate inventory of all such devices and the individuals to whom they are assigned.

Any encryption requirement identified in this provision must meet the Ohio standard as defined in Ohio IT standard ITS-SEC-01, "Data Encryption and Cryptography".

The Contractor must have reporting requirements for lost or stolen portable computing devices authorized for use with State data and must report any loss or theft of such to the State in writing as quickly as reasonably possible. The Contractor also must maintain an incident response capability for all security breaches involving State data whether involving mobile devices or media or not. The Contractor must detail this capability in a written policy that defines procedures for how the Contractor will detect, evaluate, and respond to adverse events that may indicate a breach or attempt to attack or access State data or the infrastructure associated with State data.

In case of an actual security breach that may have compromised State data, including but not loss or theft of devices or media, the Contractor must notify the State in writing of the breach within 24 hours of the Contractor becoming aware of the breach, and fully cooperate with the State to mitigate the consequences of such a breach. This includes any use or disclosure of the State data that is inconsistent with the terms of this Contract and of which the Contractor becomes aware, including but not limited to, any discovery of a use or disclosure that is not consistent with this Contract by an employee, agent, or subcontractor of the Contractor.

The Contractor must give the State full access to the details of the breach and assist the State in making any notifications to potentially affected people and organizations that the State deems are necessary or appropriate. The Contractor must document all such incidents, including its response to them, and make that documentation available to the State on request. In addition to any other liability under this Contract related to the Contractor's improper disclosure of State data, and regardless of any limitation on liability of any kind in this Contract, the Contractor will be responsible for acquiring one year's identity theft protection service on behalf of any individual or entity whose personally identifiable information is compromised while it is in the Contractor's possession.

OWNERSHIP OF DELIVERABLES. All deliverables produced by the Contractor and covered by this Contract, including any software modifications, and documentation, shall be owned by the State, with all rights, title, and interest in all intellectual property that come into existence through the Contractor's custom work being assigned to the State. Additionally, the Contractor waives any author rights and similar retained interests in custom-developed material. The Contractor will provide the State with all assistance reasonably needed to vest such rights of ownership in the State. The Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials") if the Contractor provides the non-exclusive license described in the next paragraph.

The Contractor may grant the State a worldwide, non-exclusive, royalty free, perpetual license to use, modify, sell, and otherwise distribute all Pre-existing Materials that are incorporated in any custom-developed Deliverable rather than grant the State ownership of the Pre-existing Materials provided however, that the State may distribute such Pre-existing materials to the extent required by governmental funding mandates. The Contractor will not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing Materials in a custom Deliverable, the Contractor must first disclose this and seek the State's approval for doing so in advance. On the request of the Contractor, the State will incorporate any proprietary notice the Contractor may reasonably want for any Pre-existing Materials included in a custom Deliverable in all copies the State makes of that Deliverable.

Subject to the limitations and obligations of the State with respect to Pre-existing Materials, the State may make all custom Deliverables available to the general public without any proprietary notices of any kind.

LICENSE IN COMMERCIAL MATERIAL. As used in this section, "Commercial Material" means anything that has been developed at private expense by the Contractor or a third party, commercially available in the marketplace, subject to intellectual property rights, and readily copied through duplication on magnetic media, paper, or other media. Examples include written reports, books, pictures, videos, movies, computer programs, and computer source code and documentation.

Any Commercial Material that the Contractor intends to deliver as a Deliverable must have the scope of the license granted in such material disclosed in the RFP or as an attachment referenced in the RFP, if that scope of license is different from the scope of license contained in this section for Commercial Materials.

Except for Commercial Material that is software ("Commercial Software"), if the Commercial Material is copyrighted and published material, then the State will have the rights permitted under the Federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor.

Except for Commercial Software, if the Commercial Material is patented, then the State will have the rights permitted under the Federal patent laws for each copy of the Commercial Material delivered to it by the Contractor.

Except for Commercial Software, if the Commercial Material consists of trade secrets, then the State will treat the material as confidential. In this regard, the State will assume all obligations with respect to the Commercial Material that the Contractor assumes under the Confidentiality section of this Contract with respect to State secrets. Otherwise, the State will have the same rights and duties permitted under the Federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor, whether or not the material is copyrighted when delivered to the State.

For Commercial Software, the State will have the rights in items (1) through (8) of this section with respect to the software. The State will not use any Commercial Software except as provided in items (1) through (8) of this section or as expressly stated otherwise in this Contract. The Commercial Software may be:

1. Used or copied for use in or with the computer or computers for which it was acquired, including use at any State installation to which such computer or computers may be transferred.
2. Used or copied for use in or with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative.
3. Reproduced for safekeeping (archives) or backup purposes.
4. Modified, adapted, or combined with other computer software, but the modified, combined, or adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions set forth in this Contract.
5. Disclosed to and reproduced for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions set forth in this Contract.

6. Used or copied for use in or transferred to a replacement computer.

However:

7. If the Commercial Software delivered under this Contract is published and copyrighted, it is licensed to the State without disclosure prohibitions.
8. If any Commercial Software is delivered under this Contract with the copyright notice in 17 U.S.C. 401, it will be presumed to be published, copyrighted, and licensed to the State without disclosure restrictions, unless a statement substantially as follows accompanies such copyright notice: "Unpublished -- rights reserved under the copyright laws of the United States." The State will treat such Commercial Software as Confidential Information to the extent that such is actually the case.

ATTACHMENT THREE: GENERAL TERMS AND CONDITIONS  
PART FOUR: REPRESENTATIONS, WARRANTIES, AND LIABILITIES

GENERAL WARRANTIES. The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will: (1) Be in accordance with sound professional standards and the requirements of this Contract and without any material defects; (2) Unless otherwise provided in the RFP, be the work solely of the Contractor; and (3) No Deliverable will infringe on the intellectual property rights of any third party.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that: (1) The Contractor has the right to enter into this Contract; (2) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform the contemplated services; (3) The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control; (4) The Contractor has good and marketable title to any goods delivered under this Contract and in which title passes to the State; (5) All hardware, software, firmware, and similar devices and materials provided under this Contract will be designed to operate without regard to the turning of a century and process dates in a manner that takes into account dates occurring before and after the turning of a century; and (6) The Contractor has the right and ability to grant the license granted in any Deliverable in which title does not pass to the State.

The warranty regarding material defects is a 1-year warranty. All other warranties will be continuing warranties. If any portion of the Project fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for such portion of the Project. The Contractor will also indemnify the State for any direct damages and claims by third parties based on a breach of these warranties. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim is based on the modification or misuse. The State agrees to give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one (1) of the following four (4) things: (1) Modify the Deliverable so that it is no longer infringing; (2) Replace the Deliverable with an equivalent or better item; (3) Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or (4) Remove the Deliverable and refund the amount the State paid for the Deliverable and the amount of any other Deliverable or item that requires the availability of the infringing Deliverable for it to be useful to the State.

SOFTWARE WARRANTY. If this Contract involves software as a Deliverable, then, on acceptance and for 12 months after the date of acceptance of any Deliverable that includes software, the Contractor warrants as to all software developed under this Contract that: (a) the software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation, the Contractor's Proposal, and the RFP; (b) the software will be free of any material defects; (c) the Contractor will deliver and maintain relevant and complete software documentation, commentary, and source code; and (d) the source code language used to code the software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and (e) the software and all maintenance will be provided in a professional, timely, and efficient manner.

For Commercial Software licensed from a third party that is incorporated in a Deliverable, the Contractor represents and warrants that it has done 1 of the following 3 things: (a) obtained the right from the third-party licensor to commit to the warranties and maintenance obligations in this Section; (b) obtained a binding commitment from the licensor to make those warranties and maintenance obligations directly to the State; or (c) fully disclosed in the RFP any discrepancies between the requirements of this section and the commitment the third-party licensor has made.

In addition, for Commercial Software that is incorporated in a Deliverable, the Contractor will: (a) maintain or cause the third-party licensor to maintain the Commercial Software so that it operates in the manner described in the RFP (or any attachment referenced in the RFP) and relevant Commercial Software documentation; (b) supply technical bulletins and updated user guides; (c) supply the State with updates, improvements, enhancements, and modifications to the Commercial Software and documentation and, if available, the commentary and the source code; (d) correct or replace the Commercial Software and/or remedy any material programming error that is attributable to the Contractor or the third-party licensee; (e) maintain or cause the third-party licensor to maintain the Commercial Software and documentation to reflect changes in the subject matter the Commercial Software deals with; (f) maintain or obtain a commitment from the third-party licensor to maintain the Commercial Software so that it will properly operate in conjunction with changes in the operating environment in which it is designed to operate.

For purposes of the warranties and the delivery requirements in this Contract, software documentation means well written, readily understood, clear, and concise instructions for the software's users as well as a system administrator. The software documentation will provide the users of the software with meaningful instructions on how to take full advantage of all of the capabilities designed for end users. It also means installation and system administration documentation for a system administrator to allow proper control, configuration, and management of the software. Source code means the uncompiled operating instructions for the entire System. The Contractor will not be obligated to provide source code for Commercial Software unless it is readily available from the licensor. The source code will be provided in the language in which it was

written and will include commentary that will allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code.

**EQUIPMENT WARRANTY.** If any electrical equipment, mechanical device, computer hardware, telecommunications hardware, or other type of physical machinery ("Equipment") will be a part of any Deliverable, the following warranties apply. The Contractor warrants that the Equipment fully complies with all government environmental and safety standards applicable to the Equipment. The Contractor also warrants for 1 year from the acceptance date of the Equipment that the Equipment will perform substantially in accordance with specifications described in the RFP, the user manuals, technical materials, and related writings published by the manufacturer for the Equipment. The foregoing warranties will not apply to Equipment that is modified or damaged after title passes to the State.

The Contractor will notify the State in writing immediately upon the discovery of any breach of the warranties given above.

The Contractor's will do the following if any Equipment does not meet the above warranties:

1. Cause the Equipment to perform as required, or, if that is not commercially practicable, then;
2. Grant the State a refund equal to the amount the State paid for the Equipment or, if such has not been individually priced, the manufacturer's suggested retail price for the Equipment.

