

**STATEMENT OF WORK
GUARANTEED ENERGY SAVINGS PROGRAM
INVITATION TO QUALIFY (ITQ) CONTRACT**

OVERVIEW: The purpose of this Invitation to Qualify (ITQ) is to qualify responsible and responsive contractors to provide services necessary to facilitate, manage, and complete projects executed under the Commonwealth’s Guaranteed Energy Savings Act (GESA). These GESA Projects involve the design and implementation of energy-related improvements, referred to herein as Energy Conservation Measures (ECM), at no up-front cost to the Commonwealth.

ISSUING OFFICE: This ITQ is managed and administered by the Commonwealth of Pennsylvania, Department of General Services (DGS), Bureau of Procurement. All inquiries should be referred to:

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TERM OF CONTRACT: The term of the Contract shall commence on the Effective Date and shall end when terminated by the Commonwealth pursuant to the Contract Clause “Termination” herein. This is an “evergreen” contract with no predetermined end date.

SERVICE CATEGORIES: Contractors will select the appropriate commodity code under the Business Details section of the qualification process. The Commonwealth may add additional commodity codes as the need arises. The table below lists the appropriate commodity code and description of each service category.

COMMODITY CODE	DESCRIPTION OF SERVICE CATEGORY
83100000-ITQ-203 – GESA Contracting Services	Contractors qualified under this service category will have the opportunity to respond to RFQs for GESA Projects to be completed at Commonwealth facilities. The GESA Contractor shall design, construct, and implement ECMs in accordance with the requirements of this ITQ and the specifications of the applicable RFQ. See Part I-B – Statement of Work: GESA Contractor Services below.
83100000-ITQ-204 – GESA Project Consulting Services	When desired, DGS will engage the services of an energy consultant (referred to herein as the DGS Energy Consultant or Consultant) to act as an agent and authorized representative/designee for DGS and the Funding Agency in the management and oversight of all phases of a GESA Project. See Part I-C – Statement of Work: GESA Project Consulting Services.

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QUALIFICATIONS: To become a qualified under either Service Category of this ITQ, prospective Contractors must:

- A. Substantiate a minimum of three (3) years of experience in the field of energy-related capital improvements and developing energy conservation measures.
- B. Substantiate the Contractor has on-staff and identify a full time Professional Engineer (P.E.) licensed to practice in Pennsylvania as well as a full time Certified Energy Manager (C.E.M). Note that a single individual may possess both credentials and satisfy this requirement.

To demonstrate that the above requirements are satisfactorily met, the Contractors **must** submit a company overview providing a brief business history outlining the length of time in business, an outline of the management and operational structure, including number of senior staff professionals and other staff professionals, as well as resumes of key staff professionals who have experience energy related capital improvements and guaranteed energy savings projects.

RFQ PROCEDURES: The DGS Energy and Resource Management Office will issue RFQs for this ITQ on behalf of Commonwealth agencies. Each RFQ will be issued to all Qualified Contractors for the applicable Service Category.

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**Commonwealth of Pennsylvania
Invitation to Qualify for the Guaranteed Energy Savings Program**

PART I-A – STATEMENT OF WORK: GENERAL

1. **Purpose:** The purpose of this Invitation to Qualify (ITQ) is to qualify responsible and responsive contractors to provide services necessary to facilitate, manage, and complete projects executed under the Commonwealth’s Guaranteed Energy Savings Act (GESA). These GESA Projects involve the design and implementation of energy-related improvements, referred to herein as Energy Conservation Measures (ECM), at no up-front cost to the Commonwealth.

This ITQ will result in a contract that is the first step of a two-step procurement process. Only those contractors that respond to this ITQ and that the Department of General Services (“Department”) determines to be qualified (“Qualified Contractors”) and thus awarded a contract will be eligible to participate in the second step.

The second step involves the issuance of Requests for Quotes (“RFQ”) to the Qualified Contractors. Through this two-step process, Commonwealth agencies will offer Qualified Contractors the opportunity to submit their proposals for specific projects considered under the GESA Program.

2. **Scope of Work:** Through this ITQ Contract, the Commonwealth will issue RFQs on an as-needed basis in order to secure the services of a contractor to design, and implement GESA Projects at specified Commonwealth facilities. For each Project, the Commonwealth will issue an RFQ to the qualified contractors under the GESA Contracting Services category of this ITQ. A single GESA Contractor will be selected through the RFQ process for the Project, which will involve the design and implementation of a full range of ECMs at the specified facility or group of facilities.

When desired due to the size and/or complexity of a Project, the Commonwealth may elect to secure the services of an Energy Consultant to monitor the work of the GESA Contractor and to provide management and oversight for the Project. The Commonwealth will secure the services of this Consultant by issuing an RFQ to the qualified contractors under the GESA Project Consulting Services category of this ITQ.

ECMs may include, but are not limited to, design, acquisition, installation, and modification measures that reduce energy consumption and related costs associated with heating, ventilation, and air conditioning (HVAC) systems, lighting systems, control systems, hot water systems, building envelope, water consumption, sewage, and other energy-using equipment or systems. Additionally, savings which will not reduce consumption per se but are aimed at reducing cost, such as fuel switching, demand side management, on-site generation, utility bill auditing, utility rate changes, and distribution upgrades may be considered. ECMs may also include the training of facility staff with respect to routine maintenance and operational improvements.

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The ECMs must result in a guaranteed minimum cost savings to be accrued on an annual basis. These cost savings shall fully offset the project costs incurred by the Commonwealth. The payments for the project shall be linked to the actual documented energy and cost reductions achieved.

3. **Issuing Office:** This ITQ is issued by the Commonwealth of Pennsylvania, Department of General Services, Bureau of Procurement. The Issuing Office is the sole point of contact in the Department for this ITQ

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4. **Addendum to ITQ:** If it becomes necessary to revise any part of this ITQ, an addendum will be executed and posted to the Department Website, www.emarketplace.state.pa.us.
5. **Alternate Proposal:** The Department will not accept alternate proposals to this ITQ. Alternate proposals are those that are provided in a form other than that specified by the Department.
6. **Rejection of Proposals:** The Department reserves the right to reject any and all proposals received as a result of this ITQ.
7. **Incurring Costs:** The Department is not liable for any costs or expenses incurred in the preparation and submission of a proposal received as a result of this ITQ or subsequent RFQs received for a particular GESA Project.
8. **Term of Contract:** The term of the Contract shall commence on the Effective Date and shall end when terminated by the Commonwealth pursuant to the Contract Clause "Termination" herein. This is an "evergreen" contract with no predetermined end date.
9. **Definitions:** The following definitions apply to the words and phrases used in this ITQ Contract.

Application for Payment: The document (DGS Form GSC-17) submitted by the Contractor to the Funding Agency for review and/or approval of the release of payment by the Financer or Escrow Agent.

As-Built Record Drawings: Terminology used by DGS to identify contract prints or drawings, corrected with suitable markings to show all changes or variations from the

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original contract drawings, including all items uncovered during the Work and show details of the work as actually built, including but not limited to horizontal and vertical dimensional references of all concealed pipe, conduit and other lines and equipment and similar items. As-built record drawings are not “Record Drawings”, which is terminology used by DGS to describe the revised set of construction documents (also referred to as L&I Record Drawings) which the Contractor is responsible for submitting to the Pa. Department of Labor and Industry for approval of changes made during construction that are not in accordance with the approved design documents.

Assured Performance Guarantee: A component of a GESA Contract through which the GESA Contractor defines and guarantees the energy and/or cost savings to be achieved by the installed ECMs for the Project. The Assured Performance Guarantee also includes:

- The requirements for the Measurement & Verification of the energy and/or cost savings achieved by the Project ECMs
- The process through which a shortfall or surplus in the guaranteed savings are to be resolved financially between the GESA Contractor and Funding Agency

Change Order: A written order signed by the Funding Agency directing the GESA Contractor to make necessary adjustments to the ECM(s) of a Project due to unforeseen conditions. A Change Order shall not increase the total cost of a GESA Contract. Any expenditures resulting from a Change Order will be covered with Project contingency funds. A Change Order may be issued with the consent of the GESA Contractor or a unilateral order by the Funding Agency (after notifying the DGS Energy and Resource Office.)

