|  |  |
| --- | --- |
| Image result for dormitory authority state of new york LOGO |  |
| **ENERGY SAVINGS PERFORMANCE CONTRACTING &FINANCING PROGRAM**ESCO Base Contract By and betweenDormitory Authority of the State of New York and[]  |
|  |  |
| [] 2019 |

CONTENTS

Section PAGE

1. Introduction 1

1.1 Entire Agreement 1

1.2 Purpose of Base Contract 1

1.3 Definitions 1

2. Term; Performance Review; Termination 2

3. Responsibilities of Contractor 2

3.1 Preliminary Project Evaluation and Marketing 2

3.2 Pricing 3

3.3 Insurance Requirements 3

3.4 Incentive and Rebate Summary 3

4. Project development and contract standardization 3

4.1 Compliance with State Law, Regulations and Guidance 3

4.2 Scope of Energy Conservation Measures 3

4.3 Preliminary Site Investigation 5

4.4 Investment Grade Audit 5

4.5 Energy Performance Contract 5

4.6 Project Metrics Report 6

5. DASNY Role and Obligations 6

5.1 Project Specific RFPs 6

5.2 Facilitation 6

5.3 Contracts 6

5.4 Measurement and Verification 6

5.5 Disputes 7

6. Miscellaneous 7

6.1 General Conditions for Construction 7

6.2 Order of Precedence 7

6.3 Consideration & Indemnity 8

6.4 Waiver 8

6.5 Integration of this Contract 8

6.6 Entire Agreement 8

6.7 Severability 8

6.8 Limitation on Third Party Beneficiaries 8

6.9 Successors and Assigns 9

6.10 Governing Law 9

6.11 Survival 9

6.12 Counterparts 9

**EXHIBITS**

**EXHIBIT A DEFINITIONS**

**EXHIBIT B PRICE PROPOSAL**

**EXHIBIT C PROJECT METRICS REPORT**

**EXHIBIT D GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION**

**EXHIBIT E STANDARD FORM INVESTMENT GRADE AUDIT AGREEMENT**

**EXHIBIT F STANDARD FORM ENERGY PERFORMANCE CONTRACT**

**EXHIBIT G RFP
EXHIBIT H INSURANCE REQUIREMENTS**

**PROGRAMMATIC ESCO BASE CONTRACT**

This Base Contract (this "**Base Contract**") is entered into as of [], 2019.

Between:

1. **THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK** ("**DASNY**"); and
2. [●] (the "**Contractor**"),

(each a "**Party**" and together, the "**Parties**").

recitals

1. Pursuant to Article 9 of the State Energy Law, DASNY established its Energy Performance Contracting Program ("**EPCP**") and issued a request for proposals attached as Exhibit G (*RFP*) ("**RFP**") requesting proposals that include qualifications and pricing from qualified energy savings and performance contractors ("**ESCOs**") licensed to do business in the State of New York;
2. DASNY has pre-qualified a list of [●] ESCOs that submitted compliant SOQPs to the RFP, including the Contractor. As a condition precedent to prequalification, each ESCO selected for pre-qualification is required to enter into this Base Contract to ensure such ESCO is (i) maximizing the success of New York State's and DASNY’s energy efficiency policies and goals, (ii) participating in accordance with the objectives of DASNY's EPCP and (iii) able to efficiently bid on relevant projects and enter into DASNY's energy performance contracts ("**EPCs**"); and
3. Contractor desires to enter into this Base Contract in order to participate in DASNY's EPCP and submit proposals in response to Project Specific RFPs.

The parties agree as follows:

1. Introduction
	1. Entire Agreement

The entire agreement of the Parties regarding the EPCP consists of EPC Documents and any other documents entered into in connection with such EPC Documents.

* 1. Purpose of Base Contract

The purpose of this Base Contract is to provide the Contractor with the ability to participate in the EPCP, respond to any Project Specific RFP, to receive the EPCP's standard processes, procedures and documentation that the Contractor will be obligated to follow and adhere to, including certain standards, guidelines, and provisions in order to remain a good-standing participant within the EPCP.

* 1. Definitions

Capitalized terms used but not defined in Exhibit A (*Definitions*) to this Base Contract will have the meaning assigned to such term in the RFP attached as Exhibit G (*RFP*).

