

#	Question	RFP Section Reference	DOCCS Response
1	Please provide annual utility costs for each site. i.e. we need to know the dollar value total to ensure that RNM credits are not over allocated.		Utility cost data is posted on the DOCCS website.
2	In the interests of providing a level playing field for price evaluations, can you please propose a NYSEERDA Megawatt Block level for all bidders to use?		Timing of the NYSEERDA MW Block application and approval process is out of DOCCS control. Financial assumptions made relative to available incentives and tax breaks are part of the risks taken in submitting a competitive bid. DOCCS will not set a Megawatt Block Level.
3	Additionally, can you please recognize that PPA rates might be subject to change based on incentive block level attained?		DOCCS will not set a Megawatt Block Level.
4	As the RFP is proposing Remote Net Metering, and as these projects should qualify for monetary RNM credit values, the ISO supply cost will not be relevant because RNM credit values are generated by the applicable utility and based on applicable utility tariff rates plus utility (not ISO) default supply rates. Can DOCCS please verify this and, if in agreement, amend the RFP to recognize that PPA rates to not need to be below ISI rate, but that they will need to be below the utility RNM credit values?		Section II, #1; The statement "In all cases, DOCCS will only purchase electricity at or below the market price DOCCS is currently paying through OGS for ISO power. (See Attachment 11)" is replaced with "The DOCCS will continue to purchase it's electricity through OGS at the ISO price. The payments made to the developer will be offset by the credits earned by remote/net metering from reduced supply and transmission costs".
5	To the point above, it might be helpful for DOCCS to third party evaluate expected RNM credit values.		Noted
6	Do any of these sites have "net metered" solar tied to the primary account? Even if just a few panels. Problem is we are not allowed to RNM a NM in any case. If the solar is tied to a separate small meter than we are fine (streetlight meter etc).		Any minor solar panels installed at DOCCS facilities in conflict with this RFP will be disconnected or altered as necessary.
7	Can we get the Utility costs broken down by system. What do you pay NG, NYSEG, etc for each account. Not the kWh. RNM credit only covers the cash that you pay the utility. (This is what Ian from Solar City was asking for). I like to say that RNM gives the off taker a utility gift card. You pay the PPA rate and you get SC2 non demand value in credit. This is the meter that we put as the RNM. [Bringing me to the 3rd (next) question]		Utility cost data is posted on the DOCCS website.
8	"compare apples to apples". We feel, as did others, that you should set a standard for the proposals. Every load zone has a different "cash value" given out. This is an estimation or average from the previous year. There is no way to truly determine the future cost of power and thus the credit you will receive. NG may give the average. It is complex and is the sum of supply, delivery, and the tons of other small charges on a bill in each zone. For example NG load zone F has a \$.142 credit value but NYSEG load zone is \$.105. Every company will have a slightly different RNM "value" in every load zone because there is no set # to use. The second value that we feel should be given out as a standard is the utility inflation factor. You will get ranges from .15-.3%. If you set this value ahead of time it will standardize proposals. Again, this is an arbitrary #. 2.5% is a very standard PPA value.		DOCCS has revised the proposal and scoring language and methodology. A new Cost Proposal spreadsheet will be forthcoming soon to replace Attachment 16. DOCCS is interested in the lowest \$/kWh from an experienced, responsible developer. Section VI 6 and VII 2-B have been modified accordingly.

9	<p>Not a formal question but more of a comment. It was not clear that you guys understand how RNM works as a credit (again Ian Solar City question). It was mentioned a few times that you were looking for a "few pennies" savings off of you all in cost of power. You have a few accounts that are "all in" at 5 cents/kWh. It seemed as if you felt that a 3 cent PPA is required to save the 2 cents on these accounts. This is not the case. Not to mention that a 3 cent PPA is upside down in any cash model for a solar firm. It will cost more to build that we would ever receive in payments even with tax credits added in.</p> <p>Here is how it will work (NG load zone F): 5 cents "all in" on your bill 8 cent PPA cost (seems upside down) 14.2 cent credit (gift card) "SC2-non demand value" your arbitrage (net savings) = 14.2c (-) 8c = 6.2 cents per kWh. way better than the 2 cents you were expecting but yet it is not a 3 cent PPA.</p>		Noted
10	Can developers lease DOCCS property at Correctional Facilities listed in Table 2, should 10 acre+ plots of DOCCS controlled land be available for solar system installations in the same manner as those in Table 1?	Section II	No.