Except where the Contractor's breach of a warranty makes it not possible for the State to do so, the State will return the affected Equipment to the Contractor in the case of a refund under the previous paragraph.

**GENERAL EXCLUSION OF WARRANTIES.** The State makes no warranties, express or implied, other than those express warranties contained in this contract. The contractor also makes no warranties of merchantability or fitness for a particular purpose except as follows: If the Contractor has been engaged under the scope of work in the RFP to design something to meet a particular need for the State, then the Contractor does warrant that the contractor's work will meet the stated purpose for that work.

**INDEMNITY.** The Contractor will indemnify the State for any and all claims, damages, law suits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to property that may arise out of or are related to Contractor's performance under this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors.

The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement, is based on the modification or misuse. The State agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by the Office of the State Attorney General. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will take one (1) of the following four (4) actions:

1. Modify the Deliverable so that is no longer infringing.
2. Replace the Deliverable with an equivalent or better item.
3. Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract.
4. Remove the Deliverable and refund the fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

**LIMITATION OF LIABILITY.** Notwithstanding any limitation provisions contained in the documents and materials incorporated by reference into this contract, the parties agree as follows:

1. Neither party will be liable for any indirect, incidental or consequential loss or damage of any kind including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of damages.
2. The contractor further agrees that the contractor shall be liable for all direct damages due to the fault or negligence of the contractor.

ATTACHMENT THREE: GENERAL TERMS AND CONDITIONS  
PART FIVE: ACCEPTANCE AND MAINTENANCE

STANDARDS OF PERFORMANCE AND ACCEPTANCE. If the RFP does not provide otherwise, the acceptance procedure will be an informal review by the Agency Project Representative to ensure that each Deliverable and the Project as a whole comply with the requirements of this Contract. The Agency Project Representative will have up to 30 calendar days to do this. No formal letter of acceptance will be issued, and passage of the 30 calendar days will imply acceptance, though the State will issue a notice of noncompliance if a Deliverable or the Project as a whole does not meet the requirements of this Contract. If the Agency Project Representative issues a letter of noncompliance, then the Contractor will have 30 calendar days to correct the problems listed in the noncompliance letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the Agency Project Representative has issued a noncompliance letter, the Deliverables or the Project as a whole will not be accepted until the Agency Project Representative issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30 day period, the Agency Project Representative will issue the acceptance letter within 15 calendar days.

If the Project fails to meet the standard of performance after 90 calendar days from the start of the performance period, the Contractor will be in default and will not have a cure period. In addition to all other remedies the State may have under this Contract, the State will have the right to request correction or replacement of the relevant portion of the Project.

ATTACHMENT THREE: GENERAL TERMS AND CONDITIONS  
PART SIX: CONSTRUCTION

ENTIRE DOCUMENT. This Contract is the entire agreement between the parties with respect to the subject matter and supersedes any previous statements or agreements, whether oral or written.

BINDING EFFECT. This Contract will be binding upon and inure to the benefit of the respective successors and assigns of the State and the Contractor.

AMENDMENTS – WAIVER. No change to any provision of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be a waiver of those terms. Waivers must be in writing to be effective. Either party may at any later time demand strict performance.

SEVERABILITY. If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Contract will remain in full force and effect to the extent that such does not create an absurdity.

CONSTRUCTION. This Contract will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

HEADINGS. The headings used herein are for the sole sake of convenience and will not be used to interpret any section.

NOTICES. For any notice under this Contract to be effective it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract, unless such party has notified the other party, in accordance with the provisions of this section, of a new mailing address. This notice requirement will not apply to any notices that this Contract expressly authorized to be made orally.

CONTINUING OBLIGATIONS. The terms of this Contract will survive the termination or expiration of the time for completion of Project and the time for meeting any final payment of compensation, except where such creates an absurdity.



ATTACHMENT THREE: GENERAL TERMS AND CONDITIONS  
PART SEVEN: LAW & COURTS

COMPLIANCE WITH LAW. The Contractor agrees to comply with all applicable federal, state, and local laws in the conduct of the Work.

DRUG-FREE WORKPLACE. The Contractor will comply with all applicable state and Federal laws regarding keeping a drug-free workplace. The Contractor will make a good faith effort to ensure that all the Contractor employees, while working on state property, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

CONFLICTS OF INTEREST. No Personnel of the Contractor may voluntarily acquire any personal interest that conflicts with their responsibilities under this Contract. Additionally, the Contractor will not knowingly permit any public official or public employee who has any responsibilities related to this Contract or the Project to acquire an interest in anything or any entity under the Contractor's control if such an interest would conflict with that official's or employee's duties. The Contractor will disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Contract. The Contractor will take steps to ensure that such a person does not participate in any action affecting the work under this Contract. This will not apply when the State has determined, in light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.

OHIO ETHICS AND ELECTIONS LAW.

1. Ethics Law

All Contractors who are actively doing business with the State of Ohio or who are seeking to do business with the State of Ohio are responsible to review and comply with all relevant provisions of O.R.C. Sections 102.01 to 102.09. Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws.

2. Political Contributions

The Contractor affirms in its cover letter that, as applicable to the Contractor, all personal and business associates are in compliance with Chapter 3517 of the Revised Code regarding limitations on political contributions and will remain in compliance for the duration of the Contract and with all applicable provisions that extend beyond the expiration of the Contract.

EQUAL EMPLOYMENT OPPORTUNITY. The Contractor will comply with all state and federal laws regarding equal employment opportunity, including O.R.C. Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be completed using the Ohio Business Gateway Electronic Filing website <http://business.ohio.gov/efiling/>. Contractor must verify compliance on an annual basis for the duration of any contract. Approved Affirmative Action Plans can be found by going to the Equal Opportunity Division's web site: <http://eodreporting.oit.ohio.gov/searchAffirmativeAction.aspx>

INJUNCTIVE RELIEF. Nothing in this Contract is intended to limit the State's right to injunctive relief if such is necessary to protect its interests or to keep it whole.

ASSIGNMENT. The Contractor may not assign this Contract or any of its rights or obligations under this Contract without the prior, written consent of the State.

GOVERNING LAW. This Contract will be governed by the laws of Ohio, and venue for any disputes will lie exclusively with the appropriate court in Franklin County, Ohio.

ORC 9.76(B). Pursuant to Ohio Revised Code 9.76 (B) Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract period.

ATTACHMENT FOUR  
CONTRACT

This Contract, which results from RFP RS900219, entitled Renewable Energy Purchase Agreement Target of Approximately 12,000,000 kWh/year of Solar Energy Resources is between the State of Ohio, through the Department of Administrative Services, Office of Procurement Services, on behalf of the Department of Rehabilitation and Correction Service (the "State") and

\_\_\_\_\_  
(the "Contractor").

If this RFP results in a contract award, the Contract will consist of this RFP including all attachments, written addenda to this RFP, the Contractor's proposal, and written, authorized addenda to the Contractor's proposal. It will also include any materials incorporated by reference in the above documents and any purchase orders and change orders issued under the Contract. The form of the Contract is this one (1) page attachment to the RFP, which incorporates by reference all the documents identified above. The general terms and conditions for the Contract are contained in another attachment to the RFP. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

1. This RFP, as amended;
2. The documents and materials incorporated by reference in the RFP;
3. The Contractor's Proposal, as amended, clarified, and accepted by the State; and
4. The documents and materials incorporated by reference in the Contractor's Proposal.

Notwithstanding the order listed above, change orders and amendments issued after the Contract is executed may expressly change the provisions of the Contract. If they do so expressly, then the most recent of them will take precedence over anything else that is part of the Contract.

This Contract has an effective date of the later of 06/30/19 or the occurrence of all conditions precedent specified in the General Terms and Conditions.

**IN WITNESS WHEREOF**, the parties have executed this Contract as of the dates below.

\_\_\_\_\_  
(Contractor)

Department of Administrative Services  
(State of Ohio Agency)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Robert Blair  
(Printed Name)

\_\_\_\_\_  
(Title)

Director, Department of Administrative Services  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

ATTACHMENT FIVE A  
OFFEROR PROFILE FORM

Offeror's Legal Name:	Address:	
Phone Number:	Fax Number:	E-mail Address:
Home Office Location:	Date Established:	Ownership:
Firm Leadership:	Number of Employees:	Number of Employees Directly involved in Tasks Directly Related to the Work:
Additional Background Information:		

ATTACHMENT FIVE B  
OFFEROR PRIOR PROJECT FORM

Customer Company Name:	Contact:	
Address:	Phone Number:	
	E-mail:	
Project Name:	Beginning Date of Project (Month/Year):	Ending Date of Project (Month/Year):

The Offeror must document previous experience and expertise in providing a minimum of four (4) previous projects working, similar in size and complexity, in the previous five (5) years. These projects must be of similar size, scope and nature. Details of the similarities must be included. Attachment Five B, C, D and E must be filled out completely for each of the four (4) projects provided. The Offeror must use these forms and fill them out completely to provide the Offeror requirement information. Failure to recreate the form accurately to include all fields, may lead to the rejection of the Offeror's Proposal. A minimum of two (2) prior projects must detail experience with power purchase agreement management.

General Project Information:

Project Name:

Project Site:

Interconnecting Utility:

Engineering, Procurement, and Construction (EPC) Contractor:

Estimated Commercial Operation Date:

Nameplate (MWac):

Expected Annual Availability (%):

Nameplate (MWdc):

Expected Capacity Factor (%):

Expected Annual Energy (MWh):

Annual Degradation (%):

Fixed Tilt or Single Axis Tracking:

If fixed tilt, please state tilt angle and azimuth. If tracking, please describe.