1. Term; Performance Review; Termination
	* 1. This Base Contract will become effective as of the date first noted above (the "**Effective Date**") and will terminate on the earlier of (i) any early termination date, or (ii) the date that is four (4) years after Effective Date (the "**Termination Date**").
		2. DASNY will review the Contractor's performance at least annually for compliance with the EPCP, including the standards, guidelines, requirements, processes, and documentation under this Base Contract. The Contractor's failure to comply with the EPCP guidelines may result in its disqualification. DASNY may, in its sole discretion and without recourse from the Contractor, terminate this Base Contract at any time when DASNY deems it to be in its best interest and without regard to any time remaining in the term of this Base Contract. In any such instance, the termination shall be effective immediately upon notice to the Contractor, and a terminated Contractor will remain disqualified for the remainder of the four (4) year period covered by this Base Contract.
		3. Without prejudice to Section 2(b), DASNY, where appropriate and in its sole discretion, will:
			1. work collaboratively with the Contractor and use a good faith effort to notify the Contractor in writing of any issues or concerns regarding the Contractor’s compliance with the EPCP;
			2. meet and confer with the Contractor and require the Contractor to develop a remedial plan that the Contractor must timely implement to remedy the issues or concerns raised by DASNY; and
			3. assess the Contractor's progress in implementing any such remedial plan within the agreed upon period of time. The Contractor's failure to properly implement the remedial plan, will serve as a basis for DASNY to terminate this Base Contract through written notification to the Contractor.
		4. To the extent either Party breaches this Base Contract and such breach is not remedied within thirty (30) days (or such extended period of time agreed between the Parties), then either Party may terminate this Base Contract upon ten (10) days written notice. Except as provided in Section 6.3(b) (*Consideration and Indemnity*) regarding the Contractor's indemnification of DASNY, upon such termination neither Party will have a claim against the other Party for monetary or equitable relief.
2. Responsibilities of Contractor

The Contractor's responsibilities under this Base Contract are set forth in this Article 3 and Article 4 (*Project Development and Contract Standardization*).

* 1. Preliminary Project Evaluation and Marketing

The Contractor must:

* + 1. enter into a standard form confidentiality agreement which will be attached to each Project Specific RFP;
		2. where requested by DASNY, respond within the required period of time to any issued Project Specific RFP as to whether the Contractor plans to participate in any Project Specific RFP issued to the Contractor by DASNY for its response;
		3. monitor DASNY's website for any updates to the EPCP, including but not limited to updates to the template documents, statutes and regulations;
		4. provide a dedicated webpage for the EPCP on the Contractor's website where Program Participants that seek the Contractor's services can gain access and information about the EPCP. The DASNY/EPCP website will also provide a link to the Contractor's DASNY EPCP web link.
	1. Pricing

Unless otherwise approved by DASNY, in response to any Project Specific RFP, the Contractor must not exceed the maximum margins, fees, mark-ups and percentages proposed in response to the RFP and which is attached to this Base Contract as Exhibit B (*Price Proposal*).

* 1. Insurance Requirements

### The Contractor shall comply with the insurance requirements attached as Exhibit H (*Insurance Requirements*)

* 1. Incentive and Rebate Summary

In connection with any EPC entered into under the EPCP, the Contractor must identify and secure on behalf of any Program Participant all available utility, State or federally provided incentives, as applicable and available to each project. The Contractor must also, annually for each EPCP project in which the Contractor participates, provide an incentive summary to DASNY, in a format acceptable to DASNY. Supporting such summary, the Contractor must also provide evidence of its correspondence with applicable utility companies or governmental agencies indicating all incentives that were applied for and secured on behalf of a Program Participant, including emails, letters, rebate applications, etc.

1. Project development and contract standardization
	1. Compliance with State Law, Regulations and Guidance

The Contractor, in performing any work in connection with the EPCP, must perform such work in accordance with good industry practice, applicable law, DASNY's procurement guidelines, rules and regulations, and where applicable, any rules or regulations applicable to any of the Program Participants.