Contract Bonds: The bonds required by the GESA Contract which must be executed by one or more surety companies legally authorized to do business in the Commonwealth of Pennsylvania including, but not limited to, bonds for the faithful performance of the contract and for payment of labor and material, as required by DGS.

Contract Completion Date: Date in the GESA Contract for completion of the Work.

Contract Sum: The total amount payable by the Commonwealth to the GESA Contractor for the performance of the Work under the GESA Contract.

DGS: The Department of General Services of the Commonwealth of Pennsylvania. DGS is both the Issuing Office of this ITQ Contract and the administrator for the GESA Contracts as described further in Section 11.

DGS Energy Consultant: The Qualified Contractor(s) for the GESA Project Consulting Services category of this ITQ that may submit proposals to act as agent for DGS and the Funding Agency in administering a Project.

ECM: Energy Conservation Measure. A program or facility alteration designed to reduce energy consumption or operating costs, as defined in 62 Pa.C.S. §3752, as amended.

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ESCO: An energy service company or energy savings company. This term is often used synonymously with a GESA Contractor. Where the term “ESCO” is used herein or in a subsequent RFQ, it shall be interpreted to reference a GESA Contractor.

Funding Agency: The agency of the Commonwealth that operates the facility where a GESA project will occur. The Funding Agency will sign the GESA contract on behalf of the Commonwealth and manage the Project.

GESA Contractor: The Qualified Contractor(s) for the GESA Contracting Services category of this ITQ that may submit proposals for various Commonwealth GESA projects

GESA Contract: The Purchase Order awarded to a Qualified GESA Contractor through the RFQ process for a Project. The GESA Contract represents the entire and integrated agreement between all parties to a Project and shall include, but not be limited to, the following, listed in no particular order:

- The Request for Quote, inclusive of all appendices
- The GESA Contractor’s proposal submitted in response to the RFQ
- The Contract Bonds
- The Payment Schedule for the GESA Contractor
- The Payment Schedule for the DGS Energy Consultant (If Applicable)
- The GESA Contractor’s Assured Performance Guarantee
- The Design Documents, Contract Drawings, and specifications created by the GESA Contractor, including all changes made during the time between the selection of the GESA Contractor and the execution of the GESA Contract
- Any approved Change Orders
- This ITQ
- Any and All Addenda to this ITQ.

Unless specified otherwise in an RFQ, the GESA Contract shall be issued in the form of a Purchase Order including the items listed above either as attachments or as incorporated by reference and shall be approved by the Commonwealth electronically.

GESA Project: A project completed under the provisions of the Commonwealth’s Guaranteed Energy Savings Act and executed through this ITQ Contract. A GESA Project, otherwise referred to herein as a Project, is funded by the anticipated savings generated by the installed ECMs.

Investment Grade Audit (IGA): The comprehensive energy audit completed after a GESA Contractor is selected via RFQ to complete a Project. The purpose of this audit is to evaluate the ECMs proposed for the Project, identify the energy and/or cost savings to be achieved by these ECM’s, and to finalize the scope of work for the Project.

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ITQ Contract: The contract awarded to all contractors that responded to the ITQ and are found responsible and responsive and thus qualified to facilitate, manage, and complete GESA Projects.

Labor & Industry: The Commonwealth of Pennsylvania's Department of Labor & Industry, also referred to as "L&I"

Notice of Award: The notification provided to a GESA Contractor selected in response to an RFQ issued for the GESA Contracting Services category or to an Energy Consultant selected in response to an RFQ issued to for the GESA Project Consulting Services category. The Notice of Award shall constitute the selected contractor's notice to proceed with the work and/or services specified in the RFQ.

Project Manager: The GESA Contractor's person responsible for direct supervision of the Project, including all design and construction, in accordance with a GESA Contract. The Project Manager is responsible for continuous contract operations including supervision, coordination, and completion of all of the Work. The Project Manager shall have full authority to act on behalf of the GESA Contractor in relation to Project activities and associated work.

Record Drawings: Also referred to as L&I Record Drawings. The revised set of construction documents the GESA Contractor is responsible for submitting to DGS, the Funding Agency, and L&I for approval of changes made during construction of a Project that are not in accordance with the Design Documents.

Request for Quotes (RFQs): The RFQ is a description of the services needed which provides Qualified Contractors with sufficient information that enables them to prepare and submit a proposal. Each RFQ will be deemed to incorporate the terms and conditions set forth in this Contract.

Specification: A description of the physical or functional characteristics or the nature of a construction item, including a description of any requirement for inspecting, testing or preparing a construction item for delivery. The specifications are a part of the GESA Contract and must be interpreted in conjunction with the other GESA Contract documents.

Subcontractor: A person or organization which has a contract with the Contractor to perform any of the work associated with a Project. The term subcontractor is referred to throughout this ITQ as if singular in number and means a subcontractor or its authorized representative.

Submittals: Administrative or technical information, including but not limited to, drawings, diagrams, illustrations, schedules, performance charts, brochures, catalog data, and other data that are prepared by the GESA Contractor or any subcontractor, manufacturer, supplier, or distributor, and which illustrate some portion of the Work or how it fits in relation to other parts of the Work.

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Substantially Complete: When the Work on the project is sufficiently completed in accordance with the GESA Contract and certified by DGS and Funding Agency so that the Project or specified part(s) of the Project can be used, occupied, or operated for its intended use.

Uniform Construction Code (UCC): Pennsylvania’s Uniform Construction Code (35 P.S. §7210.101 et seq.) that grants the Pennsylvania Department of Labor & Industry sole jurisdiction over state-owned buildings. A general description and important links can be found at <http://www.dli.state.pa.us> and clicking on the Building Codes Quick Link. The Contractor is responsible for compliance as set forth in the UCC, this ITQ Contract, and the GESA Contract for the Project.

Work: The construction and services required by the GESA Contract, whether completed or partially completed, including all labor, materials, equipment, and services provided or to be provided by a GESA contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project.

10. Service Categories: The categories of services to be provided through this ITQ are listed below.

A. **GESA Contracting Services:** The GESA Contractors qualified under this service category will have the opportunity to respond to RFQs for GESA Projects to be completed at Commonwealth facilities. The GESA Contractor shall design, construct, and implement ECMs in accordance with the requirements of this ITQ and the specifications of the applicable RFQ.

For minimum eligibility requirements, See Part II – Bid Requirements

B. **GESA Project Consulting Services:** When desired, DGS will engage the services of an energy consultant (referred to herein as the DGS Energy Consultant or Consultant) to act as an agent and authorized representative/designee for DGS and the Funding Agency in the management and oversight of all phases of a GESA Project. Contractors qualified under this service category will have the opportunity to respond to RFQs for these services.

For minimum eligibility requirements, See Part II – Bid Requirements

Information regarding the materials Contractors must submit in order to meet these qualification requirements can be found in Part IV of this ITQ. **Contractors are permitted to become qualified in either or both service categories. However, no contractor shall be permitted to function as both the GESA Contractor and the DGS Energy Consultant on a Project.**

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The GESA Contractor and the DGS Energy Consultant, on any given project, may not have any financial interest in one another. Depending on the Project and which service category RFQ is issued and awarded first, the winner of the RFQ for the second service category issued RFQ may not be awarded due to having a financial interest in the first, or vice-versa.

The Issuing Office reserves the right to add additional service categories considered within the scope of this ITQ at any time. Existing ITQ Contractors may seek qualification for the additional service category at any time by submitting a written request to the Issuing Office accompanied by the materials required for qualification for the applicable service category. Existing ITQ Contractors may drop a service category at any time by submitting a written request to the Issuing Office.

- 11. Roles of the Department of General Services:** The DGS Bureau of Procurement (BOP) is the Issuing Office for this ITQ as described in Section 3. In this role, BOP will review and evaluate ITQ proposals submitted by prospective contractors for responsiveness and contractor responsibility in accordance with the requirements of this ITQ Contract. BOP, at its sole discretion, will award a contract to those Contractors it has determined to be qualified.