ATTACHMENT FIVE C  
OFFEROR PRIOR PROJECT FORM

Customer Company Name:	Contact:	
Address:	Phone Number:	
	E-mail:	
Project Name:	Beginning Date of Project (Month/Year):	Ending Date of Project (Month/Year):

The Offeror must document previous experience and expertise in providing a minimum of four (4) previous projects working, similar in size and complexity, in the previous five (5) years. These projects must be of similar size, scope and nature. Details of the similarities must be included. Attachment Five B, C, D and E must be filled out completely for each of the four (4) projects provided. The Offeror must use these forms and fill them out completely to provide the Offeror requirement information. Failure to recreate the form accurately to include all fields, may lead to the rejection of the Offeror's Proposal. A minimum of two (2) prior projects must detail experience with power purchase agreement management.

General Project Information:

Project Name:

Project Site:

Interconnecting Utility:

Engineering, Procurement, and Construction (EPC) Contractor:

Estimated Commercial Operation Date:

Nameplate (MW<sub>ac</sub>):

Expected Annual Availability (%):

Nameplate (MW<sub>dc</sub>):

Expected Capacity Factor (%):

Expected Annual Energy (MWh):

Annual Degradation (%):

Fixed Tilt or Single Axis Tracking:

If fixed tilt, please state tilt angle and azimuth. If tracking, please describe.

ATTACHMENT FIVE D  
OFFEROR PRIOR PROJECT FORM

Customer Company Name:	Contact:	
Address:	Phone Number:	
	E-mail:	
Project Name:	Beginning Date of Project (Month/Year):	Ending Date of Project (Month/Year):
<p>The Offeror must document previous experience and expertise in providing a minimum of four (4) previous projects working, similar in size and complexity, in the previous five (5) years. These projects must be of similar size, scope and nature. Details of the similarities must be included. Attachment Five B, C, D and E must be filled out completely for each of the four (4) projects provided. The Offeror must use these forms and fill them out completely to provide the Offeror requirement information. Failure to recreate the form accurately to include all fields, may lead to the rejection of the Offeror's Proposal. A minimum of two (2) prior projects must detail experience with power purchase agreement management.</p> <p><u>General Project Information:</u></p> <p><u>Project Name:</u></p> <p><u>Project Site:</u></p> <p><u>Interconnecting Utility:</u></p> <p><u>Engineering, Procurement, and Construction (EPC) Contractor:</u></p> <p><u>Estimated Commercial Operation Date:</u></p> <p><u>Nameplate (MWac):</u>    <u>Expected Annual Availability (%):</u></p> <p><u>Nameplate (MWdc):</u></p> <p><u>Expected Capacity Factor (%):</u>    <u>Expected Annual Energy (MWh):</u></p> <p><u>Annual Degradation (%):</u>    <u>Fixed Tilt or Single Axis Tracking:</u></p> <p style="text-align: center;">If fixed tilt, please state tilt angle and azimuth. If tracking, please describe.</p>		

ATTACHMENT FIVE E  
OFFEROR PRIOR PROJECT FORM

Customer Company Name:	Contact:	
Address:	Phone Number:	
	E-mail:	
Project Name:	Beginning Date of Project (Month/Year):	Ending Date of Project (Month/Year):

The Offeror must document previous experience and expertise in providing a minimum of four (4) previous projects working, similar in size and complexity, in the previous five (5) years. These projects must be of similar size, scope and nature. Details of the similarities must be included. Attachment Five B, C, D and E must be filled out completely for each of the four (4) projects provided. The Offeror must use these forms and fill them out completely to provide the Offeror requirement information. Failure to recreate the form accurately to include all fields, may lead to the rejection of the Offeror's Proposal. A minimum of two (2) prior projects must detail experience with power purchase agreement management.

General Project Information:

Project Name:

Project Site:

Interconnecting Utility:

Engineering, Procurement, and Construction (EPC) Contractor:

Estimated Commercial Operation Date:

Nameplate (MWac):

Expected Annual Availability (%):

Nameplate (MWdc):

Expected Capacity Factor (%):

Expected Annual Energy (MWh):

Annual Degradation (%):

Fixed Tilt or Single Axis Tracking:

If fixed tilt, please state tilt angle and azimuth. If tracking, please describe.

ATTACHMENT SIX  
OFFEROR REFERENCES

Three (3) professional references who have received services from the Offeror in the past five (5) years

Company Name:		Contact Name:	
Address:		Phone Number:	
		E-Mail Address:	
Project Name:	Beginning Date of Project: (Month/Year)	Ending Date of Project: (Month/Year)	
Description of project size, complexity and the Offeror's role in this project.			

Company Name:		Contact Name:	
Address:		Phone Number:	
		E-Mail Address:	
Project Name:	Beginning Date of Project: (Month/Year)	Ending Date of Project: (Month/Year)	
Description of project size, complexity and the Offeror's role in this project.			

Company Name:		Contact Name:	
Address:		Phone Number:	
		E-Mail Address:	
Project Name:	Beginning Date of Project: (Month/Year)	Ending Date of Project: (Month/Year)	
Description of project size, complexity and the Offeror's role in this project.			



ATTACHMENT SEVEN A  
OFFEROR'S CANDIDATE REFERENCES

Candidate's Name: \_\_\_\_\_

Candidate's Proposed Position: \_\_\_\_\_

Three (3) professional references who have received services from the candidate in the past five (5) years

Company Name:		Contact Name:	
Address:		Phone Number:	
Project Name:		Beginning Date of Project:	Ending Date of Project:
		Month/Year	Month/Year
Description of project size, complexity, and the candidate's role in this project.			
Company Name:		Contact Name:	
Address:		Phone Number:	
Project Name:		Beginning Date of Project:	Ending Date of Project:
		Month/Year	Month/Year
Description of project size, complexity, and the candidate's role in this project.			
Company Name:		Contact Name:	
Address:		Phone Number:	
Project Name:		Beginning Date of Project:	Ending Date of Project:
		Month/Year	Month/Year
Description of project size, complexity, and the candidate's role in this project.			

ATTACHMENT SEVEN B  
OFFEROR'S CANDIDATE INFORMATION  
EDUCATION AND TRAINING

Candidate's Name: \_\_\_\_\_

Education and Training: This section must be completed to list the education and training of the proposed candidate.

Name and Address	Months/Years	Degree/Major
College		
Technical School		
Licenses		
Certifications		

ATTACHMENT SEVEN C  
OFFEROR'S CANDIDATE EXPERIENCE REQUIREMENT

Candidate's Name: \_\_\_\_\_

Candidate's Proposed Position: \_\_\_\_\_

Client Company Name:		Client's Project Supervisor Contact Name:	
Address:		Phone Number:	
		E-Mail:	
Project Name:	Beginning Date of Project: Month/Year	Ending Date of Project: Month/Year	
Description of the related services provided:			
Client Company Name:		Client's Project Supervisor Contact Name:	
Address:		Phone Number:	
		E-Mail:	
Project Name:	Beginning Date of Project: Month/Year	Ending Date of Project: Month/Year	
Description of the related services provided:			
Client Company Name:		Client's Project Supervisor Contact Name:	
Address:		Phone Number:	
		E-Mail:	
Project Name:	Beginning Date of Project: Month/Year	Ending Date of Project: Month/Year	
Description of the related services provided:			

ATTACHMENT EIGHT  
OFFEROR PERFORMANCE FORM

The Offeror must provide the following information for this section for the past seven (7) years. Please indicate yes or no in each column.

Yes/No	Description
	The Offeror has had a contract terminated for default or cause. If so, the Offeror must submit full details, including the other party's name, address, and telephone number.
	The Offeror has been assessed any penalties in excess of five thousand dollars (\$5,000), including liquidated damages, under any of its existing or past contracts with any organization (including any governmental entity). If so, the Offeror must provide complete details, including the name of the other organization, the reason for the penalty, and the penalty amount for each incident.
	The Offeror was the subject of any governmental action limiting the right of the Offeror to do business with that entity or any other governmental entity.
	Has trading in the stock of the company ever been suspended? If so provide the date(s) and explanation(s).
	The Offeror, any officer of the Offeror, or any owner of a twenty percent (20%) interest or greater in the Offeror has filed for bankruptcy, reorganization, a debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding.
	The Offeror, any officer of the Offeror, or any owner with a twenty percent (20%) interest or greater in the Offeror has been convicted of a felony or is currently under indictment on any felony charge.

If the answer to any item above is affirmative, the Offeror must provide complete details about the matter. While an affirmative answer to any of these items will not automatically disqualify an Offeror from consideration, at the sole discretion of the State, such an answer and a review of the background details may result in a rejection of the Offeror's proposal. The State will make this decision based on its determination of the seriousness of the matter, the matter's possible impact on the Offeror's performance on the project, and the best interests of the State.

ATTACHMENT NINE  
COST SUMMARY FORM-Base Bid

All proposals will include a price for the REPA for 12,000,000 kWh/yr +/- 2% (initial generation in first typical year of operation without degradation) of Solar Electricity Procurement. The price for the REPA must be for a bundled renewable energy product including Energy, Capacity, Ancillary Services and Environmental Attributes. All proposals will be judged based on energy-normalized Net Present Value<sup>1</sup> of the Project. Base price should presume ODRC retains ownership of Solar Renewable Energy Certificates (SRECs).

RFP Number: RS900219 UNSPSC CATEGORY CODE: 26131507

Combination Net Present Value Calculator	
Discount Rate:	2.5%
Years:	25
Initial Price (\$/kWh):	
Escalation Factor:	
Initial Generation (kWh/year):	
Annual Degradation:	
Net Present Value	

<sup>1</sup> The NPV of all payments over the 25-year term will be calculated. The sum will then be divided by kWh production over the 25-year term to determine the value used to determine the cost score.

All costs must be in U.S. Dollars.  
The State will not be responsible for any costs not identified.  
There will be no additional reimbursement for travel or other related expenses.

Appendix A – Power Purchase Agreement

This POWER PURCHASE AGREEMENT (the "Agreement") is entered into as of \_\_, (the "Execution Date"), by and between the State of Ohio ("Purchaser"), and \_\_\_\_\_ ("Seller").