11	The RFP proposal evaluation and scoring system asks for assurance the price offered achieves guaranteed energy and operational savings, and to do so we must have current cost information, including supply, delivery, and demand charges; kindly provide copies of recent electric bills from Sites #2 and #4, Green Haven CF and Wende CF, so we may confirm the numbers and present a meaningful savings evaluation.		Utility cost data is posted on the DOCCS website.
12	Would it be possible to publish the list of attendees of that [pre-bid] conference? This would facilitate efficient partnership opportunities.		The names of the attendees have already been provided in the transcript from the pre-bid conference. The transcript along with a separate list of attendees have been posted on the DOCCS website and NYS Contract Reporter.
13	Please confirm that both the Type 1 and Type 2 sites are grandfathered for monetary crediting, as opposed to volumetric crediting, under the Remote Net Metering regime.		Type 1 and Type 2 Sites are grandfathered for monetary crediting.
14	The lists of sites in Section II.2-3 of the RFP appear to contain some inaccuracies. For example, Lot # 33, Marcy CF, is stated to be in ISO Zone G, whereas we think it is in Zone E. Would you please review the list to ensure the information is accurate?	Section II	Corrected Tables 1 and 2 will be forthcoming soon.
15	Section II.1 of the RFP states that "DOCCS will only purchase electricity at or below the market price DOCCS is currently paying through OGS for ISO power." Given that DOCCS has qualified for monetary crediting in the Remote Net Metering regime, this requirement appears unnecessary (and in fact detrimental to DOCCS), as DOCCS will receive credits for power purchased and transferred to the grid no matter what price DOCCS pays for that power. We request that this requirement be re-examined.	Section II	See response to #4 above.
16	Section VIII.15 of the RFP contains a broad termination for convenience provision. As drafted, this is a significant impediment to investors due to the risk that the PPA could be terminated for convenience with no stipulated termination payment due. However, Section 2.2 and Schedule 3 of the draft PPA appear to provide that if there is a termination for convenience then termination payments are to be made to the system owner which preserve the owner's anticipated return. Would you please clarify what is intended in this respect?	Section VIII.15, Attachment 9: Section 2.2 & Schedule 3	Yes. See response to Question # 40.

17	Is DOCCS open to negotiating provisions in the PPA and Lease to provide for the extension of the PPA and Lease terms after the initial 20-year terms?		Answer will be forthcoming soon.
18	We suggest that the RFP should specify certain standard assumptions to be made by bidders, such as (i) which NYSEDA MW Block each project qualifies for, (ii) what crediting rates (\$/MWhr) apply for each ISO Zone, and (iii) what utility-mandated interconnection costs should be assumed for each Type 1 site.		Timing of the NYSEDA MW Block application and approval process is out of DOCCS control. Financial assumptions made relative to available incentives, ISO Zone crediting rates, tax breaks, and interconnection costs are part of the risks taken in submitting a competitive bid. DOCCS will not dictate these values.
19	Beneficial Energy Solutions would like to bid a battery storage solution with solar pv, and also a solar only bid. This was discussed and approved during the pre-bid meeting. To accurately show the revenue streams that battery storage could incorporate, obtaining the 15-minute interval data and tariff rate structure would be extremely helpful to put our bid together. Would it be possible to obtain this information for the 5 sites? Feel free to give me a call anytime, if you have any questions.		The 15 minute interval data for the 5 customer sited systems is provided on DOCCS website. The SC for the 5 facilities are: Great Meadow SC 3A, Mid-State SC 3, Green Haven SC 7-2, Wende SC 7-3, Eastern E305
20	Given that a 25-year Power Purchase Agreement ("PPA") term will most likely benefit DOCCS more than a 20-year PPA, will DOCCS change the RFP to require a 25-year PPA considering that (i) many other state entities (e.g. ORDA) have awarded remote net metered PV PPAs with 25 year terms, (ii) 25-year term PPAs are more cost effective than 20-year PPAs, (iii) all first-quality solar panels carry 25-year warranties, and (iv) any quality EPC contractor will provide the Performance Guarantee sought by DOCCS for a 25-year term?	Page 3-4, Section II: 2	Answer will be forthcoming soon.