The DGS Energy and Resource Management Office is responsible for the management and oversight of GESA Projects. In that role, the DGS Energy and Resource Management Office is solely responsible for issuing RFQs against this ITQ, the selection of GESA Contractors and Consultants (where applicable), and the management of all GESA Projects from start to completion. For the purposes of this contract, any reference hereafter to “DGS” shall be assumed to mean the DGS Energy and Resource Management Office.

- 12. RFQ Procedures:** The DGS Energy and Resource Management Office will issue RFQs to all Qualified Contractors in the applicable Service Category on an as-needed basis. The RFQ will include the location and description of GESA Project, the submissions required for the RFQ, and the criteria to be used to select the GESA Contractor or the Consultant for the Project.

Contractors will be notified electronically of any RFQs issued for the service categories in which they are qualified. Qualified Contractors must submit their proposal by the date and time specified for each RFQ to be considered for award.

Award will be made to the contractor whose proposal conforms to the requirements of the RFQ and provides the best value to the Commonwealth as determined by an evaluation committee. The criteria to be used in evaluating contractor proposals will be specified in the RFQ.

The DGS Energy and Resource Management Office will issue a Notice of Award by electronic mail to the selected contractor for the RFQ. This notice of award shall be official and binding and shall constitute the formal notice to proceed for the selected contractor to

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proceed with the Work or services specified in the RFQ. The issuance of a Commonwealth Purchase Order shall not be required to initiate performance under this ITQ Contract.

- 13. General GESA Project Overview:** A GESA Project will typically proceed as described below.
- A. DGS identifies a potential GESA project
 - B. If applicable, DGS issues an RFQ to the suppliers qualified under the GESA Project Consulting Services category to obtain the services of a contractor to perform the duties of the DGS Energy Consultant for the project
 - C. The DGS In-House Scoping Team develops the core ECMs for the project with the assistance of the DGS Energy Consultant, if applicable.
 - D. DGS issues an RFQ to the contractors qualified under the GESA Contractor Services category to obtain the services of a GESA Contractor to design, construct, and implement the GESA Project.
 - E. The Project Scoring Committee selects a GESA Contractor
 - F. The DGS In-House Scoping Team, Funding Agency, selected GESA Contractor and the DGS Energy Consultant (if applicable) will determine the scope of the Project.
 - G. The GESA Contractor performs the Investment Grade Audit to evaluate the proposed project scope.
 - H. The DGS In-House Scoping Team, the DGS Energy Consultant, and the Funding Agency review the results of the Investment Grade Audit and approve the final scope of the GESA Project
 - I. The GESA Contractor prepares the plans and specifications for the approved ECMs.
 - J. DGS, The Funding Agency, and the DGS Energy Consultant, if applicable, approve the final plans and specifications for the approved ECMs
 - K. DGS obtains financing for the GESA Project using a separate procurement vehicle independent of this ITQ Contract.
 - L. The Selected GESA Contractor is awarded a Purchase Order for the project, referred to herein as the GESA Contract.
 - M. The GESA contractor constructs the approved ECMs while the Funding Agency manages the Project with the assistance of the DGS Energy Consultant (if applicable).

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- N. After the construction of the Project is complete, the GESA Contractor provides three years of measurement and verification (M&V) services to evaluate the actual savings achieved by the ECMs vs. projections under the oversight of DGS, the Funding Agency and/or the DGS Energy Consultant, if applicable.
- O. If the expected savings, which are guaranteed via the GESA Contract, are not achieved, the GESA Contractor makes up the difference on an annual basis via either funds or equipment.

The details for each activity listed above will be outlined in the applicable RFQ. The GESA Contract will specify the total cost for each project and will outline the process for payments to be made to the GESA Contractor and, if applicable, the DGS Energy Consultant.

- 14. **Specifications for GESA Contracting Services:** See Part I-B – Statement of Work: GESA Contractor Services.
- 15. **Specifications for GESA Project Consulting Services:** See Part I-C – Statement of Work: GESA Project Consulting Services.
- 16. **Interaction Between the GESA Contractor and DGS Energy Consultant:** Unless specified otherwise in an RFQ, the selected GESA Contractor shall be the designer of record for the Project. Where applicable, the GESA Contractor will coordinate with the DGS Energy Consultant on the scope and design of ECMs for the project. The GESA Contractor shall construct the Project for the Funding Agency in accordance with the RFQ Documents. For Projects for which DGS utilizes the services of a DGS Energy Consultant, the selected GESA Contractor and the selected DGS Energy Consultant shall interact in accordance with the following:
 - A. The GESA Contractor is not an intended third party beneficiary of any agreement between DGS and the DGS Energy Consultant. Nothing in this ITQ Contract or any subsequent RFQ should be construed to authorize any person not a party to the agreement between DGS and the DGS Energy Consultant to maintain any lawsuit involving the agreement between DGS and the DGS Energy Consultant.
 - B. The GESA Contractor shall consider and assume that any approval or authority exercised by the DGS Energy Consultant shall be deemed to have been given by the DGS Energy and Resource Management Office.
 - C. The DGS Energy Consultant shall provide the GESA Contractor with a list of its principal staff assignments for the Project prior to the commencement of Work by the GESA Contractor.
 - D. The DGS Energy Consultant shall maintain open communication with the GESA Contractor as it relates to clarification, interpretation, and other issues that may occur during the course of a Project.

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- E. Unless specified otherwise in an RFQ, the DGS Energy Consultant shall have no authority to relieve the GESA Contractor of any of the obligations established by the applicable RFQ and this ITQ Contract.
 - F. If an emergency occurs affecting the Work or adjoining property, the DGS Energy Consultant may, at its sole discretion, instruct the GESA Contractor to execute all such Work or to do all such things as may be necessary to abate or reduce the risk.
 - G. The DGS Energy Consultant's assigned Project Manager will be responsible for the construction management of the applicable Project and shall be fully vested by DGS and the Funding Agency with the level of authority required to perform these duties.
 - H. Wherever during the course of a Project, the DGS Energy Consultant is required to exercise discretion, it shall exercise such discretion impartially in accordance with this ITQ Contract and the applicable RFQ.
 - I. The DGS Energy Consultant is authorized to recommend the rejection of Work that does not conform to this ITQ Contract or the RFQ Documents. Neither the Consultant's authority to make recommendations under this paragraph, nor any decision made by the DGS Energy Consultant in good faith to either exercise or not to exercise such authority shall give rise to any duty or responsibility of the Consultant to the GESA Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.
 - J. Neither the GESA Contractor nor the DGS Energy Consultant will be permitted to make any changes to the scope or include any items in the design of a Project that will increase the Contract Amount without the prior written approval of DGS and the Funding Agency.
 - K. The DGS Energy Consultant is not responsible for the acts or omissions of the GESA Contractor, or any of its subcontractors or any of their agents or employees, or any other persons performing any of the Work for the GESA Contractor.
- 17. Payment Process for GESA Contracting Services:** Payments to the GESA Contractor will be made based on an installment payment schedule contained in the GESA Contract for the project. During the progress of the work on a Project, the GESA Contractor will submit Applications for Payment to the Funding Agency for review and approval. If acceptable, the Funding Agency will approve the Application for Payment and direct the provider of the financing for the project to issue the applicable payment to the GESA Contractor.
- A. **Withholding of Payment:**
 - 1) The Funding Agency may decline to approve an Application for Payment or decline release of payment on a previously approved Application for Payment in whole or in part for deficiencies in the work including but not limited to:

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- a) Work having not progressed to the point as indicated in the GESA Contract
 - b) Work completed that is not of quality or quantity specified in the GESA Contract
 - c) Reasonable doubt that the Work can be completed for the unpaid balance of the GESA Contract
 - d) Defective Work not remedied
 - e) Reasonable indication that the Work will not be completed within the schedule established by the GESA Contract
 - f) Unsatisfactory prosecution of the Work by the Contractor
 - g) Failure of the Contractor to maintain required insurance
 - h) Failure of the Contractor to submit proper documentation and forms as required by the GESA Contract.
- 2) If the Funding Agency declines to approve an Application for Payment from the GESA Contractor for any reason, it shall notify the GESA Contractor of the reason for withholding its approval within 15 days of its receipt of the Application for Payment.
- B. Non-Approval of Payment:** If the Funding Agency fails to approve release of payment to the GESA Contractor within 45 days of receipt of any acceptable Application for Payment, the GESA Contractor may file a claim for interest
- C. Final Payment:** The final payment to the GESA Contractor shall not become due until the Contractor submits the following to the Funding Agency and the Consultant (if applicable):
- 1) An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Funding Agency might in any way be responsible, have been paid or otherwise satisfied by the GESA Contractor.
 - 2) Statements from the GESA Contractor's Surety Company and the GESA Contractor's certificate on forms satisfactory to DGS as to the GESA Contractor's payment of all claims for labor, materials, equipment rentals, and public utility services.
 - 3) If required by the Commonwealth, other data establishing payment of satisfaction of all such obligations, such as receipts, releases and waivers of liens arising from the Project, to the extent and in such form as is designated by DGS. If any Subcontractor refuses to furnish a release or waiver, as required by DGS, the GESA Contractor may furnish a Bond satisfactory to DGS to indemnify DGS against any such lien. If any such lien remains unsatisfied after all payments are made, the GESA Contractor shall refund to DGS all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

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- D. **Final Payment as Waiver of Claims:** The release of final payment to the GESA Contractor shall constitute a waiver of all claims by DGS or the Funding Agency, except those arising from:
- 1) Unsettled claims
 - 2) Faulty, nonconforming, or defective work or material
 - 3) Failure of the work or material to comply with the requirements of this ITQ Contract or the GESA Contract for the Project
 - 4) Terms of any special warranties and/or special guarantees required by this ITQ or the GESA Contract for the Project.
- E. **Acceptance of Final Payment as Waiver of Claims:** The acceptance of final payment by the GESA Contractor shall constitute a waiver of all claims by the GESA Contractor against the Commonwealth related to the Project.
- F. **Early Release of Final Payment:** If Final Inspection is materially delayed through no fault of the GESA Contractor, the Funding Agency shall, upon certification by the DGS Energy Consultant, make payment of the balance due for the portion of the Work fully completed and accepted by the Funding Agency. Such payment will not complete the contract. If the remaining balance of the Work not fully completed or corrected is less than the retainage and if performance and payment bonds have been furnished as required, the GESA Contractor shall submit to the Funding Agency, prior to certification of the payment, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted by Funding Agency. Such payment shall be made under the terms and conditions governing final payment, except that it does not constitute a waiver of any of claims against the GESA Contractor.
- G. **No Estoppel or Waiver of Legal Rights:** The Funding Agency is not precluded or estopped by the measurements or the release of Applications for Payment made or given by the Funding Agency from showing the true and correct amount and character of the Work performed and materials and equipment furnished by the GESA Contractor. The Funding Agency may show, at any time, that any such measurements or approvals of release of Applications for Payment are untrue or incorrectly made in any particular, or that the Work or materials, equipment or any parts thereof do not conform to the specifications and the Contract. The Funding Agency may reject the whole or any part of the aforesaid Work or materials and equipment if the measurements or approval of release of Applications for Payment are found or become known to be inconsistent with the terms of the Contract, or otherwise improperly given. The Funding Agency may, notwithstanding any such measurements or approval of release of Applications for Payment, demand and recover from the GESA Contractor, its surety, or both, such damages as the Funding Agency may sustain by reason of the GESA Contractor's failure to comply with the terms of the specifications and the Contract, or on account of any overpayments made on any approved for release Application for Payment. Neither the acceptance by the Funding Agency nor any certificate accepted for payment of

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money, nor any approval for release of payments, nor acceptance of the whole or any part of the Work by the Funding Agency nor any Extension of Time, nor any position taken by the Funding Agency operates as a waiver of any portion of the Contract or any power herein reserved by the Funding Agency or any right to damages. A waiver of any breach of the Contract will not be held to be a waiver of any other or subsequent breach.

- H. For projects not proceeding beyond the Investment Grade Audit stage, at its sole discretion, the Commonwealth may elect to pay a GESA Contractor for the production of an Investment Grade Audit that meets the requirements of the RFQ. An IGA not meeting the requirements stated in the RFQ will not be considered or paid for.

- 18. **Payment Process for GESA Project Consulting Services:** Where applicable, the GESA Contractor shall be responsible for making payments to the DGS Energy Consultant from the funds allocated for the Project. The total amount to be paid to the Consultant will be based on a percentage of the total value of the GESA Contract and paid in installments at predetermined milestones during the course of the Project. The total value and schedule of payments to the DGS Energy Consultant will be specified in the RFQ used to secure the services of the Consultant for the applicable Project and formalized in the GESA Contract.

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PART I-B – STATEMENT OF WORK: GESA CONTRACTING SERVICES

The GESA Contractor will be responsible for the design, construction, and implementation of the approved ECMs for GESA Projects as described herein.

1. **Roles and Responsibilities of GESA Contractor:** Unless specified otherwise in an RFQ, the following shall be the roles and responsibilities of the GESA Contractor for all Projects initiated through this ITQ Contract
 - A. **Supervision and Construction:** The GESA Contractor shall be solely responsible for all construction means, methods, techniques, procedures, and safety programs in connection with the work for a Project.
 - B. **Coordination of the Work:** The GESA Contractor shall be solely responsible for the coordination of the Work, ensuring proper function and sequence to avoid delays.
 - C. **Coordination of Subcontractors:** The GESA Contractor shall be responsible for all acts of its subcontractors utilized for the Project and for their compliance with all provision of this ITQ Contract and the applicable RFQ. The Contractor shall be responsible for coordinating the work of its subcontractors to ensure adherence to project timelines.
 - D. **Provision of Labor and Materials.** The GESA Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of a Project.
 - E. **Compliance with Applicable Laws, Ordinances, and Regulations:** The GESA Contractor shall comply with all applicable laws, ordinances, regulations, rules, and orders of any public authority applicable to the Project. The GESA Contractor shall have language in all its contracts with all its subcontractors requiring compliance with the same.
 - 1) All projects are subject to the Pennsylvania Construction Code Act (PCCA) and the Uniform Construction Code Statute (UCC)
 - 2) The GESA Contractor shall ensure that all work performed for the Project complies with all federal, state, and local environmental laws and regulations.
 - F. **Permits and Fees:** The GESA Contractor shall obtain and pay for all necessary permits, licenses and certificates required by law for the proper execution and completion of the Project. Note that per the UCC, all state-owned facilities fall under the jurisdiction of the Commonwealth’s Department of Labor & Industry (L&I) for

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plan review and inspection. Consequently, the Contractor will not be required to obtain any building permits from local authorities.

2. **Project Design:** Unless specified otherwise in an RFQ, the GESA Contractor shall provide all Architectural and Engineering services required through completion of a Project, including but not limited to civil, electrical, mechanical, and structural engineering services. The GESA Contractor shall be the designer of record. As such, the GESA Contractor shall:
- A. Prepare and submit for review and approval, all documents, applications, and other submittals as required by DGS and any other governmental agency (Local, State, or Federal) having jurisdiction over the Project.
 - B. Prepare drawings, specifications, and other documentation and supporting information in accordance with the specifications of the applicable RFQ.
 - C. If applicable, keep the local government informed about the Project and comply with any applicable requirements of local zoning, planning, and supervisory bodies.
 - D. Consult with the Funding Agency, and the DGS Energy Consultant (if applicable) to obtain all necessary data for coordinating the Project with existing structures and all support utilities. The GESA Contractor shall verify information provided in the RFQ for the Project regarding the various public services and utility companies, such as natural gas, electric, water, steam, wastewater treatment/disposal, surface water disposal, and telephone/communications.
 - E. Consult with the Funding Agency regarding any correlation of design with future planning.
 - F. Prepare drawings, specifications, and other documentation and supporting information in connection with Change Orders as required.
 - G. Submit to DGS, the Funding Agency, and L&I, a revised set of Design Documents for approval for changes made during construction that are not in accordance with the original design documents. This revised set of construction documents shall be referred to as “L&I Record Drawings” and shall be submitted in accordance with L&I UCC requirements.
 - H. Submit As-Built Record Documents showing all changes or variations from the original contract drawings and specifications made during the course of construction. These drawings shall indicate all items uncovered during the Work and show details of the work as actually built, including but not limited to horizontal and vertical dimensional references of all concealed pipe, conduit and other lines and equipment and similar items. Recorded changes shall be obtained from clearly marked field prints provided by the construction contractors and field office and from change orders.