* 1. Scope of Energy Conservation Measures

The types of energy conservation measures that ESCOs will be expected to deliver under various Projects may include, but are not limited to the following:

* + 1. **Primary Heating**
			1. Boiler replacement with units of greater efficiency
			2. Replacement of hydronic or steam distribution system specialties including thermostats, steam traps and control valves
			3. Burner replacement
			4. Reinsulating of steam and hydronic system piping and equipment
			5. Ground source heat pumps
		2. **Domestic Hot Water**
			1. Installation of domestic hot water heating units
			2. Installation of summer load boilers
			3. Fixture replacement to decrease consumption
		3. **Building Air Conditioning & Ventilation**
			1. Installation or expansion of Energy Management Systems with addition of energy saving control routines including optimal /stop, night setback and discharge temperature reset
			2. Fume hood replacement and/or modification of laboratory air systems
			3. Retro-commissioning of building controls and other building systems
		4. **Chilled Water Plants**
			1. Replacement of existing electric centrifugal, steam turbine centrifugal or absorption chiller units with new, high efficiency equipment
			2. Replacement of existing cooling towers with new or alternate type units
			3. Replacement of DX or ancillary system equipment with high efficiency units and reconfiguration of pumping system layout
			4. Cooling tower replacement
		5. **Lighting / Building Improvements**
			1. Lighting fixtures and controls, including LED lighting retrofits
			2. Building envelope improvements
			3. Street and traffic lights
			4. Occupancy sensors
		6. **Alternative Energy**
			1. Cogeneration and combined heat and power
			2. Renewable power facilities
			3. Installation of solar and photovoltaic systems
		7. **Resiliency / Resilience Measures**
			1. Backup power/gas supplies
			2. Energy storage (battery, thermal, etc.)
			3. Micro grid design and construction.
	1. Preliminary Site Investigation

### Contractor acknowledges that DASNY, in its sole discretion, may issue a Project Specific RFP to as many or as few pre-qualified ESCOs as DASNY deems appropriate in accordance with its internal policies and procurement guidelines. As a result, there is no guarantee that the Contractor will receive any Project Specific RFP under the EPCP.

### Where the Contractor is provided the opportunity to, and does, either (i) respond to a Project Specific RFP or (ii) is selected through a non-competitive source selection method under DASNY’s procurement contract guidelines, the Contractor, if it agrees to participate, must conduct a preliminary facility and site investigation at its cost and in accordance with good industry practice, provide indicative pricing and comply with the requirements of any Project Specific RFP.

* 1. Investment Grade Audit
		1. If awarded a DASNY IGA, the Contractor must enter into the DASNY IGA in substantially the form attached as Exhibit E (*Standard Form Investment Grade Audit Agreement*) to this Base Contract and comply with all requirements of such executed DASNY IGA. The Contractor acknowledges that DASNY may update the DASNY IGA as determined to be in the best interest of the EPCP; however, any updates may, where appropriate, entitle the Contractor to revise its pricing set out in Exhibit B (*Price Proposal*) to this Base Contract.
		2. As part of the investment grade audit process, the Contractor must address issues, recommendations and requests from DASNY in support of DASNY's independent technical review and facilitation process for each applicable project and must ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed.
	2. Energy Performance Contract
		1. Once the Contractor submits a compliant final DASNY IGA and EPC proposal (a “**Contractor Project Proposal**”) that is accepted by DASNY and the relevant Program Participant, the Contractor must enter into a DASNY EPC in substantially the form attached as Exhibit F (*Standard Form Energy Performance Contract*) to this Base Contract and comply with all requirements of such executed DASNY EPC. The Contractor acknowledges that DASNY may update the DASNY EPC as determined to be in the best interest of the EPCP; however, any updates may entitle, upon DASNY’s consent, the Contractor to revise its pricing set out in Exhibit B (*Price Proposal*) to this Base Contract.
		2. In connection with any DASNY EPC, the Contractor must also address all issues, recommendations and requests from DASNY in support of DASNY's work as owner's representative to a Program Participant and its independent technical review in respect of each applicable project and must ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed.
		3. The Contractor must comply with all requirements of the DASNY EPC, including, but not limited to, design services, equipment procurement and purchasing, construction and construction management services, hazardous material abatement or disposal, commissioning services on installed measures and M&V services.
	3. Project Metrics Report

The Contractor must deliver a Project Metrics Report to DASNY in accordance with Exhibit C (*Project Metrics Report*).

1. DASNY Role and Obligations

DASNY's responsibilities under this Base Contract will include the obligations set out in this Article 5.

* 1. Project Specific RFPs

DASNY will work, to the extent feasible, in good faith to equitably select pre-qualified ESCOs to participate in Project Specific RFPs each year throughout the Term. Where DASNY provides the Contractor with a Project Specific RFP, DASNY will provide the Contractor with as much information as is available and capable of being publicly provided for each such Project Specific RFP in order to ensure that each ESCO and the Contractor have sufficient information to determine whether such proposed project can be feasibly delivered.

