

Date of Issue: November 9, 2018

DEPARTMENT OF GENERAL SERVICES  
ENERGY AND RESOURCE MANAGEMENT OFFICE  
401 NORTH STREET HARRISBURG, PENNSYLVANIA

BULLETIN NO. 8  
on

Project No. GESA 2018-1 – REQUEST FOR QUOTES FOR A GUARANTEED ENERGY SAVINGS PROJECT AT: DEPT. OF CORRECTIONS, SCI HOUTZDALE, HOUTZDALE, PENNSYLVANIA Department of General Services, Energy & Resource Management, 401 North Street, Room 403, Harrisburg, Pennsylvania, 17120.

**QUOTE SUBMISSION DEADLINE: TUESDAY NOVEMBER 20, 2018**  
**TIME OF OPENING: 2:00 PM**

**RFQ CHANGES**

1. In Bulletin #4, please remove the answer to question 10 "Is there a limit to the amount of Capital Cost Avoidance savings that ESCOs can include in the cash flow & pro forma?" in its entirety. Replace with: **Yes; do not exceed \$300,000 per ECM.**

**QUESTIONS**

1. Regarding Core ECM #9: Solar Panel Array, would the Commonwealth consider contracting and implementing this ECM through a Power Purchase Agreement (PPA)? **Due to the Commonwealth's procurement code restrictions, a PPA is not possible. The short answer is: no.**
2. Article 8 – Warrantee and Guarantee Section 8.1 .1 (pg 4) - If items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The GESA Contractor shall replace such defective equipment or materials, without cost to DGS or the Funding Agency, within the manufacturer's warranty period. Nothing in this paragraph relieves the GESA Contractor or surety of its obligations under the performance bond.

Please confirm that the GESA Contractor must include in its RFQ cost estimate sufficient funds to cover any potential manufacturer warranty related issue for up to the full manufacturer warranty period, which may exceed the standard 12-month materials and labor warranty. For example, some LED lighting may have a manufacturer warranty of 10 years and if any LED fixture or equipment fails during the warranty period, due to a manufacturer warranty issue, the GESA Contractor is required to replace the failed

equipment at no cost to DGS or the Funding Agency. DGS or the Funding Agency will provide no additional funds to the GESA Contractor for services or labor provided for any manufacturer warranty issue. These potential costs must be fully incorporated into the GESA contract price. **It is the Offeror's business decision regarding what is to be included in its cost.**

3. Article 9 – Miscellaneous Provisions

Section 9.2 (pg 4) - In addition to any other guarantees or warranties, the Contractor covenants and agrees after acceptance of the Work performed under this Contract, to remedy without cost to the Funding Agency, any such defect in the Work, provided said defects in the reasonable 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 Surety Company for reimbursement.

Section 9.3 (pg 4)- The Contract Bonds given by the Contractor conditioned upon the faithful performance of the Contract and for the payment of labor, material, equipment, and public utility service claims are attached to this Contract and are made a part of it. No third party shall acquire any rights against the Funding Agency under the Contract Documents. The Performance Bond does not cover the Assured Performance Guarantee or guaranteed savings under the Contract Documents. However, failure to meet Assured Performance Guarantee or guaranteed savings may be the result of defective or inferior materials, equipment, or workmanship due to the Contractor's failure of faithful performance. Where and when such cases of defective and/or nonconforming work occurs, such defective and/or nonconforming work is covered by the Performance Bond.

Our understanding and interpretation of these two provisions is that the Commonwealth would like the GESA Contractor and their Surety Company to provide a performance bond for the entire term of the project, up to a potential 20 years, to cover any potential equipment defect or workmanship. Please confirm that the performance bond must remain active and in effect for the entire term of the GESA project up to a potential 20 years? **The GESA Contract's Contract Bond speaks for itself. There is no set duration corresponding to the length of the contract.**

4. Our review of the GESA 2017-1 Capitol Complex GESA Contract shows that the performance bond was limited to only a period of two (2) years based on the Dual Oblige Rider note 3 provided below for reference. Will this performance bond limitation be allowed on future projects, since it does not appear to meet the intent or term of article 9 as defined in the standard GESA contract?

"3. No suit, action or proceeding by reason of any default whatever shall be brought on this bond after two (2) years from the day on which the final payment under said

construction contract falls due.”