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I. Prior to Final Inspection of the Project, assemble a final draft of the Operation and Maintenance Instructions Manuals.

3. **Construction Documents:** All drawings, specifications, and other documents prepared by the GESA Contractor for a Project shall comply with all applicable laws, statutes, ordinances, codes, orders, and rules and regulations in effect at the time of the Project.

Any errors or omission on drawings, specifications, or other documents furnished for a Project by the GESA Contractor shall be promptly corrected by the GESA Contractor at no cost to DGS, the Funding Agency, or the DGS Energy Consultant (if applicable). Nothing contained in this ITQ or in the applicable RFQ shall preclude a claim by DGS or the Funding Agency against a GESA Contractor for damages arising from errors or omissions on drawings specifications, or any other documents furnished by the GESA Contractor in connection with a Project. DGS or Funding Agency's approval, acceptance, use of, or payment for all or any part of the GESA Contractor's services for the Project shall not in any way alter the GESA Contractor's obligations or the DGSs or Funding Agency's rights hereunder.

All final drawings and specifications, and all other data compiled by the GESA Contractor shall be the sole property of the Commonwealth and may be used by the Commonwealth for any desired purpose at no cost.

4. **Easements and Rights of Access:** DGS will confirm Commonwealth ownership of land within the limits of each Project. If Commonwealth land is insufficient for the erection of temporary construction facilities and storage of materials needed for a Project, DGS shall provide easements and space as DGS deems necessary. DGS will only, if necessary and appropriate and upon proper notice, provide utility easements across Commonwealth land at the project site.

DGS and its designees shall at all times be provided full access to any area DGS deems necessary in order to observe the Work. The Contractor shall provide the facilities for such access so DGS may perform its functions under the Contract Documents

5. **Recycled Material Requirements:** The GESA Contractor may be required to meet certain requirements for the use of recycled materials for a Project. Any such requirements will be specified in the RFQ for the Project.

6. **Subcontractors:** Unless specified otherwise in an RFQ, the following shall apply to all Subcontractors utilized by the GESA Contractor for a Project.

A. **Approval of Subcontractors:** For each project, the GESA Contractor shall submit for approval by DGS, the names of all Subcontractors to be utilized for a Project. The GESA Contractor is not permitted to replace any Subcontractor previously approved by DGS without the approval and acceptance of DGS.

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- B. **GESA Contractor Interest in Subcontractor:** Pursuant Part VI, Section 48, Contractor Integrity Provisions, a GESA Contractor may not have a financial interest in any other Contractor, subcontractor, or supplier providing services, labor, or material on a Project except with the consent of the Commonwealth. For each Project, the GESA Contractor shall disclose the names of all proposed Subcontractors in which the GESA Contractor has financial interest. The failure of the GESA Contractor to disclose the names of any such Subcontractor may result in the termination of a GESA Contract for the applicable Project and/or the termination of the GESA Contractor's ITQ Contract.
- C. **Subcontract Requirements:** All Work performed for the GESA Contractor by a Subcontractor shall be done pursuant to a written subcontract between the GESA Contractor and its Subcontractor signed by both parties. Upon request, the GESA Contractor shall provide copies of any or all of the written subcontracts with its Subcontractors for a Project to DGS. All subcontracts shall include the following:
- 1) The amount the Subcontractor is to be paid
 - 2) The scope of Work to be performed by the Subcontractor
 - 3) A statement requiring that such Work be performed in accordance with the requirements of this ITQ and the applicable RFQ.
 - 4) Language requiring the Subcontractor to comply with the provisions of the Public Works Employment Verification Act (43 P.S. §§ 167.1 – 167.11) prior to the commencement of on-site or off-site Work. This Act requires subcontractors to utilize the Federal E-Verify program to verify the employment eligibility for every new employee hired after January 1, 2013 and to submit to DGS a Commonwealth Public Works Verification Form available on the Department's web site at www.dgs.pa.gov.
 - 5) Language requiring the Subcontractor to comply with the Pennsylvania Prevailing Wage Act and the Enhanced Minimum Wage Provisions.
- D. The GESA Contractor shall be required to submit copies of all purchase orders issued by it to Small Diverse Businesses to the DGS Bureau of Diversity, Inclusion, and Small Business Opportunities.
- E. Nothing contained in this ITQ, any subsequent RFQ, or related contracts shall create any contractual relationship between DGS or the Funding Agency with any Subcontractor. Nothing in this ITQ, subsequent RFQ, or related contracts should be construed to authorize any person not a party to the GESA Contract to maintain any lawsuit involving that GESA Contract, except otherwise provided by law.
- F. **Payments to Subcontractors:** The GESA Contractor is solely responsible for payments to its Subcontractors.
- 1) Neither DGS nor the Funding Agency, nor the DGS Energy Consultant, where applicable, shall have any obligation to pay or to ensure the payment of any moneys to any Subcontractor, except as may otherwise be required by law.

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- 2) Payments by the GESA Contractor to its Subcontractors are subject to the provisions of the Commonwealth Procurement Code (62 Pa. C. S. §3931 et seq.) also known as the “Prompt Payment Schedule”. The general description set forth in the this ITQ Contract does not relieve the GESA Contractor from strict compliance with the requirements of the Prompt Payment Schedule. Nothing described in this ITQ, subsequent RFQ, or related contracts are is intended to impose a duty greater than that imposed by the Prompt Payment Schedule.
- 3) If the Funding Agency or the DGS Energy Consultant, where applicable, does not approve the release of some or all of an approved Application for Payment for any cause which is the fault of the GESA Contractor and not the fault of a particular Subcontractor, the GESA Contractor shall pay that Subcontractor, upon demand made by the Subcontractor at any time after the approved Application for Payment should otherwise have been issued, for its Work to the extent completed, less the retained percentage.
- 4) If the GESA Contractor withholds payment from a Subcontractor due to a deficiency item identified by DGS or the Funding Agency, the GESA Contractor shall notify the Subcontractor and the DGS Energy Consultant (if applicable) within 15 days of the date the GESA Contractor was notified of the deficiency.

G. As Subcontractors do not have privity of contract with DGS or the Funding Agency and are thus unable to pursue a claim directly against the Commonwealth, the GESA Contractor agrees to require its Subcontractors to submit all claims for extras, for extensions of time, or for damages to the GESA Contractor.

7. **Compliance with Safety Laws:** The GESA Contractor shall comply at all time with all applicable Federal, Commonwealth, and local laws, ordinances, rules, regulations, and orders of any public authority having jurisdiction for the safety of persons or property and to protect them from damage, injury, or loss. The GESA Contractor shall be responsible for payment of all fines and/or claims for damages levied for deficiencies relating to conduct of the GESA Contractor’s work.
8. **Insurance Requirements for GESA Contractors:** Unless specified otherwise in an RFQ, the Selected GESA Contractor shall be required to meet the following minimum insurance requirements for each Project.
 - A. The GESA Contractor shall be required to purchase the following insurance for each Project to protect it from any claims that may arise from the Work performed for a Project either by it or its Subcontractors
 - 1) Worker’s Compensation insurance
 - 2) Comprehensive general liability insurance
 - 3) Comprehensive automobile liability insurance.
 - 4) Excessive liability insurance
 - 5) Comprehensive product and completed operations insurance

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- B. The GESA Contractor shall do either of the following pertaining to the insurance requirements for its Subcontractors:
 - 1) Require its Subcontractors to procure and maintain for the duration of its subcontract, insurance of the same types listed in Section 8A above and for the same amounts required of the GESA Contractor for the Project
 - 2) Insure the activity of its Subcontractors on its own policy

 - C. The Contractor shall, until all physical on-site work is complete, maintain insurance on all insurable work included in the GESA Contract against loss or damage by fire and lightning and those perils covered by the extended coverage endorsement. This insurance must include Builder's Risk Insurance or an installation floater that covers all risks and must be in the names of DGS and the GESA Contractor in full insurable value thereof as will fully protect the interests of DGS and the Commonwealth, the GESA Contractor, and its Subcontractors.