* 1. Facilitation

DASNY, where it deems appropriate, will facilitate the energy savings performance contracting process and assist both the Contractor and the Program Participant in meeting their respective commitments, including by:

* + 1. providing technical guidance;
		2. structuring and initiating energy savings performance contracting projects;
		3. facilitating Program Participants developing projects under the EPCP and getting Program Participants to commit to a program management agreement for a project;
		4. assisting Program Participants in procuring the services of a pre-qualified ESCO;
		5. attending on-site meetings between the Program Participant and the Contractor, as needed; and
		6. acting as a tax-exempt conduit issuer, in its discretion and where appropriate, to finance projects.
	1. Contracts

Provided that the Contractor is complying with its obligations under this Base Contract and the Project Specific RFP, DASNY will work, where applicable, in good faith to efficiently develop and finalize the DASNY IGA and DASNY EPC for each project with the Contractor.

* 1. Measurement and Verification

Where engaged by a Program Participant to perform certain oversight of the Contractor’s M&V, DASNY will satisfy those obligations in accordance with any program management agreement with such Program Participant and will monitor the Contractor's project implementation and review audits, proposals, calculations, contracts, and M&V reports in a manner that is consistent with good industry practice.

* 1. Disputes

Where requested by a Program Participant, DASNY may work in good faith to anticipate and identify solutions to resolve any potential or actual disputes or claims between the Contractor and a Program Participant.

1. Miscellaneous
	1. General Conditions for Construction

The Contractor must comply with DASNY’s General Terms and Conditions for Construction, which are hereby incorporated into this Base Contract by reference and are attached as Exhibit D (*General Terms and Conditions for Construction*).

* 1. Order of Precedence
		1. Except as otherwise expressly provided in this Section 6.2, if there is any conflict, ambiguity or inconsistency between the provisions of the RFP, this Base Contract or any other EPC Documents, the order of precedence will be as follows, from highest to lowest:
			1. the provisions of the EPC;
			2. the provisions of the IGA;
			3. the provisions of this Base Contract;
			4. the DASNY General Terms and Conditions for Construction;
			5. the RFP; and
			6. the Contractor Project Proposal.
		2. If there is any conflict, ambiguity or inconsistency between any of the EPC Documents, the order of precedence will be as follows, from highest to lowest:
			1. if the EPC Documents contain differing provisions or requirements with respect to the same subject matter, the provisions that establish the higher quality manner or method of performing the work or that establish more stringent standards will prevail;
			2. where the EPC Documents contain a more stringent standard than applicable law, the EPC Documents will prevail, to the extent that those more stringent EPC Documents do not violate applicable law;
			3. if the Contractor Project Proposal includes statements, provisions, concepts or designs that can reasonably be interpreted as offering to:

(A) provide higher quality items than otherwise required by any of the other EPC Documents; or

(B) perform services or meet standards in addition to or better than those otherwise required, then

the Contractor’s obligations include compliance with all statements, provisions, concepts and designs as set out in the Contractor Project Proposal.

* 1. Consideration & Indemnity
		1. In consideration for entering into this Base Contract, the Contractor will be eligible to participate in the EPCP.
		2. The Contractor shall indemnify, defend and hold harmless DASNY for any and all claims, losses, (including third-party claims) or damages that may arise out of the Contractor's performance and non-performance under any of the EPC Documents. The Contractor acknowledges and agrees that DASNY will not be liable to the Contractor for any damages in connection with this Base Contract.
	2. Waiver
		1. No waiver of any term, covenant or condition of this Base Contract will be valid unless in writing and executed by the obligee Party.
		2. Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Base Contract at any time will not in any way limit or waive that Party's right to subsequently enforce or compel strict compliance with every term, covenant, condition or other provision of this Base Contract, despite any course of dealing or custom of the trade (other than the waived breach or failure in accordance with the terms of such waivers).
		3. If the Parties make and implement any interpretation of this Base Contract without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation will not be binding in the event of any future disputes.
	3. Integration of this Contract

DASNY and the Contractor agree and expressly intend that this Base Contract (including all Exhibits) constitutes a single, non-severable, integrated agreement whose terms are interdependent and non-divisible, such that, among other things, no part of this Base Contract could be separated from any other part for the purposes of assumption or rejection under Section 365 of title 11 of the United States Bankruptcy Code.

* 1. Entire Agreement

This entire understanding of the Parties with respect to the subject matter of this Base Contract supersedes all prior agreements, understandings, statements, representations and negotiations between the Parties.