21	Is there a reason Orleans CF was not included in the Type 2 project list? Please confirm that the omission of Orleans CF from the list of CF's in National Grid Zone B is correct and intentional, not a typographical error.	Page 4, Section II: 3	Orleans has been included as an eligible facility for a developer-sited project. Table 2 and Attachment 4 have been revised and will be forthcoming soon. All references to "49" lots or project locations should be changed to "50".
22	Please confirm that #31 Cape Vincent CF through #37 Watertown CF are actually in Zone E (Mohawk) (per the zone map in the attachments) despite being listed here as being in ISO Control Zone G.	Page 5, Section II: 3	Corrected Tables 1 and 2 will be forthcoming soon.
23	Attachment 11 of the RFP lists monthly kWh usage, NYISO costs associated with those fees (i.e. supply), and the "OGS Fee" per DOCCS location. However, this attachment does not indicate costs solely from the local electric utility (i.e. delivery) - a critical cost element to understand as it relates to remote net metering and monetary crediting. Can DOCCS provide this additional information per location on a monthly basis?	Attachment 11	Additional financial and usage data has been provided on the DOCCS website.
24	Is the Department planning to release an Addendum that addresses the questions raised at the pre-bid conference? Can we expect this Addendum prior to the September 4 th question deadline? If not, how do we ensure that the questions will be addressed adequately and if they are not, how will we be able to submit requests for clarification after September 4 th ?		Attendees at the pre-bid conference were advised that all answers provided at the conference were to be considered unofficial. To insure an official response, vendors were advised to submit questions in writing. If vendors have additional questions after the Q and A period ends, DOCCS will confer and determine a course of action.
25	On Page 20 of the Solicitation, it states that the Proposer must certify the Vendor Responsibility Questionnaire no more than six months prior to proposal due date. Is this still the case?	VRQ	Yes.
26	Can you clarify the requirements that we will need to demonstrate for private land for Type 2 Developments, if any?		DOCCS would require that the winning bidder provide proof of ownership or control of the property and equipment as noted in the PPA 4.1, page 9

27	Are there additional meters for the Type 1 projects that are not listed in Attachment 4 - Facility Electric Information? Or are all meters show?	Attachment 4	Correctional Facilities often have several meters depending on the number of buildings, staff housing, and other needed sources of electricity. The meter accounts provided represent that "main" facility meter. All bidding should be based on the main meter. If at a later date additional meters are identified at each facility that could benefit DOCCS solar program, they will be considered at that time for inclusion in the contract.
28	Just a clarification on Attachment B that there is not National Grid service territory in Zone B.	Attachment B	There is no Attachment B. If referencing Attachment 2; there is no National Grid territory in Zone B.
29	The Addendum seems to have eliminated other references to "(8) eight", but perhaps one survived that edit: What is meant by "the RFP solicits bids for up to (8) eight (49) forty nine separate Lots." Can you clarify that the reference to "(8) eight" is a typographical error?	Addendum #1 Page 2	The reference to "(8) eight" is a typographical error and should be removed from the RFP and Addendum #1.
30	RFP states: "The construction of five (5) Distributed PV Solar Generating Facilities (SGF), up to two (2) megawatts in size each, on state property located adjacent to, or nearby five (5) NYS Correctional Facilities (See Attachment 1) across New York State and the purchase by DOCCS of the electricity produced by each PV SGF system, through Remote Net Metering means ". Is it DOCCS' preference that these systems are not directly connected to the local facility's service, and that they are only net metered?		DOCCS will accept Net Metered, or "behind the meter" installations at the (5) PV SGF sites if it will provide DOCCS a greater financial advantage.
31	RFP states: "At the conclusion of the 20 year PPA, the developer will be responsible to remove in its entirety each SGF system including all PV panels, supports, wiring, electrical equipment, etc., and leave the land in the same condition as it was found prior to construction of the solar system(s)". Is there an option to leave the system intact and in-place for one of the following strategies: 1) DOCCS may continue with an appended PPA, or take ownership at FMV; or 2) System owner continues to maintain the system on the DOCCS site, net-meters the system, and provides lease payments for the property to DOCCS?		No.