RECITALS:

**WHEREAS**, subject expressly to the Request for Proposals for the State of Ohio, Renewable Energy Project issued by the Purchaser, Project number RS900219 ("RFP"), and the Seller's, response thereto, and the other terms and conditions in this Agreement, the Purchaser wishes to have the Seller provide for the design, installation and maintenance of certain solar electric energy generation facilities ("Generation Facilities") which qualify as a renewable energy resource under state and federal law; and

**WHEREAS**, the Purchaser owns and operates the property and wishes to place and host the Seller's Generation Facilities on its premises; and

**WHEREAS**, the Purchaser wishes to buy electricity generated from the Generation Facilities from the Seller at the rate(s) and under the terms set forth herein; and

**WHEREAS**, subject to the terms and conditions stated herein, the Seller and the Purchaser (referred to herein, collectively, as "Parties" and, individually, a "Party") mutually desire to enter into this Agreement whereby the Seller shall sell, and the Purchaser shall purchase the electric energy as more fully described herein.

**NOW**, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1

AGREEMENT DEFINITIONS

The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense. Other terms used in this Agreement but not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice.

1.1 "Affiliate" means any other person or entity that controls, is under the control of, or is under common control with, the named entity.

1.2 "Agreement" has the meaning stated in the introductory paragraphs of this Agreement and includes all Exhibits and Appendices attached hereto.

Appendix A – Power Purchase Agreement (Continued)

1.3 "Applicable Laws" means all applicable national, state or local laws of the United States of America or any political subdivision thereof including statutes, regulations, by-laws, ordinances, codes, and instructions of governmental or local authorities and related consents, approvals, licenses or permits applicable to the System.

1.4 "Applicable Records" means those records directly related to the State of Ohio Renewable Energy Project.

1.5 "Business Day" means any day except a Saturday, Sunday or any other day designated and scheduled as a holiday by the Purchaser. A Business Day shall open at 8:00a.m. and close at 5:00p.m. local time for the relevant Party's principal place of business.

1.6 "Calendar Day" or "Day" means one full day, inclusive of Saturdays, Sundays and holidays, beginning on 12:00 am through 11 :59 pm.

1.7 "Change of Law" means the adoption, promulgation, modification or re-interpretation after the date of this Agreement by any federal or state governmental entity, the Interconnecting Utility, an independent system operator or other regional transmission organization of any law, regulation or other requirement which directly affects the construction, operation or maintenance of the System and requires a capital addition or improvement to the System.

1.8 "Communications and Telemetry Equipment" is the telemetering, communications, and data acquisition equipment that is necessary for the effective operation of the Generation Facilities within the regulations and requirements of the Interconnecting Utility in effect on the Execution Date. The Communications and Telemetry Equipment may include communication and data transmission (telemetering) facilities operable from any single location designated by the Purchaser, from time to time in addition to those required by the Interconnecting Utility.

1.9 "Competitive Retail Electric Supplier (CRES)" is a company certified by the appropriate regulatory authority to offer electricity to a retail customer.

1.10 "Completion Date" means the date specified in a Notice to the Purchaser from the Seller that (a) the Generation Facilities are installed in accordance with this Agreement and are ready to deliver Energy in accordance with the terms of this Agreement; (b) approvals required by the Federal Energy Regulatory Commission or the Public Utilities Commission of Ohio, if any, for the Generation Facilities to sell Energy at the rates and terms specified under this Agreement shall have been obtained; and (c) all Interconnection Facilities have been installed in accordance with this Agreement, approved by the Interconnecting Utility and are available to receive and deliver Energy from the Generation Facilities.

1.11 "Debt" means the full obligations of the Seller under any loan, credit agreement, note, bond, mortgage or other financing or refinancing document with a lender, including, without limitation, any mortgagees or lessees in the case of lease financing.

1.12 "Default" means (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within thirty (30) Calendar Days after notice from the other Party; (b) the failure of any material representation or warranty made by a Party herein to be true and correct which failure is not cured within thirty (30) Calendar Days after Notice thereof to such Party; (c) the failure of either Party to perform any of its material obligations under this Agreement, which failure is not excused by Force Majeure or cured within thirty (30) Calendar Days after Notice thereof to such Party; or (d) the filing of a bankruptcy petition by a Party, or the filing of such a petition against a Party without the petition being vacated within ninety (90) Calendar Days.

Appendix A – Power Purchase Agreement (Continued)

1.13 "Emergency" means any abnormal interconnection or system condition including, but not limited to, equipment or transmission limitations and constraints caused by thermal limits, stability, voltage, or loop flows that the applicable regional transmission operator, Interconnecting Utility or the Purchaser determines, in its sole discretion (exercised in accordance with Good Utility Practices) requires automatic or immediate manual operation to prevent or limit loss or damage to the Purchaser's system or generation supply, any interconnected electric system, or could otherwise pose a threat to public safety.

1.14 "Energy" means the electrical energy generated from the production and sale of photovoltaic solar power from the Generation Facilities to the Purchaser during the Term of this Agreement.

1.15 "Environmental Attributes" means all environmental, economic, and other related credits, emissions credits, Renewable Energy Certificates, allowances, state, Federal or local tax credits, air emissions credits, and emissions reductions credits, offsets, allowances or benefits that are attributable to the capacity of the System and the Energy generated or placed under contract during the Term. Environmental Attributes include, but are not limited to the described credits, offsets, allowances, or benefits that are now available, along with all of those that may become available in the future for Energy generated by the Generation Facilities. For purposes of this Agreement, Environmental Attributes also includes any characteristics or attributes of a renewable energy credit, as defined by Public Utility Commission of Ohio OAC Rule 4901: I -40-01(BB) as may be amended or superseded from time to time. Environmental Attributes shall not include any credit, allowance, or benefit granted by the U.S. Department of Treasury or any taxing authority, including but not limited to, the Investment Tax Credit Grant or other grant, incentive, depreciation credit as the owner of the Generation Facilities.

1.16 "Excess Output" means any electricity produced by the Generation Facilities in excess of that needed by the Purchaser to meet its immediate needs pursuant to this Agreement.

1.17 "Facility" is the property described in Appendix 4, the Site Lease.

1.18 "Financing Condition Precedent" means that the Purchaser has secured sufficient conduit financing from a financial institution; that the Seller has secured all additional financing for the installation of the Generation Facilities through The Ohio Air Quality Development Authority or other financing entity, with terms and conditions acceptable to both parties.

1.19 "Force Majeure" means an event or circumstance or combination of events or circumstances beyond the reasonable control of the Party claiming the Force Majeure including, but not limited to acts of God; strikes, lockouts, industrial and/or labor disputes, difficulties with bans, blockages or picketing; terrorism, sabotage, war or riots; explosions; severe cold or hot weather or other extreme weather conditions; other actions of the elements such as floods, earthquakes, lightening or hurricanes. The ability to sell Energy at a higher price or purchase Energy at a lower price shall not constitute Force Majeure.

1.20 "Full Commercial Operation Date" is the agreed upon date that the entire Generation Facilities are complete and meet all regulatory and Interconnecting Utility requirements and begin delivering electricity to the Facility as measured by the revenue grade net meter.

1.21 "Generation Facilities" means a photovoltaic electricity generation facility owned by the Seller and located on the Purchaser's premises which is built, maintained, and operated in accordance with this Agreement. The Generation Facilities include photovoltaic solar panels, racking, wiring, and all facilities and associated equipment necessary to connect to the Point of Delivery, and other tangible assets reasonably necessary for the installation, operation, and maintenance of the Generation Facilities that produce the Energy being sold under this Agreement.



Appendix A – Power Purchase Agreement (Continued)

- 1.22 "Good Utility Practice(s)" means the practices, methods, and acts that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, necessary to be in compliance with all laws, regulations, codes, standards, equipment manufacturer's recommendations applicable to the Generation Facilities; and in addition the practices, methods or acts considered good industry practice by public utilities as to the generation, distribution and transmission of electricity.
- 1.23 "Interconnection Agreement" means the Agreement between the Purchaser and the Interconnecting Utility.
- 1.24 "Interconnecting Utility" means Ohio Edison, a subsidiary of FirstEnergy Corp., or any other utility or corporation that distributes electrical energy to the area where the Purchaser is located.
- 1.25 "Interconnection Facilities" means all of the facilities installed for the purpose of interconnecting the Generation Facilities to the Interconnecting Utility's system including, without limitation, transformers and associated equipment, relay and switching equipment, and safety equipment, all as more fully described in the Interconnection Agreement.
- 1.26 "kW" means kilowatt (a unit of electrical demand) and "kWh" means kilowatt hour (a unit of electrical energy).
- 1.27 "Lease Area" means the Leased Area as that term is defined in the Site Lease between the Seller and the Purchaser.
- 1.28 "Metering Equipment" means any certified revenue grade meters and appurtenances thereto to measure the Energy and Excess Output produced.
- 1.29 "Net metering" is a billing mechanism that credits solar energy system owners for the electricity they add to the grid. It allows consumers who generate some or all of their own electricity to use that electricity anytime, instead of only when it is generated.
- 1.30 "Notice" means a written communication delivered to the other Party at a location and through verifiable means as specified in Article 12
- 1.31 "Notice to Proceed" means a written notice provided by the Purchaser authorizing the Seller to proceed with the Seller's obligations under this Agreement, including the design and installation of the Generation Facilities.
- 1.32 "Operating Records" means the Generation Facilities' operating logs, blueprints for construction of the Generation Facilities, invoices for all Generation Facilities' equipment, all operating manuals, all warranties on equipment, and all other documents and agreements associated with the Generation Facilities, whether in printed or electronic format, that the Seller uses or maintains for the operation of the Generation Facilities.
- 1.33 "Party" or "Parties" has the meaning stated in the introductory paragraph of this Agreement.
- 1.34 "Point of Delivery" means the point of interconnection where Energy is delivered from the Seller to the Purchaser as noted in Appendix 3 and described herein or at such other point as the Parties, from time to time, may agree to in writing.

Appendix A – Power Purchase Agreement (Continued)

1.35 "Production Year" means a full calendar year starting on the Completion Date or on the anniversary of the Completion Date.