* 1. Severability

The invalidity or unenforceability of any clause, provision, Article, Section, subsection or part will not affect the validity or enforceability of the balance of this Base Contract, which will be construed and enforced as if this Base Contract did not contain the invalid or unenforceable clause, provision, Article, Section, subsection or part.

* 1. Limitation on Third Party Beneficiaries

Nothing contained in this Base Contract is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties toward, any Person not a party to this Base Contract, except rights expressly contained in this Base Contract for the benefit of third-parties.

* 1. Successors and Assigns

This Base Contract is binding upon and will inure to the benefit of DASNY and the Contractor and their respective successors and permitted assigns. This Base Contract may not be assigned by the Contractor without DASNY’s prior written consent.

* 1. Governing Law

This Base Contract shall be construed and interpreted in accordance with the laws of New York State. New York State and New York State Courts shall be the exclusive jurisdiction and forum for disputes under this Base Contract.

* 1. Survival

Section 6.3 (*Consideration & Indemnity*) and Section 6.10 (*Governing Law and Jurisdiction*) of this Base Contract; any other express obligations of the Parties following the Termination Date; any obligations to pay amounts under this Base Contract and all other provisions which by their inherent character should survive termination of this Base Contract will survive the termination of this Base Contract.

* 1. Counterparts

This Base Contract may be signed in any number of counterparts, each of which will be an original. Together, all counterparts form one single document.

[**Signature Pages Follow**]

**IN WITNESS WHEREOF**, the Parties to this Base Contract, intending to be legally bound hereby, have caused this Base Contract to be signed by their respective authorized representatives, duly authorized as of the day and year first set out above.

|  |  |  |  |
| --- | --- | --- | --- |
| **THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK** |  |  |  |

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF NEW YORK )

 ) ss:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me personally came [ ], to me known, who being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that he is an authorized representative of the Dormitory Authority of the State of New York and that he/she executed the above instrument pursuant to authority granted to him/her and he/she signed his name thereto by like authority.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

**[CONTRACTOR]**

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CORPORATE ACKNOWLEDGMENT

STATE OF NEW YORK )

 ) ss:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ before me personally came \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he/she resides at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that he/she is an authorized representative of [ ] a [ ], and that he/she executed the above instrument pursuant to authority granted to him/her and he/she signed his name thereto by like authority.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

Exhibit A

Definitions

Capitalized terms used in this Base Contract shall have the following meaning:

**“Base Contract”** is defined in the preamble of the Base Contract.

“**Contractor**” is defined in the preamble of the Base Contract.

“**Contractor Project Proposal**” is defined in Section 4.4 of the Base Contract.

“**DASNY**” is defined in the preamble of the Base Contract.

“**DASNY EPC**” means any EPC entered into in connection with any project under the EPCP between the Contractor and DASNY or the Contractor and a Program Participant.

“**DASNY IGA**” means any IGA entered into in connection with any project under the EPCP between the Contractor and DASNY or the Contractor and a Program Participant.

“**Effective Date**” is defined in Section 2(a) of the Base Contract.

**“EPC Documents**”means the following documents under the EPCP:

1. The Base Contract with all attached exhibits,
2. any executed DASNY IGA;
3. any executed DASNY EPC;
4. the RFP; and
5. any Contractor Project Proposal.

“**EPCs**” is defined in the recitals of the Base Contract.

“**EPCP**” is defined in the recitals of the Base Contract.

“**ESCOs**” is defined in the recitals of the Base Contract**.**

“**Party**” is defined in the preamble of the Base Contract.

“**RFP**” is defined in the recitals of the Base Contract.

“**Termination Date**” is defined in Section 2(a) of the Base Contract

**Exhibit B**

**Price Proposal**

**DESCRIPTION**

This Exhibit B states the agreed and negotiated markups and fees for the Contractor's participation in the EPCP. This information was provided in the Contractor's response to the RFP.

1. Markups, Margins, Costs and Fees

For any project under the EPCP, the Contractor's cost, markups, margins and fees must not exceed the maximums established in the table below.

Program Participants may choose to accept audit costs, markups, margins and fees proposed by the Contractor for individual projects without further negotiation, provided they do not exceed the maximums established in the tables below, or directly negotiate with the Contractor for reductions as dictated by individual facility or project requirements. The Contractor may also propose lower audit costs, markups, and fees depending upon individual project considerations or their own internal business approach.