**The referenced limitation was applicable only to the financier, not the Commonwealth.**

5. To ensure that all bidders are complying with the terms and conditions set forth in Article 9 Section 9.2 and 9.3. Will DGS amend the RFQ submission to require that each GESA Contractor submit a letter as part of the RFQ response signed by an approved surety company/bonding agent that explicitly states the performance bond will remain in effect for the full term of the GESA Contract and it will cover any conditions or issues that arise from defective or inferior materials, equipment, or workmanship for the full term of the GESA contract or up to a maximum 20 years? **No, DGS will not amend the RFQ as such a letter is neither required nor needed. DGS does not require any unqualified statements from the contractor or surety.**
6. Please confirm what will be the potential term of the contract, which presumably is the timeframe for the above warranty and performance bond requirements. We note the Capitol Complex Project references a 365-day term. If that is the case for this project, is it correct to assume the bonds and warranty obligations would only extend for 365 days since the contract would expire after that term? **Refer to this Project’s terms and conditions.**
7. Request for Quotes Section 1.35 subsection E (pg 20). - After submission of the IGA, and approval by the Commonwealth, the Commonwealth may, in its sole discretion, decide:

To proceed with the construction/ implementation/ financing of the Project, subject to the required approvals; or

Decline to proceed with the Project, in which case the Commonwealth shall not be responsible for any costs or expenses incurred by the GESA Contractor.

- a. However, if the project is viable, and the Funding Agency declines to move forward with the Project, the Funding Agency will pay the GESA Contractor the agreed upon IGA fee (determined in IGA Contract).

Section 1.36 subsection D (pg 21) - Upon approval by all required Commonwealth entities, the GESA Contract will be executed to implement the Project in accordance with the IGA. In the event approval by the required Commonwealth entities is not obtained, there is no contract, and the Commonwealth shall not be liable for any cost or expense incurred by the GESA Contractor.

These two sections seem to contradict each other in that Section 1.35 states that if a viable IGA is developed the GESA contractor will be paid the agreed upon IGA fee if the Funding Agency decides not to move forward. Section 1.36 subsection D state that if the IGA and contract are not approved the Commonwealth will not be liable for any costs incurred by the GESA Contractor. Could clarification be provided that if the GESA

contractor provides a financially viable IGA and if either the Funding Agency or the Commonwealth decline to move forward the GESA Contractor would be paid the agreed upon IGA fee? **If the GESA contractor provides a financially viable IGA and the Funding Agency declines to move forward, the GESA Contractor would be paid the agreed upon IGA fee as outlined in the previously executed IGA contract.**

8. Please confirm that any included O&M savings, if allowed, can only be based on material savings and not Funding Agency staff labor savings (at least at this time for proposal submissions)? **Confirmed.**
9. Two questions regarding capital cost avoidance were raised, one in Bulletin #2 (question 4) and again in Bulletin #4 (question 10). The questions and responses are listed below for reference.

Bulletin #2 question 4. "Is it okay to identify the Operations & Maintenance (O&M) savings and the capital cost avoidance in the cash flow section of the RFQ response? Yes."

Bulletin #4 question 10. "Is there a limit to the amount of Capital Cost Avoidance savings that ESCOs can include in the cash flow & pro forma? Yes; do not exceed \$300,000 per building per discipline."

The response to Bulletin #4 question 10 is unclear and seems to leave significant room for each ESCO to arbitrarily calculate the maximum limit of Capital Cost Avoidance that can be included in the project. This will result in RFQ responses that will vary wildly depending on each ESCO's calculation of Capital Cost Avoidance. This will make it harder to properly score the RFQ responses and could open up the entire procurement to potential protests. For example, it appears there are 14 separate "major" buildings at the SCI Houtzdale complex if each housing unit is considered a unique "building". If so then the maximum avoided capital cost could be 14 times \$300,000 or about \$4.2 million dollars. If you then add in the per trade, assuming 4 major trades would be involved with this project (mechanical, electrical, plumbing and roofing), this could escalate the maximum avoided capital to 14 buildings times 4 trades times \$300,000 or \$16.8 million dollars. Some ESCOs may feel the site is all one "building" and therefore the maximum avoided capital would be 4 trades times \$300,000 or only \$1.2 million dollars. Just these examples have resulted in values that range from \$1.2 million all the way to almost \$17 million. Due to the potential for wild variation in calculating Avoided Capital Savings by each ESCO will DGS reconsider and exclude Capital Cost Avoidance savings for the procurement stage?

Capital Cost Avoidance can be incorporated later in during the IGA phase if the Funding Agency feels this is appropriate. Additionally, since Capital Cost Avoidance is a fully stipulated value and will be the responsibility of the Funding Agency to supply these funds out of their budget, the Agency should be fully informed and agree to any Capital Cost Avoidance included in the cash flow. Since these discussions have not occurred and typically happen during the IGA we further recommend that Avoided Capital Savings be

excluded for the RFQ stage or at a minimum a specific dollar value identified for all ESCOs to use uniformly. **Unrealistic capital savings values included in the proposals will be identified and will negatively impact the proposal's score.**



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Rebecca Tomlinson, RFQ Coordinator  
Energy & Resource Management Office

PLEASE ACKNOWLEDGE RECEIPT OF BULLETIN BY EMAIL RESPONSE TO BECKY TOMLINSON AT: [retomlinso@pa.gov](mailto:retomlinso@pa.gov)