1.36 "Purchaser's System" means all wiring, meters, service panels and other related equipment, components or devices existing on the Purchaser's side of the Point of Delivery, including the AC disconnect box through the end use in the Purchaser's Facility, as may be repaired, upgraded or replaced, through the Term of this Agreement.

1.37 "Renewable Energy Certificates" are tradable, non-tangible energy commodities in the United States that represent proof that one megawatt-hour (MWh) of electricity was generated from an eligible renewable energy resource (renewable electricity). Solar Renewable Energy Certificates (SRECs) are RECs that are specifically generated by solar energy.

1.38 "Site Lease" means the Agreement between the Seller and the Purchaser.

1.39 "Stated Expiration Date" is the date or number of days indicated in the Agreement at which some stipulated action occurs on the part of the Seller or Purchaser or a calculation is triggered with respect to the kilowatt-hour electric production. "System" means the Generation Facilities, Metering Equipment, Point of Delivery, and connection to the Interconnection Facilities.

1.40 "Taxes" means federal, state and local taxes of whatever kind, including, without limitation, sales, use, excise, property, governmental charges, licenses and fees.

## ARTICLE 2

## 2.1 TERM

The initial Term of this Agreement commences on the Execution Date and shall terminate on XX date. The Purchaser may renew this Agreement for successive two-year terms under the same terms and conditions by giving written notice to the Seller on or before XX of each odd-numbered year. Failure to renew the Agreement as set forth in this paragraph shall constitute a termination by Purchaser effective at 11:59 p.m. on the last day of XX of each odd-numbered year and shall be governed per the terms and conditions indicated in Section 8.3.2 of this Agreement.

## 2.2 COMPLETION

The Seller agrees that the Completion Date shall occur no later than one hundred eighty-two (182) days from receipt of a notice to proceed issued by the Purchaser to the Seller unless otherwise agreed in writing by the Parties. Subject to any limit established by law or this Agreement, the Term of this Agreement may be extended by mutual written agreement of the Seller and Purchaser to accommodate any delays in completion.

## ARTICLE 3 INSTALLATION

## 3.1 Installation

The Seller shall design and install the Generation Facilities to meet the specifications of the RFP and the Seller's responses thereto. The Seller agrees to design and install the Generation Facilities in a commercially reasonable manner and in accordance with Good Utility Practices.

## Appendix A – Power Purchase Agreement (Continued)

### 3.2 SUBCONTRACTING

The Seller shall comply with all requirements set forth in the RFP, and the laws of Ohio as they apply to the selecting, supervising and paying of electrical and other subcontractors. This includes the payment of prevailing wage.

### 3.3 SCHEDULING

The Seller shall coordinate all installation scheduling with the Purchaser and shall provide a written schedule. The Seller shall provide reasonable notice to the Purchaser of any changes to the Schedule. Any planned power disruptions shall be coordinated with the Purchaser no less than seven (7) Business Days prior to the disruptions and shall be scheduled to minimize interference with the Purchaser's services. The Seller shall take all steps necessary to stage or suspend installation to avoid disruption as much as possible.

### 3.4 INTERCONNECTION AGREEMENT

The Seller shall, at its own cost and expense, comply with all Applicable Laws relating to the electrical interconnection requirements imposed by the Interconnecting Utility and shall prepare all required interconnection and/or net metering applications as may be required to permit the interconnection of the Generation Facilities and use Excess Output by the Purchaser. As reasonably requested by the Seller, the Purchaser shall assist and cooperate with the Seller to submit such applications to the Interconnecting Utility. The Seller shall be liable for all fees and costs imposed by the Interconnecting Utility for the submission, review or approval of the interconnection and/or net metering applications. The Seller shall be solely responsible for ensuring that approval of the interconnection of the Generation Facilities is received from the Interconnecting Utility and that the interconnection remains approved by the Interconnecting Utility during the term of this Agreement.

### 3.5 SYSTEM COMMISSIONING AND TRAINING

At the end of the installation of the Generation Facilities, the Seller, at its sole cost and expense and to the satisfaction of the Purchaser, will arrange for and obtain all required regulatory agency and Interconnecting Utility inspections and approvals. After obtaining all the successful inspection reports, the Seller will provide a copy of these reports to the Purchaser, provide notice of completion to the Purchaser, coordinate date and time of system energization with the Purchaser and upon approval by the Purchaser with that approval to not be unreasonably withheld, energize the Generation Facilities so that they begin producing Energy for the Purchaser. This will begin commencement of the Energy production and will constitute the Completion Date provided that the Interconnecting Utility has approved the interconnection and that the Public Utilities Commission of Ohio has approved the Generation Facilities as a renewable energy generation facility.

The Seller will schedule and conduct a system orientation and training session with the Purchaser's personnel to familiarize the Purchaser's personnel with the System, at the Seller's expense. This session will consist of review of System components, their operational characteristics, normal upkeep, safety procedures to allow the Purchaser to maintain the Purchaser's System, and to review and understand the manufacturer-provided documentation. System start-up and System shut-down procedures will be reviewed and demonstrated. However, it will be the sole responsibility of the Seller to maintain the Generation Facilities throughout the term of this Agreement.

Appendix A – Power Purchase Agreement (Continued)

ARTICLE 4 DESCRIPTION OF SYSTEM

4.1 GENERAL DESCRIPTION OF SYSTEM

4.1.1 Generation Facilities. The Seller shall own the Generation Facilities. The Purchaser shall have no ownership interest in the Generation Facilities unless it purchases the System pursuant to Section 8.6, nor shall the Generation Facilities be considered a fixture to the Purchaser's property for any reason.

4.1.2 Point of Delivery. TBD

4.1.3 Purchaser's System. The Purchaser's System shall be comprised of the existing:

- (a) AC Disconnect Box(es);
- (b) AC Panel;
- (c) Disconnects and breaker;
- (d) Internal and external wiring; and
- (e) Metering Equipment.

4.1.4 Metering and Monitoring Equipment. The Seller shall install the Metering Equipment such that there will be one meter at the Point of Delivery to measure Energy supplied to the Purchaser and an additional meter between the Generation Facilities and the Interconnecting Utility's system to measure Excess Output. Metering Equipment shall include a certified revenue grade meter and shall be installed as described in Appendix 2. The Seller shall monitor the Generation Facilities and Energy Output through on-site inspections and remote metering equipment. At the Seller's expense, equipment shall be furnished and installed to communicate with the Purchaser's monitoring system. The Seller shall coordinate with the Purchaser's choice of either xx. The Purchaser will make available a dedicated, high-speed Internet connection for the Seller's use at the Purchaser's expense. The Seller shall abide by all reasonable network safety and security procedures required by the Purchaser.

4.2 Location. The location of the Generation Facilities shall be xx.

4.3 Transfer and Risk Of Loss At Point Of Delivery. The Seller shall make the Energy available to the Purchaser at the Point of Delivery. Title to and risk of loss related to the Energy shall transfer from the Seller to the Purchaser at the Point of Delivery. The Seller shall arrange, be responsible for and pay for costs associated with delivery of Energy up to the Point of Delivery.

Appendix A – Power Purchase Agreement (Continued)

ARTICLE 5 CONDITIONS AND LIMITATIONS

5.1 CONDITIONS PRECEDENT The obligations of the Seller under this Agreement shall be conditioned upon:

(a) The Seller's satisfaction of the Financing Condition Precedent, upon such terms and conditions as are acceptable to the Seller, in the Seller's sole judgment;

(b) The Seller, with the Purchaser's cooperation and assistance, secures all necessary approvals of permits and net metering agreements, including approval of the Generation Facilities as a renewable energy generation facility by the Public Utilities Commission of Ohio;

(c) The Generation Facilities can be installed as planned.;

(d) The Generation Facilities can be interconnected to the Purchaser's System at the Point of Delivery and all necessary interconnection and net metering agreements and approvals have been obtained; and

(e) The Purchaser has provided to the Seller lawful access to and required use of the Generation Facilities by executing the Site Lease attached as XX.

In the event the foregoing conditions precedent are not satisfied within 90 days from the notice to proceed date, or within 180 days for subsection (b) above, the Seller may terminate this Agreement pursuant to Section 8.2 of this Agreement.

5.2 LIMITATIONS ON USE

5.2.1 Limitations on Use. The Purchaser shall not offer or sell Excess Output to any other party other than the net metering arrangements between the Purchaser and the Interconnecting Utility.

5.2.2 Limitations on Generation Facilities. So long as the Purchaser accepts and purchases the output of the Generation Facilities, there shall be no limitation on the Purchaser's ability to the use of its property for any other power-generating facility or to purchase and receive energy from the Interconnecting Utility regardless of whether the energy received is generated by the Interconnecting Utility or by another generation supplier.

5.3 SITE LEASE

Upon execution of this Agreement, the Seller and Purchaser shall enter the Site Lease attached hereto as xx.

Appendix A – Power Purchase Agreement (Continued)

ARTICLE 6 PRICING AND TERMS

1 GENERAL SALES TERMS

The Seller shall sell and deliver to the Purchaser, and the Purchaser shall purchase and accept from the Seller, all Energy generated by the Generation Facilities and recorded on the Metering Equipment measuring the Energy. The Seller warrants that title to the Energy delivered at the Point of Delivery shall pass from the Seller to the Purchaser free of any liens.

6.2 PRICING

6.2.1 Sale of Energy. The Seller agrees to produce, and the Purchaser agrees to accept and purchase all Energy produced in accordance with the terms of this Agreement and at the price specified in Appendix 1 for the Term of this Agreement.

6.2.2 Excess Output. The Purchaser shall be entitled to the full amount of any net metering credit applied to the Purchaser's utility bills by the Interconnecting Utility because of any Excess Output. The Purchaser acknowledges that any such net metering credit shall be as determined by the Interconnecting Utility and that the Seller has made no representation or warranty to the Purchaser as to the amount of any such credit.