* 1. **Cost Markups**

The table below indicates the proposed maximum markups for each category listed.

|  |  |
| --- | --- |
| **Construction Costs** | **Maximum Markup above actual costs (if any)** |
| Subcontractor Costs (Contractor Costs to Contractor) |  |
| Other direct purchases of equipment, material, supplies by the Contractor (do not include subcontractor supplied purchases as they should be included above) |  |
| Design (state at right whether this shall be completed by the Contractor or subcontracted) |  |
| Project Management (state at right whether this shall be completed by the Contractor or subcontracted) |  |
| Commissioning (state at right whether this shall be completed by the Contractor or subcontracted) |  |
| Training (state at right whether this shall be completed by the Contractor or subcontracted) |  |
| Construction Measurement and Verification (state at right whether this shall be completed by the Contractor or subcontracted) |  |
| Operations Measurement and Verification (state at right whether this shall be completed by the Contractor or subcontracted) |  |
| Permits (markup allowed only if permits are acquired by Contractor) |  |
| Performance and Payment Bond |  |
| Insurance |  |
| Parent Guaranty, where applicable  |  |

* 1. **Project Margins**

The table below provides the maximum margins that will be applied to any project within this program.

|  |  |
| --- | --- |
| **Project Margin** | **Maximum % Margin** |
| Overhead Percent |  |
| Profit Percent |  |

* 1. **Audit Fee**

The table below provides the maximum fee to conduct the DASNY IGA, where applicable, on a cost per square foot basis. [The Contractor agrees that the proposed maximum fee may be adjusted to incorporate a Contractor’s responsibility to adhere to and complete the full scope of work as presented in the DASNY IGA and for any projects which are not done a per sqft basis**.**]**[[1]](#footnote-1)**

|  |  |  |
| --- | --- | --- |
|  |  | **Proposed Max cost per sf** |
|  | Investment Grade Audit and Project Proposal | $/sf |

* 1. **Other Fees**

The table below presents annual cost categories with applications descriptions. Markups on fees are not allowable under the EPCP.

|  |  |  |
| --- | --- | --- |
| **Annual Cost Category** | **How Price is Determined** | **Years Applied (One-time, Annual, etc.)** |
| Warranty |   |   |
| Post-Retrofit Measurement & Verification |  |  |
| Maintenance |   |   |
| Other:  |   |   |
| Other:  |   |   |
| Other:  |   |   |

1. Open Book Pricing

Open book pricing is full disclosure by the Contractor to the Program Participant of all costs and markups for materials, labor, and services received during the project development, implementation, and performance period phases. The Contractor is required to provide open book pricing in accordance with and as defined in the DASNY EPC.

##

Exhibit C

Project Metrics Report

The Contractor must submit a project metrics report (a “**Project Metrics Report**”), in a form to be agreed prior to execution of this Base Contract, to DASNY on a monthly basis. Submission of the Project Metrics Report is a minimum requirement for any contract renewal. The Contractor will submit its Project Metrics Report completed electronically and DASNY will supply an electronic spreadsheet that the Contractor must complete to the extent possible for each project and submit electronically to DASNY. This information is critical to DASNY's ability to monitor projects and to calculate energy efficiency state-wide that result from program successes.

Other information may be identified and required by DASNY in order to meet the requirements of State agencies, Executive Orders, legislation, and other initiatives, and the Contractor must comply with such informational requirements.

Exhibit D

General Term and Conditions for Construction

[*Attached*]

Exhibit E

Standard Form Investment Grade Audit Agreement

[*To be provided once ESCOs are notified that they have been identified by DASNY for pre-qualification*]

**Exhibit F****Standard Form Energy Performance Contract**

[*To be provided once ESCOs are notified that they have been identified by DASNY for pre-qualification*]

**Exhibit G**

**Request for Proposal**

[Attached]

**Exhibit H**

**Insurance Requirements**

  **General Provisions**

## The Contractor and Subcontractors shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety DASNY’s requirements and the requirements of each Program Participant and of the insurance companies issuing such policies.

## All insurance required to be procured and maintained must be procured from insurance companies licensed to do business in the State of New York and rated at least A- by A.M. Best and Company, or meet such other requirements as are acceptable to DASNY.

## All insurance policies required to be procured and maintained by the Contractor and Subcontractors shall include a provision or endorsement that the policy shall not be canceled, materially changed, or not renewed without at least thirty (30) calendar days written notice to DASNY except for non-payment in which case notice to DASNY shall be provided as required by law.