 - D. Additional insurances may be required on a Project by Project basis due to special conditions or hazards. Any such additional insurance requirements will be specified in the RFQ for the project.
9. **Project Change Orders:** Change Orders for GESA projects DO NOT change the total GESA Contract Sum. DGS or the Funding Agency, may direct changes in the Work within the general scope of the GESA Project, consisting of additions, deletions, or other revisions as described herein:
- A. All Change Orders will require the approval of the Funding Agency (after notifying DGS).

 - B. **Types of Change Orders:**
 - 1) Field Order: Any change to the GESA Contract that meets both of the following:
 - a) The GESA Contractor, DGS, and the Funding Agency agree that the change constitutes neither a net additional nor deductible cost to the GESA Contract.
 - b) The change consists of a minor relocation, substitution, or revision to the GESA Contract that does not constitute a significant design change and does not need to be documented by a revision to the Project drawings or specifications.
 - 2) Change Order: Any change to the GESA Contract that does not meet the criteria of a Field Order. A Change Order may only be requested by a GESA Contractor or DGS.

 - C. **Change Order Process Overview:**
 - 1) The GESA Contractor will be required to describe the unforeseen condition leading to the requested change to the original GESA Contract. This

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description should include all reference drawings, sketches, and specifications needed to define the scope of the Change Order.

- a) When any new work is requested in lieu of work specified by the original GESA Contract, the GESA Contractor shall clearly define both the new work and the work originally specified.
 - b) The GESA Contractor shall reference any ECM impacted by a proposed Change Order.
- 2) The GESA Contractor, and any subcontractor if applicable, shall be required to provide a detailed breakdown of the costs of the requested Change Order. This breakdown shall include a detailed description of the additional costs in the following areas:
- a) Material
 - b) Labor
 - c) Equipment
 - d) Subcontractors
- 3) Upon review and approval, either DGS or the Funding Agency will issue a written approval letter for the Change Order to the GESA Contractor
- D. A debit Change Order will only be approved for unforeseen conditions. No Change Orders will be approved other than for unforeseen conditions except when the change order results in a credit to the Funding Agency.
- E. **A Change Order shall not increase the total cost of the GESA Contract for a Project. All costs associated with a Change Order will be covered by the contingency funds for the Project.**
- F. When a Change Order is deemed necessary, the Funding Agency and the GESA Contractor shall endeavor to mutually agree upon the cost or credit associated with the change. If the Funding Agency and the GESA Contractor cannot agree as to the cost or credit resulting from the Change Order, the Funding Agency shall determine the cost or credit and direct the GESA Contractor to proceed with the Change Order work accordingly. The GESA Contractor may submit the disputed cost to the Funding Agency for re-evaluation in accordance with the Part VI Section 28, Disputes.
- G. DGS may direct the GESA Contractor to commence Change Order work prior to a fully executed Change Order. Such direction will not be given until DGS generates the scope and confirms that funding is available to complete the Change Order work.
- H. The GESA Contractor shall make no claim for increased costs, charges, expenses, or damages of any kind for any delays or hindrances during the progress of any portion of a Project for any cause whatsoever, including but not limited to strikes, walk-outs, or work stoppages, except as provided in this ITQ Contract and the applicable RFQ.

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The Funding Agency may address any such delays by extending the time for completion of the Project at its discretion.

10. **Non-Conforming Work and Corrections:** DGS, the Funding Agency and/or the DGS Energy Consultant (if applicable) reserve the right to reject any Work performed by the GESA Contractor as defective or as failing to confirm to this ITQ Contract or applicable RFQ documents.
- A. The GESA Contractor shall promptly correct any rejected work upon notification. The correction must be implemented regardless of when such Work is observed or if the Work has been paid for.
 - B. Upon notification, the GESA Contractor shall promptly correct any Work found to be defective or nonconforming after the date of final inspection and acceptance for the Project except when DGS and/or the Funding Agency have previously given the GESA Contractor a written acceptance of the specific condition. The approval of a payment to the GESA Contractor does not constitute written acceptance of the specific condition.
 - C. At its discretion, the Funding Agency is permitted to knowingly accept nonconforming work instead of requiring its removal and/or correction. If nonconforming work is accepted under this condition, the GESA Contractor shall request a credit Change Order to reflect an appropriate reduction in the GESA Contract Sum, or issue payment to the Funding Agency and/or Financing Company.
 - D. All defective or nonconforming work shall be corrected to comply with the Contract Documents at no cost to the Commonwealth.

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11. **Project Closeout/Final Inspection:** Project Closeout consists of a Final Inspection, through which DGS, the Funding Agency, and/or the DGS Energy Consultant (if applicable) will determine whether the Project is substantially complete.
- A. It shall be the GESA Contractor's responsibility to request Final Inspection for a Project. The Final Inspection should be completed within 15 days of request by the GESA Contractor.
 - B. DGS, the Funding Agency, and/or the DGS Energy Consultant (if applicable) have the sole authority to determine whether the Project is ready for Final Inspection and will conduct the Final Inspection. The GESA Contractor or an authorized representative must be present throughout the duration of the Final Inspection.
 - C. The GESA Contractor shall be required to obtain required occupancy permits from L&I prior to Final Inspection
 - D. If DGS, the Funding Agency, and/or the DGS Energy Consultant (if applicable) all concur that the Project is at substantial completion, a certificate of completion and final certificate for payment shall be issued to the GESA Contractor. In such case DGS, the Funding Agency, and/or the Consultant shall provide the GESA Contractor at the Final Inspection with a list of uncompleted items, referred to herein as a Punch List.
 - E. The GESA Contractor shall complete all Punch List items within 30 calendar days of the Final Inspection
 - F. The Funding Agency will approve release of payment in full within 45 days of the submission of the final application. Payment of any amount withheld for the completion of the Punch List shall be paid upon completion of the items.
 - G. The GESA Contractor shall verify at Final Inspection that a complete set of As-Built Record Documents have been provided as described in Part II, Section 2, Item G above.
 - H. If the GESA Contractor does not complete all Punch List items or show just cause to the satisfaction of the Funding Agency why they cannot be completed, the Funding Agency may take action, including but not limited to correcting items and deducting the cost of completion from the amount retained or default the Contractor and pursue its surety for completion of the Work.
 - I. After successful Final Inspection, the Funding Agency may utilize the project and the warranty period shall commence.
12. **Suspension of Work:** DGS, The Funding Agency, and/or the DGS Energy Consultant (if applicable) are authorized to direct a temporary suspension of all or any portion of Work on

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a Project as outlined below. If Work is suspended as provided, the Funding Agency shall not be liable for any damages or lost anticipated profits and no automatic extension of the established completion date for the Project other than as specified below.

- A. **Suspension of Work due to Unfavorable Conditions or Weather:** Work is temporarily suspended due to the determination that the GESA Contractor takes on undue risk of damaging any part of the Project by proceeding with the Work during unfavorable weather or other adverse conditions not the fault of the GESA Contractor. Such a suspension shall be considered an excusable delay and a proper Extension of Time will be allowed.

 - B. **Suspension of Work due to the Convenience of the Commonwealth:** Work is temporarily suspended for the convenience of the Commonwealth for a period of time determined to be appropriate. If the temporary suspension for convenience is for an excessive period of time, an adjustment shall be made for any increase in the cost of the GESA Contractor's performance of the Project caused by the temporary suspension, excluding lost anticipated profits. No additional costs will be allowed to the extent:
 - 1) Work would have been concurrently suspended by any other cause, including weather, or the fault or negligence of the GESA Contractor
 - 2) An equitable adjustment for the time period encompassed within the suspension has been provided for or excluded under any other provision of the ITQ Contract or applicable RFQ.