6.2.3 Change of Law. The Seller shall deliver Notice to the Purchaser as soon as practicable after the occurrence of a Change in Law applicable to this Agreement, which Notice shall describe the Change in Law, its effect on the Seller and any commercially practicable remedial measures available. For the purposes of this subsection, the cost to the Seller of complying with a Change in Law as described above shall be the sum of: (a) increased operating costs incurred because of such Change in Law over the remaining Term of this Agreement plus

(b) the reasonable, actual and direct cost charged to or incurred by the Seller of any additions required by such Change in Law, amortized over the remaining term of this Agreement on a straight-line basis, plus (c) a financing cost equal to the amount of such additions or improvements (as so amortized) multiplied by the then applicable prime rate. The Parties shall negotiate in good faith to either terminate the Agreement pursuant to Section 8.2, or reach a mutually satisfactory resolution for dividing any added costs to the Seller equally between them, by either amortizing the costs over the remaining Term of the Agreement or extending the Term for an additional period of time, or through some other mutually acceptable means.

6.3 PRODUCTION GUARANTEE

6.3.1 Definitions. The following additional definitions apply under this Agreement.

(a) "Actual Annual Energy Output" is the sum of kilowatt hours of electricity during any one Guarantee Year as measured by the Generation Facilities' revenue grade meter.

(b) "Actual Cumulative Energy Output" is the sum of the Actual Annual Energy Output, as adjusted under this Agreement, for the thirty-six (36) month period immediately prior to the end of a Guarantee Year except that the Actual Cumulative Energy Output shall be the sum of the Actual Annual Energy Output for the twenty-four (24) month period immediately prior to the end of the last Guarantee Year of the Production Guarantee Term.

Appendix A – Power Purchase Agreement (Continued)

(c) "Guaranteed Cumulative Energy Output" means 90% of the sum of the Guaranteed Annual Energy Output, as adjusted under this Agreement, for the thirty-six (36) month period immediately prior to the end of any Guarantee Year with the exception of the last Guarantee Year of the Production Guarantee Term in which case a twenty-four (24) period shall apply, and as numerically defined in the column with the heading "Guaranteed Cumulative Energy Output" in the table set X.

(d) "Energy Value" Equals means a mutually agreed upon rate measured in dollars per kilowatt hours as set forth in the last column with the heading of Energy Value of the table xx.

(e) "Guaranteed Annual Energy Output " means the amount of kilowatt hours of electricity to be produced by the Generation Facilities for each year of the Production Guarantee Term as numerically defined in the column with the heading "Guaranteed Annual Energy Output" in the table xx.

(f) "Guarantee Year" is each 365-day period beginning on the Full Commercial Operation Date for the duration of the Production Guarantee Term.

(g) "Production Guarantee Term" mean s the period commencing on the Full Commercial Operation Date and continuing until the earlier of the termination date of this Agreement or the first date on which the Generation Facilities produce a measured cumulative amount of Energy equal to the twenty (20) year Total Guaranteed Cumulative Energy Output as set forth in the column with the heading "Total Guaranteed Cumulative Energy Output" in the table xx.

(h) "SREC Value" means a rate measured in dollars per kilowatt hours that Purchaser is then receiving for renewable energy credits through any contract, or if no contract rate exists, an amount equal to fifty (50) percent of the compliance payment for solar energy resource benchmarks set forth in Chapter 4928.64(C)(2)(a) of the Ohio Revised Code or any successor statute or regulation.

6.3.2 Seller Guarantees. For each Guarantee Year of the Production Guarantee Term, the Seller shall provide to the Purchaser production guarantees in the form of a Guaranteed Annual Energy Output and a Guaranteed Cumulative Energy Output from the Generation Facilities. The Seller and the Purchaser acknowledge and agree that the Guaranteed Annual Energy Output and Guaranteed Cumulative Energy Output as set forth in xx are estimates based on a nameplate capacity of TBD kilowatts for the Generation Facilities, and that xx shall be revised on a pro-rata basis within 30 days after the Full Commercial Operation Date to reflect the actual installed nameplate capacity of the Generation Facilities.

6.3.3 Guaranteed Annual Energy Output. The Seller hereby guarantees to Purchaser that the Generation Facilities will produce a minimum of 80% of the Guaranteed Annual Energy Output for each Guarantee Year of the Production Guarantee Term.

(a) On the last day of each Guarantee Year, the Actual Annual Energy Output of the Generation Facilities for that Guarantee Year shall be compared to the corresponding Guaranteed Annual Energy Output.

(b) If the Actual Annual Energy Output is less than 80% of the Guaranteed Annual Energy Output then within 90 days following the end of that Guarantee Year, the Seller shall pay the Purchaser an amount equal to the result of the below formula:

(80% of Guaranteed Annual Energy Output (kWh {minus Actual Annual Energy Output} kWh)) multiplied by the sum of the SREC Value and the Energy Value.

Appendix A – Power Purchase Agreement (Continued)

(c) Upon payment of the amount required under xx all future calculations associated with determining the Actual Cumulative Energy Output, will recognize the Generation Facilities as having produced exactly 80% of the Guaranteed Annual Energy Output for the Guarantee Year relating to the payment.

(d) If the Actual Annual Energy Output is greater than 105% of the Guaranteed Annual Energy Output then the Seller shall receive a kilowatt hour credit equal to the difference between the Actual Annual Energy Output minus 105% of the Guaranteed Annual Energy Output. The Seller may apply all or a portion of the kilowatt hour credit to the Actual Annual Energy Output for any future Guarantee Year.

(e) Upon the Seller receiving a kilowatt hour credit, all future calculations associated with determining the Actual Cumulative Energy Output using that Guarantee Year will recognize the Generation Facilities as having produced exactly x% of the Guaranteed Annual Energy Output for that Guarantee Year.

6.3.4 Guaranteed Cumulative Energy Output. Commencing at the end of the third Guarantee Year of the Production Guarantee Term and for each Guarantee Year thereafter, the Seller hereby guarantees to Purchaser that the Actual Cumulative Energy Output from the Generation Facilities will equal the Guaranteed Cumulative Energy Output.

(a) Commencing on the last day of the third Guarantee Year of the Production Guarantee Term, and on the last day of each Guarantee Year thereafter, the Actual Cumulative Energy Output shall be compared to the Guaranteed Cumulative Energy Output for that Guarantee Year.

(b) If the Actual Cumulative Energy Output is less than the Guaranteed Cumulative Energy Output, then within 90 days following the end of that Guarantee Year, the Seller shall pay the Purchaser an amount equal to the result of the below formula:

(c) Upon payment of the amount required under Subsection 6.3.4(b), the Generation Facilities will be treated on a going forward basis as having produced exactly 90% of the Guaranteed Annual Energy Output in each of the three Guarantee Years that were used to calculate the Actual Cumulative Energy Output.

6.3.5 The Seller's Guaranteed Annual Energy Output and Guaranteed Cumulative Energy Output shall be proportionately reduced per xx the extent that in a Guarantee Year: (a) the Purchaser's actions or inactions result in the impairment or disabling of the Generation Facilities in connection with a temporary removal of the Generation Facilities, a movement to an alternate location, or a temporary shutdown of the Generation Facilities or any portion thereof; (b) the occurrence of an event of Force Majeure has temporarily impaired or disabled the operation of the Generation Facilities or any portion thereof; or (c) the Purchaser interferes with the Generation Facilities, or any portion thereof, in a manner that impairs or disables the Generation Facilities.



Appendix A – Power Purchase Agreement (Continued)

6.4 ENVIRONMENTAL ATTRIBUTE AND TAXES

6.4.1 Environmental Attributes. Environmental Attributes that may result from or be associated with the Generation Facilities and the Energy, including Excess Output, shall in all cases belong and accrue to, and be the sole property of, the Purchaser. The Seller and Purchaser will use reasonable efforts to comply with all applicable laws, rules and regulations related to the registration and certification of renewable energy facilities including application for certification, allowing site visits by inspectors and filing required reports in connection with the Environmental Attributes. The Seller shall cooperate with the Purchaser, including completing reports, applications, permits, inspections and any other actions reasonably requested by the Purchaser, to enable the Purchaser to obtain or maintain the Environmental Attributes.

6.4.2 Taxes. With respect to sales and use, real or personal property, excise, business privilege, or any other tax, assessment or charge imposed by any governmental entity with respect to, or by virtue of, the ownership or operation of the Facility or the System, or this Agreement or Site Lease, each party shall be responsible for, and shall pay when due, those taxes imposed upon it by law. Each Party shall use reasonable efforts to administer this Agreement in a manner that will minimize the imposition of Taxes.

6.5 BILLING AND PAYMENT

6.5.1 Billing Quantities. The quantity of Energy purchased by the Purchaser and any Excess Output shall be calculated by reference to the amounts recorded on the Metering Equipment.

6.5.2 Invoices. The Seller shall invoice the Purchaser for Energy produced as set forth in Appendix I. The Purchaser shall pay the Seller not later than thirty (30) Calendar Days after receipt by the Purchaser of the Seller's invoice, the full amount due as reflected in the Seller's invoice. If the due date is not a Business Day, then the Purchaser's payment is due the next Business Day. The Seller shall provide the Purchaser with instructions for submitting payments, electronically or through other means, to a financial institution of the Seller's choice, which such instructions may be modified from time to time in writing by the Seller.

6.5.3 Payments. Without limiting the Seller's other remedies for a breach of this provision, payment made more than thirty (30) Calendar Days after receipt of an invoice from the Seller shall be subject to a 2% late charge for each month such invoice remains unpaid and unpaid balances also shall bear interest at the rate set forth below in Subsection 6.5.4.

6.5.4 General. It shall be mutually agreed and understood between Purchaser and Seller that the total amount paid by Purchaser to Seller shall not exceed the sums set forth in this Agreement. The Purchaser will encumber funds as identified, allocated and released for procurement of campus utilities with the approval of each fiscal year budget, beginning xxx. An invoice is not proper if it does not indicate the deliverable or the project phase of the Agreement. The Purchaser shall notify Seller within ten (10) days, in writing, of the defect or impropriety and provide any information necessary to correct the defect or impropriety. Unless otherwise agreed to by the Parties, invoices shall be sent to:

770 West Broad Street

Columbus, Ohio

43222

Appendix A – Power Purchase Agreement (Continued)

O.R.C. Section 126.30 is applicable to this Agreement and requires payment of interest on overdue payments. The interest rate shall be at the rate per calendar month, which equals one-twelfth of the rate per annum, prescribed by O.R.C. Section 5703.47.