## All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall be written on an occurrence basis except where this Contract explicitly allows otherwise.

## All insurance policies required to be procured and maintained by the Contractor and Subcontractors under this Contract shall include a provision or endorsement that there shall be no right of subrogation against DASNY. If any of the Contractor’s policies or any of the policies of any Subcontractor prohibit such a waiver of subrogation, the Contractor or Subcontractor shall secure the necessary permission to grant this waiver of subrogation. Any and all such permission shall be confirmed by a manuscript endorsement to the relevant insurance policy or policies and a certified copy of the endorsement shall be provided to DASNY.

## Notwithstanding any other provision, DASNY may require the Contractor and Subcontractors to provide any other form or limit of insurance necessary to perform any work under any of the EPC Documents.

## Neither the procurement nor the maintenance of any type of insurance by DASNY or the Contractor shall in any way be construed or deemed to limit, discharge, waive or release the Contractor from any of the obligations or risks accepted by the Contractor or to be a limitation on the nature or extent of said obligations and risks.

## Contractor is responsible for ensuring that each Subcontractor obtains and maintains in the required amount each type of insurance policy required by this Contract and that such insurance policy provides the Owner, Client and Construction Manager with the coverage required by this Contract.

# **Submission of Insurance**

## Prior to execution of the Base Contract, the Contractor shall submit one original certificate of insurance, indicating the EPCP and showing evidence of all insurance required under this Exhibit H to DASNY or a third party designated by DASNY for receipt and review of insurance. Upon DASNY’s request, the Contractor shall provide certified copies of each type of insurance policy required by the Contract. Certificates of insurance, when submitted to DASNY, constitute a warranty by the Contractor that the insurance coverage described is in effect for the policy term shown.

## The Contractor shall submit insurance certificates (Accord 25 and 855, or equivalent as determined by DASNY), copies of declaration pages, schedules of forms and endorsements, copies of all named insured endorsements, all endorsements of the policy granting coverage to DASNY, the Client, and Construction Manager, and such other documents requested by DASNY as proof of insurance for the Contractor. Insurance certificates shall be submitted to DASNY or a third party designated by DASNY for receipt and review of insurance. All insurance submittals must be approved by DASNY prior to the Contractor’s commencement of Work.

## The Contractor shall mail original and bonds to the address noted below. All bonds must be approved by DASNY prior to the Contractor’s response to any Project Specific RFP:

 Dormitory Authority--State of New York

 Procurement Unit

 515 Broadway

 Albany, NY 12207-2964

# **Insurance Provided by Contractor**

## The Contractor and each subcontractor of every tier shall procure and maintain all of the insurance required under Exhibit H until the Base Contract is terminated.

### **Workers’ Compensation (including occupational disease)** **and Employer’s Liability New York Statutory Endorsement** with a minimum limit of $1,000,000 as evidenced by one of the following certificates **(Acord certificates are no longer acceptable):**

#### C-105.2 (September ’15, or most current version) - Certificate of NYS Workers’ Compensation Insurance. The insurance carrier shall provide a completed form as evidence of in-force coverage.

#### U-26.3 (or any replacement) - Certificate of Workers Compensation Insurance from the State Insurance Fund. The State Insurance Fund shall provide a completed form as evidence of in-force coverage.

#### GSI-105.2(2/02 or most current version) - Certificate of Participation in Workers’ Compensation Group Board-approved self-insurance. The NYS Workers’ Compensation Board’s Self Insurance Office or the Contractor’s Group Self Insurance Administrator shall provide a completed form.

#### SI-12 - (5/09 or most current version) Affidavit Certifying That Compensation Has Been Secured. The NYS Workers’ Compensation Board’s Self Insurance Office or the Contractor’s Self Insurance Administrator shall provide a completed form.

### **Disability Benefits:**

#### DB-120.1 (September ‘15) - Certificate of Disability Benefits. The insurance carrier shall provide a completed form as evidence of in-force coverage.

#### DB-155 (9/16) - Certificate of Disability Self Insurance. The NYS Workers’ Compensation Board’s Self Insurance Office shall provide a completed form.

#### CE-200 – Certificate of Attestation of Exemption. (Note: this form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by law. The Dormitory Authority will not accept this as an exemption from providing Worker’s Compensation Insurance). The Certificate may be obtained from the NYS Workers Compensation Board’s website at <http://www.wcb.state.ny.us>. The CE-200 cannot be used for multiple projects; therefore, a new form shall have to be completed prior to award of any subsequent contracts.