 - C. **Suspension of Work due to the Fault of the GESA Contractor:** Work is temporarily suspended due to the failure of the GESA Contractor to comply with the orders of DGS, the Funding Agency, and/or the DGS Energy Consultant (if applicable).

 - D. **Resumption of Work:** The GESA Contractor shall resume full operations within 10 days' notification of the lifting of a temporary suspension by DGS, the Funding Agency, and/or the DGS Energy Consultant (if applicable).
13. **Bond Requirements:** The GESA Contractor must furnish the following within 10 days after award of a GESA Contract:
- A. **Performance Bond:** A performance bond at one hundred percent (100%) of the GESA Contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be executed by a surety company authorized to do business in the Commonwealth and made payable to the Commonwealth. The bond shall be solely for the protection of the contracting body which awarded the contract. The Commonwealth may require additional performance bond protection, should the cost of a project increase. If the Commonwealth requires an increase in the performance bond amount, the Contractor will be notified of this requirement through a written

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Change Notice and the Contractor will have ten (10) days to provide the new or increased Performance Bond.

- 1) Failure to furnish the required performance bond within the required ten (10) day time frame shall be considered a failure to perform a contractual obligation which may result in termination of the purchase order and award to another Contractor. In the event of termination and re-award for failure to provide performance bond, the Contractor shall be responsible for any increase in cost to the Commonwealth.
- 2) Where the Contractor does not comply with the requirements of the purchase order, the amount of the performance bond shall be paid to the Commonwealth as liquidated damages for the Contractor's failure to comply, or the Commonwealth may, at its sole option, sue the Contractor or its surety for the damages it has suffered for any breach of contract, in which case security held by the Commonwealth shall be applied as a credit in such suit for damages.

B. Payment Bond: The awarded Contractor must furnish a Payment Bond in an amount equal to one hundred percent (100%) of the purchase order amount. The payment bond must be executed by a surety company authorized to do business in the Commonwealth and made payable to the Commonwealth. The Commonwealth may require additional payment bond protection, should the cost of a project increase. If the Commonwealth requires an increase in the payment bond amount, the Contractor will be notified of this requirement through a written Change Notice and the Contractor will have ten (10) days to provide the new or increased payment bond.

- 1) The payment bond shall be conditioned on the prompt payment for all materials furnished or labor supplied or performed in the performance of the work. Labor and materials include public utility services and reasonable rentals of equipment for the periods when the equipment rented is actually used at the site.
- 2) A Payment Bond shall be solely for the protection of claimants supplying labor and materials to the awarded Contractor, or to any of its Subcontractors, in the performance of the work provided for in the contract.

14. Warranties – GESA Contractor: The GESA Contractor unconditionally warrants that all items furnished and all services performed by the GESA Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. The GESA Contractor warrants and agrees, after acceptance of the Work performed under a Project, to remedy without cost to the Commonwealth any such defect in the Work provided said defects in the judgment of the Funding Agency, or its successors having jurisdiction over the premises, are caused by defective or inferior materials, equipment, or workmanship. If the corrective work is not completed within thirty (30) days after the notification by the Funding Agency to the GESA Contractor, the Funding Agency may do the work and submit those costs to the GESA Contractor's Surety Company for reimbursement.

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- A. The GESA Contractor shall assign and deliver to Funding Agency all warranties for review as part of the Operations & Maintenance submission. The GESA Contractor will transfer the warranties to Funding Agency. The warranty provided in this Paragraph shall be in addition to, and not in limitation of, any other warranty or remedy provided by Law or by the Contract Documents.

- B. If there is a substitution of material, the GESA Contractor warrants that such installation, construction, material, or equipment will perform to the standard of the item originally specified. The GESA Contractor explicitly warrants the merchantability, and the fitness for use and quality of all substituted items provided for or by it.

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15. **Prevailing Wage Determination:** All Projects initiated through this ITQ Contract are subject to the provisions, duties, obligations, remedies and penalties of the Pennsylvania Prevailing Wage Act, 43 P.S. Sections 165-1 through 165-17 and its regulations 34 Pa. Code Sections 9.101 through 9.112, which are incorporated herein by reference as if fully set forth herein. The GESA Contractor selected for a Project shall comply with these provisions. The GESA Contractor shall pay no less than the wage rates including contributions for employee benefits as determined by the Secretary of Labor and Industry (hereinafter referred to in this paragraph as "Secretary") for each craft or classification of all workers needed to perform this contract during the term hereof for the county in which the work is to be performed. In compliance with said Pennsylvania Prevailing Wage Act, the Prevailing Minimum Wage Predetermination, as approved by the Secretary, will accompany the RFQ and made a part hereof.
- A. The provisions of this paragraph shall apply to all work performed on the contract by the GESA Contractor and to all work performed on the contract by all Subcontractors. The GESA Contractor shall insert in each of its Subcontracts all of these required contract provisions and stipulations contained in this paragraph and such other stipulations as may be required.
 - B. No worker may be employed on the public work except in accordance with the classifications set forth in the decisions of the Secretary. In the event that additional or different classifications are necessary, the procedure set forth in section 8 of the Act (43 P.S. § 165-8) and section 9.107 of the Act's Regulations (relating to petition for review of rates and hearings) shall be followed.
 - C. Workers employed or working on the public work shall be paid unconditionally, regardless of whether any contractual relationship exists or the nature of a contractually relationship which may be alleged to exist between a GESA Contractor, Subcontractor(s) and workers, at least once a week without deduction or rebate, on any account, either directly or indirectly, except authorized deductions, the full amounts due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in the contract, the Prevailing Wage Act or its Regulations prohibits the payment of more than the general prevailing minimum wage rates as determined by the Secretary to any worker or public work.
 - D. The GESA Contractor and each Subcontractor shall post for the entire period of construction the wage determination decisions of the Secretary, including the effective date of changes thereof, in a prominent and easily accessible place or places at the site of the work and at the place or places used by them to pay workers their wages. The posted notice of wage rates shall contain the following information:
 - 1) The name of project.
 - 2) The name of public body for which it is being constructed.

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- 3) The crafts and classifications of workers listed in the Secretary's general prevailing minimum wage rate determination for the particular project.
 - 4) The general prevailing minimum wage rates determined for each craft and classification and the effective date of changes.
 - 5) A statement advising workers that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the GESA Contractor or Subcontractor(s) are not complying with the act or the regulations in any manner whatsoever, the worker may file a protest in writing with the Secretary of Labor and Industry within three (3) months of the date of the occurrence, objecting to the payment by a Contractor to the extent of the amount due or to become due to them as wages for work performed on the public work project. A worker paid less than the rate specified in the contract shall have a civil right of action for the difference between the wage paid and the wages stipulated in the contract, which right of action must be exercised within six (6) months from the occurrence of the event creating the right.
- E. The GESA Contractor and Subcontractor(s) shall keep an accurate record showing the name, craft or classification, number of hours worked per day, and the actual hourly rate of wage paid including employee benefits, to each worker employed by the GESA Contractor or Subcontractor(s) in connection with the public work. The record shall include deductions from each worker. The record shall be preserved for two (2) years from the date of payment and shall be open at reasonable hours to the inspection of the public body awarding the contract and to the Secretary or the Secretary's authorized representatives.
- F. Apprentices shall be limited to numbers in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with The Apprenticeship and Training Act (43 P.S. §§ 90.1 – 90.10), approved July 14, 1961 and the regulations issued thereto shall be employed on the public work project. A worker using the tools of a craft who does not qualify as an apprentice within the provisions of this subsection shall be paid the rate predetermined for journeymen in that particular craft or classification.
- G. Wages shall be paid without deductions except authorized deductions. Employers not parties to a contract requiring contributions for employee benefits which the Secretary of Labor & Industry has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workers.
- H. Payment of compensation to workers for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain

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amount of work, or the production of a certain result shall be deemed a violation of the Act, regardless of the average hourly earnings resulting therefrom.