## ARTICLE 7 OBLIGATIONS OF PARTIES

### 7.1 SELLER'S OBLIGATIONS

7.1.1 Inspection. The Seller shall give the Purchaser reasonable notice and obtain approval from the Purchaser before engaging in any test or use that would restrict the Purchaser's use of the building(s) which host the System. The Purchaser may observe the test and conduct its own tests, at the Purchaser's expense, to verify the Seller's procedures and results.

7.1.2 Communications and Telemetry. The Seller shall, at the Seller's expense, design, install, and control the Communications and Telemetry Equipment. The Purchaser may inspect and review the Seller's Communications and Telemetry Equipment upon reasonable Notice and during normal business hours and subject to compliance by the Purchaser with the Seller's safety guidelines and risk management procedures.

7.1.3 Maintenance. The Seller will be responsible for all maintenance and repairs to the Generation Facilities during the Term of this Agreement. The Seller shall, at the Seller's sole expense, maintain and operate the Seller's System in a commercially reasonable manner during the Term and maintain the Seller's System according to Good Utility Practices. The Seller shall give the Purchaser written Notice of any scheduled maintenance and repair activities at least fourteen (14) Days prior to any such scheduled maintenance or repair, and as much prior notice as is practical in the case of Emergency repairs. The Parties may negotiate for the provision of continuing service and maintenance if the Purchaser takes ownership at a mutually acceptable cost.

If the Seller fails to maintain the Generation Facilities in good working order or consistent with Good Utility Practices, the Purchaser shall provide notice to the Seller that repair is needed on the Generation Facilities. If within ten (10) Business Days after receipt of such Notice, the Seller fails to commence and diligently attempt to complete the necessary repairs, then the Purchaser may notify the Seller in writing that the Purchaser intends to complete repairs no sooner than seven (7) Business Days after the issuance of said Notice. In addition to any other remedies under this Agreement, the Purchaser may have such work performed at rates not exceeding customary levels for the type of work performed and to expend such funds as are reasonably required to perform such work. Any amount so expended by the Purchaser will be paid promptly by the Seller upon the submission of proper invoices to the Seller. If the Seller has not reimbursed the Purchaser for all such repairs in full and within thirty (30) Calendar Days after receipt of such invoices, the Purchaser may deduct the cost thereof against any future payment due to the Seller.

The Seller will provide Notice to the Purchaser as soon as reasonably practicable following the discovery of any material malfunction or Emergency condition in the operation of the Generation Facilities or of an interruption in the supply of Electricity from the Generation Facilities. The Seller will commence repairs to any malfunctioning Generation Facilities and restore the supply of Energy, as soon as reasonably possible after Notice or upon its own discovery of any of such conditions.

7.1.4 Records. The Seller shall maintain all Operating Records open to inspection by the Purchaser from a minimum of seven (7) years from the date each of the Operating Records was created.

7.1.5 Protection of Facilities. The Seller shall install and maintain reasonable security features to protect the Generation Facilities from foreseeable damage. The Seller shall install a black vinyl coated chain link fence with gate around the inverter, secured by chain and padlock or such other means as the Parties may agree in writing. The Seller shall ensure that the Purchaser has access to the inverter or any other part of the Generation Facilities that are secured.

Appendix A – Power Purchase Agreement (Continued)

7.2 PURCHASER 'S AND/OR SELLER OBLIGATIONS

7.2.1 General. The Seller shall, at the Seller's sole expense, maintain and operate the Seller 's System in a commercially reasonable manner during the Term and maintain the Seller's System according to Good Utility Practices and able to receive all Energy produced by the System.

7.2.2 Permits and Licensing. The Seller shall be responsible for acquiring all consents, approvals, permits and licenses necessary for the installation and operation of the Generation Facilities, and the Interconnection Facilities. The Purchaser shall cooperate with the Seller as reasonably requested in completing all Interconnection Agreements.

7.2.3 Maintenance of Lease Area. The Purchaser shall keep the Lease Area in good condition and repair. If the Purchaser fails to maintain the Lease Area, the Seller shall give the Purchaser Notice to complete such repairs as are reasonably required. If with in thirty (30) Calendar Days after such Notice, the Purchaser fails to commence and diligently attempt to complete the necessary repairs as agreed upon between the Parties, then, in addition to any other remedies provided in this Agreement, the Seller has the right to have such work performed at such cost as is reasonably necessary for the repair. Th e Purchaser shall promptly reimburse the Seller for the costs of such repairs.

7.2.4 Protection of Facilities. The Purchaser and the Seller shall not do or permit to be done any act or omission which is foreseeable to create a condition that will invalidate any fire, extended coverage or other insurance covering the Generation Facilities. The Purchaser and the Seller shall immediately report any damage, loss or injury that may impact or endanger the System to the other Party upon becoming aware of such damage, loss or injury.

7.2.5 Liens. The Purchaser shall make a good faith attempt to not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor, or material man's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Generation Facilities or any interest therein. This subsection shall not, however, restrict or limit the Seller from placing or allowing the creation of Liens of any form or type on the Generation Facilities.

7.3 OBLIGATIONS OF BOTH PARTIES

7.3.1 Inspection. Each Party has the right, after forty-eight (48) hours advance notice to the other Party, at its sole expense and during normal business hours, to examine the Applicable Records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement.

7.3.2 Disconnection. Except in the case of an Emergency, neither Party may disconnect the Generation Facilities from the Purchaser's System without reasonable prior notice to the other Party. Notice should be provided in writing at least ten (10) Days prior to any disconnection, unless such Notice is not practicable, in which case notice should be reasonable in time and manner of deli very under the circumstances. I n the event of an Emergency, either Party may disconnect the Generation Facilities immediately and provide Notice to the other Party as soon as practicable. Notice under this subsection does not constitute Notice of Default or any other Notice provided for in this Agreement.

Appendix A – Power Purchase Agreement (Continued)

7.3.3 Promotion and Advertising. The Parties share a common desire to generate favorable publicity regarding the Generation Facilities and their association with it. The Parties agree that they may, from time-to-time, issue press releases regarding the Generation Facilities and that they shall cooperate with each other in connection with the issuance of such releases including, without limitation, prompt review of press releases proposed to be issued by the other Party. Each Party agrees that it shall not issue any press release regarding the Generation Facilities without the prior consent of the other, and each Party agrees not to unduly withhold or delay any such consent. The Parties agree that all signage rights on the Purchaser's property including signage on the Generation Facilities themselves remains exclusively with the Purchaser.

## ARTICLE 8 TERMINATION

### 8.1 LENDER'S CURE PERIOD

Notwithstanding any other provision of this Agreement, the Purchaser shall allow the Seller to cure any Default by allowing the Seller's lenders or equity investors to cure any Default or take possession of the Generation Facilities within thirty (30) Days of any Notice of Default, provided that any such lenders or equity investors shall be bound by all of the terms of this Agreement to the same extent as the Seller.

### 8.2 EARLY TERMINATION

The Seller shall have the right to terminate this Agreement with notice which shall be effective five (5) Business Days after such Notice is given to the Purchaser in the event of a failure of the Financing Condition Precedent or the other condition precedent in Section 5.1 hereof. In such event, the Site Lease between the Parties also shall terminate. Neither Party shall have any further obligation or liability to the other Party arising out of or following any termination under this Section except that the Seller shall remove the Generation Facilities from the Purchaser's premises, repair any damage to the Lease Area as a result of the removal, and restore the Lease Area to at least its original condition prior to the Term of the Agreement.

### 8.3 DEFAULT AND REMEDIES

If a Default of a Party shall wholly or partly affect the performance (or the ability to perform) of the other Party under this Agreement, then the performance of the non-defaulting Party shall be excused to the extent affected by the Default.

8.3.1 Events of Default. The occurrence of a Default or one or more of the following events shall be an event of default ("Event of Default") under this Agreement:

(a) The Seller's unexcused failure to deliver Electricity from the System(s) for any continuous thirty (30) Day period, or for any sixty (60) Days during any six-month period, unless excused by either a lack of an available power resource or a Force Majeure event as set forth in Section 8.4 (Force Majeure); or

(b) The renovation, damage, destruction or closure of the Facility, for other than a "Force Majeure" event, which results in the permanent shutdown of the System(s) at the Facility and the Parties are unable to agree on and approve an alternative location for the System(s).

Appendix A – Power Purchase Agreement (Continued)

8.3.2 Seller's Remedies. If an Event of Default by the Purchaser occurs which remains uncured within the time provided in this Agreement, the Seller may terminate this Agreement within fifteen (15) Days written notice to the Purchaser. Purchaser may also terminate this Agreement by failing to renew the Agreement on or before July 1st of each odd-numbered year. If an Event of Default or termination by non-renewal under this paragraph occurs, Seller may remove the Generation Facilities.

8.3.3 Purchaser's Remedies. If an Event of Default by the Seller occurs which remains uncured within the time period provided in this Agreement, with in fifteen (15) days written notice to the Seller, the Purchaser may terminate this Agreement and associated Site Lease, and request in writing that the Generation Facilities be removed and the Lease Area restored to a condition comparable to its pre-installation condition subject to ordinary wear and tear. If the Seller fails to remove the Generation Facilities with in sixty (60) days from the date of the Seller's receipt of the written request for removal, the Purchaser may consider the Generation Facilities abandoned. In addition, the Seller shall be responsible to pay to the Purchaser any and all actual damages the Purchaser may incur as a result of the Seller's Default, including but not limited to any cost and penalties imposed upon the Purchaser, if any, as a result of any obligation(s) associated with third party Environmental Attribute contracts.