### **Commercial General Liability (CGL) insurance.** The CGL insurance policy shall cover the liability of the Contractor or Subcontractor for bodily injury, property damage, and personal/advertising injury arising from performance of the Work or operations or presence at or in the vicinity of the Site of the Contract. The policy shall utilize ISO form CG 00 01 12 07 or a form providing equivalent coverage. The limits under such policy shall not be less than the following: the limit for each occurrence shall be at least $2,000,000; the general aggregate limit shall be at least $2,000,000; the personal and advertising injury limit shall be at least $1,000,000; and the Products Completed Operations limit shall be at least $2,000,000. The limits may be provided through a combination of primary and umbrella and/or excess liability policies. Coverage shall provide and encompass at least the following:

#### Written on an occurrence form.

#### Include ISO Endorsement CG 20 10 11/85 or its equivalent.

#### An endorsement naming the Dormitory Authority - State of New York and other entities as required by any other EPC Documents. Additional insured status shall apply during the products/completed operations phase as well as during the course of the work.

#### Policies shall be endorsed to be primary as respects the coverage afforded the additional insured and such policy shall be primary to any other insurance maintained by DASNY. Any other insurance maintained by DASNY shall be in excess of and shall not contribute with the Contractor’s insurance, regardless of the “other insurance” clause contained in DASNY’s own policy of insurance. A copy of the endorsement reflecting this requirement may be requested by DASNY.

#### Excavation, Collapse and Underground Hazards (where applicable).

#### Independent Contractors.

#### Blanket Written Contractual Liability covering all indemnity agreements, including all indemnity obligations contained in the General Conditions.

#### Products and completed operations coverage for a term no less than three years.

##  **Commercial Automobile Liability and Property Damage Insurance** covering all owned, leased, hired and non-owned vehicles used in connection with the work, with a combined single limit for bodily injury and property damage of at least $1,000,000 each person and accident. The limit may be provided through a combination of primary and umbrella and/or excess liability policies.

##  **Umbrella and/or Excess Liability Policies**. Contractor shall maintain Commercial Umbrella or Excess Insurance with minimum limits of $5,000,000 per occurrence, $5,000,000 aggregate. Such coverage must include, as scheduled policies, the Employer’s Liability Insurance, Commercial General Liability Insurance, and Automobile Liability Insurance described above. The excess policies shall be “following form” over and shall not contain endorsements which restrict coverage as set forth in General Terms and Conditions for Construction attached to the RFP, Sections 15.03 (1) (with respect to Employers Liability only), 15.03 (3), and 15.03 (4). Such insurance shall not be excess to other insurance maintained by DASNY. The Contractor shall provide a copy of the umbrella and/or excess liability policy declarations page and the underlying schedule of insurance upon DASNY’s request. Coverage shall provide and encompass at least the following:

#### Written on an occurrence form.

#### Include ISO Endorsement CG 20 10 11/85 or its equivalent.

#### An endorsement naming the Dormitory Authority – State of New York.

#### The Contractor shall secure, pay for, and maintain property insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed or rented by the Contractor. The requirement to secure and maintain such insurance is solely for the benefit of the Contractor. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage shall not render the additional insured or their agents and employees responsible for any losses; and the additional insured, their agents and employees shall have no such liability.

# **Stop Work Order - Insurance**

## All insurance certificates are valid for one (1) year from the date the certificate is signed/stamped, or until policy expiration, whichever is earlier. Certificates shall provide thirty (30) days written notice prior to the cancellation, non-renewal, or reduction in the limits of liability of any policy. The Contractor shall be responsible to submit updated insurance certificates thirty (30) days prior to any insurance certificate expiration date.

1. Failure of the Contractor to maintain and provide DASNY with evidence of valid and in-force insurance coverage shall result in a default under the Base Contract and DASNY may terminate the Base Contract.
2. At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the Contractor shall immediately cease any work under this Base Contract. The Contractor shall not resume any work under this Base Contract until authorized to do so by DASNY.
3. Any delay or time lost as a result of the Contractor not having proper insurance required by this Article shall not give rise to a delay claim or any other claim against DASNY. Further, the Contractor may be liable to other contractors for costs incurred by reason of the Contractor’s failure to provide insurance.
1. **NTD**: Amount to be updated following pre-qualification and release of the form IGA. [↑](#footnote-ref-1)