- I. The GESA Contractor and each Subcontractor shall file a statement each week and a final statement at the conclusion of the work on the contract with the contracting agency, under oath, and in form satisfactory to the Secretary, certifying that workers have been paid wages in strict conformity with the provisions of the contract. If wages remain unpaid, the Contractor or Subcontractor(s) shall set forth the amount of wages due and owing to each worker respectively. A copy of the form entitled "Contractor's or Subcontractor's Weekly Payroll Certification for Public Works Projects" shall be made available to the Contractor.

- J. Before final payment is made, a final wage certification must be submitted by the GESA Contractor and all Subcontractor(s).

Because the costs and location of each specific work assignment will vary, when applicable, the State or Federal wage determination will be provided by DGS personnel to the all Contractors for their technical and cost proposal preparation.

In accordance with the Pennsylvania Prevailing Wage Act of 1963, work assignments under the Contract estimated to be greater than \$25,000 that are one hundred percent (100%) state funded, are subject to the Prevailing Wage Act. Certified payrolls may be requested by DGS, or its designated representative, in accordance with Section 6 of the Act.

In accordance with the Davis-Bacon Act, for work assignments under this contract that are funded in any percent (%) with Federal dollars, the GESA Contractor is required to pay its employees, both contracted and subcontracted, federal prevailing wages on all Federal aid projects exceeding \$2,000, except those on roadways classified as local roads or rural minor collectors.

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**Commonwealth of Pennsylvania
Invitation to Qualify for the Guaranteed Energy Savings Program**

PART I-C – STATEMENT OF WORK: GESA PROJECT CONSULTING SERVICES

The DGS Energy and Resource Management Office and/or the Funding Agency will determine on a case by case basis if it is in the best interest of the Commonwealth to utilize the services of an energy consultant for a Project.

1. **Roles and Responsibilities of DGS Energy Consultant:** Unless specified otherwise in an RFQ, the Consultant shall perform the following duties when utilized for a Project:
 - A. Meet with DGS and the Funding Agency as needed to discuss the Funding Agency’s needs and to review the type of project contemplated.
 - B. Perform a Preliminary Energy Assessment (PEA) of the Funding Agency’s facility and prepare a written report with its findings. The PEA will determine the feasibility of completing a GESA Project at the facility. The PEA will include:
 - 1) An evaluation of energy consumption data and the calculation of an Energy Use Intensity (EUI) score for each facility or energy consuming system.
 - 2) An evaluation of the Funding Agency’s facility, building systems, and conditions to determine the opportunities for energy savings and to identify the Funding Agency’s priorities for system/building upgrades
 - 3) A determination of the potential size and scope of a GESA Project
 - 4) A conclusion as to the feasibility of performing a GESA Project
 - 5) A financial pro-forma identifying the financial aspects of the project and the cash flow throughout the project’s life.
 - 6) An identification of core Energy Conservation Measures (ECM) to be included in the GESA Contract
 - C. Assist the DGS Energy and Resource Management Office in the preparation of the RFQ for the proposed project.
 - D. Assist with the evaluation of GESA Contractor RFQ responses by performing the following:
 - 1) Assist in conducting interviews with GESA Contractors
 - 2) Clarify the scope and cost of GESA Contractor proposals
 - 3) Review the qualifications and experience of each GESA Contractor team
 - 4) Create a standard ECM matrix to fairly evaluate the core ECMs and any additional ECMs proposed by the GESA Contractors
 - E. Assist and advise regarding the financing for the project, if requested.
 - F. Advise the GESA Contractor during the design stage of the Project. Review the GESA Contractor’s drawings, plans, and specifications and provides comments to

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the DGS Energy and Resource Management Office and the Funding Agency. Review design documents to ensure they are prepared in compliance with all applicable laws, rules, regulations, and codes.

- G. Designate an individual as the Project Manager in charge of the Project
 - H. Provide construction, administration, and inspection services throughout the duration of the Project to ensure the work is completed in accordance with approved plans and the specifications of the GESA Contract.
 - I. Provide peer reviews of all architectural and engineering services performed by the GESA Contractor during the Project, including, but not limited, to reviews of civil, electrical, mechanical, and structural engineering services.
 - J. Review and advise DGS and the Funding Agency on proposed Change Orders
 - K. Prepare certificate(s) of substantial completion and assist the Funding Agency and the GESA Contractor in applying for grants, incentives, rebates, and other types of aid for the Project.
 - L. Review, certify, and recommend release of payment for all acceptable Applications for Payment submitted by the GESA Contractor, including final payment.
 - M. Supervise the GESA Contractor's measurement and verification and commissioning procedures to ensure that savings will be realized.
 - N. Assist the Funding Agency with the evaluation of actual energy savings realized by the Project for a period of three (3) years after the date of substantial completion. This may include:
 - 1) Participation in discussions and/or meetings with the Funding Agency and GESA Contractor
 - 2) The review of the GESA Contractor's measurement and verification procedures, calculations, and reports.
 - 3) Assisting the Funding Agency in recouping unrealized guaranteed savings, if any, from the GESA Contractor
2. **For each Project, the DGS Energy Consultant will be required to certify that it is free from financial interest in all qualified GESA Contractors that respond to the RFQ for the Project. The Consultant shall not have any interest, monetary or otherwise, and shall not be affiliated with the GESA Contractor for the applicable Project.**
3. **Subcontractors:** The DGS Energy Consultant may subcontract any portion of the Services described in this Part I-C to third parties selected by the Consultant and approved in writing by DGS and/or the Funding Agency, whose approval shall not be unreasonably withheld. Notwithstanding the above, if the Consultant has disclosed the identity of subcontractor(s)

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together with the scope of work to be subcontracted in its Proposal, DGS's issuance of a PO is deemed to be approval of all named subcontractors and a separate approval is not required. The existence of any subcontract shall not change the obligations of Consultant to DGS and the Funding Agency under this Contract. Upon request of DGS, the Contractor must provide a copy of the subcontract agreement(s) between the Consultant and the subcontractor(s). The Consultant will require all of its subcontractors to adhere to the terms and conditions of this Contract. The Consultant may not subcontract more than 49% of the total value of its Services for a Project/purchase order unless DGS approves a waiver in advance.

4. **Changes To a GESA Project Consulting Services Award:** At any time during the performance of awarded services, DGS or the Consultant may request a change to the awarded services, including the SOW, within the scope of the applicable RFQ. The Consultant will make reasonable efforts to investigate the impact of the requested change on the price, timetable, specifications, and other terms and conditions of the RFQ. Upon mutual agreement between DGS and the Consultant, both parties must complete and execute the Change Notice Form, which is provided via the ITQ web site at <http://www.dgs.internet.state.pa.us/ITQ/ITQLibrary/DocumentLibrary.aspx>, to modify the awarded services and implement the change. The Issuing Agency and Contractor will only request changes to the awarded services by way of the Change Notice Form. If the parties cannot agree upon the requested change, the change request will not be implemented and, if the Contractor initiated the change request it may elect to handle the matter in accordance with Part VI, Section 28, Disputes of this Contract.

5. **Insurance Requirements for DGS Energy Consultants:** The Consultant shall procure and maintain at its expense and/or require any of its subcontractors to procure and maintain, as appropriate, the following types of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:
 - A. Worker's Compensation Insurance for all of the Consultant's employees and those of any subcontractor engaged in performing Services in accordance with the Worker's Compensation Act of 1915 and any supplements or amendments thereof.

 - B. Public liability and property damage insurance to protect the Commonwealth, the Consultant, and any and all subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death, and damage to property, including loss of use resulting from any property damage which may arise from its operations under this Contract, whether such operation be by the Consultant, by any of its subcontractors, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 each person and \$2,000,000 each occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured, as its interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional

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insured against the insurance coverages in regard to the Services performed for the Commonwealth.

Prior to commencing Services under any Notice of Award, the Consultant shall provide the Issuing Agency with a copy of each current certificate of insurance. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed until at least thirty (30) days prior written notice has been given to the Commonwealth.

The Consultant agrees to maintain such insurance for the life of any Notice of Award under which it is working.

A Consultant's self-insurance of the types and amounts of insurance set for the above shall satisfy the requirements of this Section.