#### 8.4 FORCE MAJEURE

If either Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that: the affected Party gives the other Party notice of the occurrence within two (2) Days after the affected Party's knowledge of an event constituting a Force Majeure; the suspension of the affected Party's performance is of no greater scope and of no longer duration than is required by the Force Majeure; the affected

Party uses reasonable efforts to remedy its inability to perform; and the affected Party resumes performance of its obligations under this Agreement as expeditiously as possible.

#### 8.5 DELAYS AND REMEDIES

The time for performance shall be extended day-for-day for the time period during which a Party is rendered wholly or partly unable to carry out its obligations under this Agreement by a Force Majeure event; provided, however, if the performance of this Agreement by either Party is interrupted for more than eighteen (18) consecutive months or for an aggregate of more than eighteen (18) months in any 24-month period, then the other Party may terminate this Agreement upon thirty (30) Day Notice.

#### 8.6 OPTION TO PURCHASE, RENEWAL, OR REMOVAL OF GENERATION FACILITIES

8.6.1 Purchase. As long as the Purchaser is not in Default under any of the terms of this Agreement, the Purchaser shall have the right and option to purchase the Generation Facilities at any time after the seventh (7th) full year of operation, at a price equal to the greater of: 1) the then fair market value of the Generation Facilities as agreed upon by the Parties; or 2) the present value of the estimated annual Energy sales revenues for the remaining term of this Agreement calculated by applying:

(a) An eleven percent (11 %) discount rate;

(b) The average annual Energy produced by the Generation Facilities prior to execution of the Purchase Option as the generation basis with each forward-looking year reduced by one half percent (0.5%) of the year-one Guaranteed Energy Output (-2,499kWh/year); and

Appendix A – Power Purchase Agreement (Continued)

(c) The associated contracted energy rates for each forward-looking year as set forth in xx?

A hypothetical table of this calculation is provided in Appendix I, See Schedule FD by way of example only.

8.6.2 Upon the completion of the purchase of the System by the Purchaser under this Section 8.6, this Agreement shall terminate all obligations between the Seller and the Purchaser hereunder except for Sections 9.1 , 9.2 and I 0.5 hereof, which shall survive any such termination.

8.6.3 Renewal. [Reserved]

8.6.4 Termination. Upon termination or expiration of this Agreement, and in addition to any other remedies provided herein, unless the Generation Facilities are S;-stern is purchased by the Purchaser or the Parties otherwise agree, the Seller at its sole expense shall remove the Generation Facilities from the Purchaser 's premises except that the Seller shall remove tile Generation Facilities and repair any damage to the Lease Area as a result of the removal , and restore the Lease Area to its original condition prior to the Agreement, subject to normal wear and tear. The Purchaser shall not interfere with the Seller's ability to remove the Generation Facilities.

## ARTICLE 9 LIABILITY

### 9.1 LIMIIATATION OF LIABILITY

In no event, whether as a result of breach of contract, tort liability (including negligence), strict liability, or otherwise, shall either Party be liable to the other for special, punitive, incidental, indirect, exemplary, or consequential damages of any nature whatsoever, including loss of profit s. The Seller agrees to indemnify and to hold the Purchaser and the State of Ohio harmless and immune from all claims for injury or damages arising from this Agreement which are attributable to the Sellers's own actions or omissions or those of its trustees, officers, employees, subcontractor s, suppliers, third party agents or joint venture entities while acting under this Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime or employment matters and any claims involving patents, copyrights and trademarks. The Parties also intend and agree that such provisions shall continue in full force and effect notwithstanding termination, suspension, cancellation, or expiration of this Agreement.

### 9.2 COOPERATION

The Parties agree to act reasonably in the performance of this Agreement. Wherever either the Purchaser' or the Seller's approval is required in this Agreement, it is understood that such approvals shall not be unreasonably withheld, delayed or conditioned unless this Agreement specifically provides that a different standard should apply.

Appendix A – Power Purchase Agreement (Continued)

ARTICLE 10 GENERAL PROVISIONS

10.1 REPRESENTATIONS AND WARRANTIES

On the Execution Date of this Agreement and on every subsequent transaction each Party hereby represents and warrants to the other that:

- (a) it is duly formed, validly existing and in good standing under the laws of its state of formation, and has all necessary legal power and authority to enter into this Agreement;
- (b) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized;
- (c) the execution and delivery of this Agreement will not result in or constitute any of the following: (i) a default, or an event that, with Notice or lapse of time or both, would be a default, breach or violation of such Party's articles of association, by-laws, limited liability company agreement, or other organizational documents or any instrument, contract or other agreement to which it is a party or by which it or its property is bound, or  
(ii) the violation of any law, judgment, order, injunction, or decree affecting it;
- (d) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt; and
- (e) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement and each transaction.

10.2 ASSIGNMENT; ENCUMBRANCES

10.2.1 Assignment. Except as permitted in Section 10.2.2 of this Agreement or otherwise in law, neither Party shall voluntarily assign, sell, transfer, delegate or declare itself trustee on behalf of any person in regard to (or otherwise deal with in like manner) its rights or duties under this Agreement, or any part of such rights or duties, without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed.

10.2.2 Encumbrances. The Purchaser agrees and acknowledges that the Generation Facilities are not a fixture. The Seller, without approval of the Purchaser, may, by way of security, charge or otherwise, encumber to any assignee, mortgagee or holder of a security interest, (collectively, "Lender") its interest under this Agreement for the purposes of financing the installation, operation and maintenance of the Generation Facilities. The Parties agree that, upon notice to the Purchaser of the Seller's assignment to a Lender, the Seller may assign its rights hereunder to a Lender as collateral security, and further agree that: (a) the Parties will not make any major modifications or terminate this Agreement without the prior written consent of the Lender; (b) the Lender shall have the right, but not the obligation, to do any act required to be performed by the Seller under this Agreement, and any such act performed by the Lender shall be as effective to prevent a Default as if done by the Seller itself; (c) no Default which requires the giving of notice to the Seller shall be effective unless notice of similar duration is given to the Lender, and if the Purchaser becomes entitled to terminate this Agreement due to an uncured Default by the Seller, the Purchaser shall not terminate this Agreement unless it has first given notice of such uncured Default to the Lender; (d) in case of termination of this Agreement as a result of any Default or upon bankruptcy of the Seller, the Purchaser shall give prompt Notice to the Lender and, upon written request by the Lender within thirty (30) Calendar Days after receipt of the Purchaser's notice, agree to enter in to a new power sales agreement with such Lender on the same terms and conditions as this Agreement and for the period that would have been remaining under this Agreement, but for the termination; and (e) the Purchaser will from time to time enter into consents and agreements with any such Lender in furtherance of this Agreement and performance of the terms thereof. The Parties further agree that they shall at any time during the term of this Agreement within ten (10) Calendar Days after receipt of a notice from the other Party, execute a written statement certifying that this Agreement is unmodified and in full force and effect (or modified and stating the modification) and that no Defaults exist (or that Defaults exist and the nature of such Defaults). Except as otherwise stated, this Agreement inures to the benefit of the Parties, their successors and permitted assigns.

Appendix A – Power Purchase Agreement (Continued)

## 10.3 INSURANCE

10.3.1 Insurance Coverage. The Seller shall, at its sole cost and expense, maintain insurance in connection with this Agreement as follows. Failure to maintain the following insurance coverage for the duration of the Agreement shall constitute Default by the Seller:

- (a) Commercial General Liability Insurance with minimum limits of one million (\$1,000,000) for each occurrence; and two million (\$2,000,000) aggregate;
- (b) Business automobile liability insurance for owned, leased, or hired vehicles with a combined single limit no less than one million (\$1,000,000) per occurrence;
- (c) Property, fire and casualty insurance for an amount sufficient to reimburse the Seller for the fair market value of the Generation Facilities, and to reimburse the Purchaser for damage to the Lease Area; and
- (d) Workers' Compensation and employer's liability as required by law.

10.3.2 Additional Insured. The Seller shall name the Purchaser as an additional insured on insurance coverage specified under Section I 0.4. 1, (a), (b) and (c) above and shall furnish the Seller Certificates of Insurance evidencing compliance with this Section and shall provide, no less than thirty (30) days' Notice of any material change, modification or cancellation of any insurance policy. Nothing in this Section shall prohibit the Seller from also naming or assigning its Lender as an additional insured.

## 10.4 GOVERNING LAW; WAIVER OF WARRANTIES

This Agreement shall be governed by the laws of the state of Ohio. The Seller warrants to the Purchaser that all materials and equipment furnished under this Agreement shall be new and of good quality, that the Generation Facilities shall be free from defects not inherent in the quality required or permitted, and that the Seller's performance under this Agreement shall conform to the requirements of the RFP. Notwithstanding any other provision of this Agreement, payment by the Purchaser constitutes neither acceptance of any defective work nor a waiver of any rights set forth in this Agreement or otherwise provided bylaw.

## 10.5 FURTHER ASSURANCES

If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Agreement, such Party shall make a written request for such from the other Party. The Party receiving such request shall reply to such request within thirty (30) days of its receipt of such request, either complying with the request or providing reasons for failure to comply with the request.

## 10.6 MODIFICATION OR AMENDMENT

No modification or amend men t of all or any part of this Agreement shall be valid unless it is reduced to writing that expressly states that the Parties thereby agree to a modification or amendment as applicable and such writing is signed by both Parties.

## 10.7 NO DUTY TO THIRD PARTIES

Except as otherwise specifically provided in this Agreement, nothing in this Agreement, or any action taken hereunder, shall be construed to create any duty, liability or standard of care to any person other than a Party.



Appendix A – Power Purchase Agreement (Continued)

10.8 NO PARTNERSHIP

Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture or impose a trust or partnership duty, obligation or liability between or among the Parties.

10.9 NON-WAIVER; TIMELINESS OF ACTION

Except as expressly provided herein, failure to enforce any right or obligation by either Party with respect to any matter in connection with this Agreement shall not constitute a waiver as to that matter or any other matter provided.