32	Section II. 2, Page 4, Paragraph 4 States "At the conclusion of the 20 year PPA, the developer will be responsible to remove in it's entirety each SGF system including all PV panels, supports, wiring, electrical equipment, etc., and leave the land in the same condition as it was found prior to construction of the solar system(s)." Can you confirm this only applies to facilities located on DOCCS land?	Page 4	The requirement to remove the system(s) at the end of the PPA term is only for systems located on DOCCS property. DOCCS will not be responsible for any costs, liabilities, etc. for PV Solar Systems installed on Non-State land, nor be party to any arrangements or agreements between the solar developer and other parties.
33	Section V. 5 L ii., Page 15 Paragraph 1 States "No construction work will start in any area until the Developer has all the required materials on-site." Please confirm that we are allowed to do planned construction in stages (e.g. ...solar panel mounting may be constructed before we have the solar panels on-site. Given the solar panels are of significant value, if we were to deliver the panels to the site before having the racking constructed, we would have additional security risk in having them on site without a means of securing them on the mounting structures.).	Page 15	"Planned construction", or just-in-time delivery of materials to the site is acceptable.
34	Section VI.1 Page 16 Paragraphs 1 & 2 States "this RFP solicits bids for up to (8) eight separate Lots." Can you confirm "eight" is a typo?	Page 16	The reference to "(8) eight" is a typographical error and should be removed from the RFP and Addendum #1.

35	Attachment 12 - Paragraph 1, "Tools and equipment" Can you please confirm contractor tool checks will not be required because we are building outside the perimeter fence.	Attachment 12	A complete inventory of all tools is required, accountability of tools is the contractors responsibility, tools/equipment entering a secure area of the facility must be checked-in and checked –out each day. All other DOCCS Security Procedures must be followed.
36	Section II. 1. Page 2 Paragraph 4, Can you please confirm that we are allowed to bid Developer Sited Projects to serve the 5 listed SGF lots in "TABLE 1 - Customer-Sited PV Systems" For example, we are allowed to bid a project developed on private land controlled by the solar developer which serves the Wende CF satellite meter.	Page 2	Yes.
37	Section VI 7. C., Page 21 Paragraph 1 MWBE and EEO : We understand that there are MWBE contracting goals for this work with a 15% MBE goal and a 15% WBE goal. Per the RFP, page 23, Item ix. Bidders are required to submit the following documents and information as evidence of compliance with the foregoing: "An MWBE Utilization Plan – submit with bid or proposal (See Attachment 20). Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to DOCCS. DOCCS will review the submitted MWBE Utilization Plan and advise the Bidder of DOCCS acceptance or issue a notice of deficiency within 30 days of receipt." Given we will be well in advance of an award at the time of our proposal submittal, we will only have preliminary construction plans completed. According to Section IV TECHNICAL REQUIREMENTS, sub item 4. System Design and Permitting (page 9 of the RFP). The team has 90 days from a contract being signed to create a construction plan set. Without a construction plan set, it will be difficult for the team to solicit hard bids from qualified MWBE contractors to meet these requirements. The same question applies to the good faith efforts identified on page 22, item viii. Until we have a construction plan set, we will be unable to solicit potential consultants for the work. Our team is dedicated to meeting and/or exceeding the MWBE goals for this contract but are unsure how we can complete the required utilization plan before an award. Perhaps you could clarify that this should only, logically, happen after the award.	Page 21	DOCCS will accept the required MWBE Utilization Plan after completion of the construction plan set, at which time sub-contracting solicitations can occur.

38	<p>Section VII B., Page 30 Paragraph 1, "Proposal Scoring " In that PPA rate proposals you receive will be a function of an assumed NYSERDA incentive value, we applaud DOCC's for evaluating the likelihood of a given bidder to win a NYSERDA award in your proposal grading. In the previous NYSERDA PON solicitations for projects larger than 200kW, the awards were given to the lowest PON bids; these were competitive programs. The current MWB program, PON 3082, is not competitive. Therefore, we suggest you change the NYSERDA aspect of the bid evaluation from a quantitative assessment based on a "PON bid" level to a qualitative assessment of each bidder's proven ability to win NYSERDA awards and actually build projects with those awards. To clarify, we suggest DOCC's eliminate the "NYSERDA Incentive Award from Form 1" score. Move the points allocated to this section to "Qualification & Project Site Proposal". In the Qualification section each bidder will have the opportunity to convey their successful project completion track record with NYSERDA as well as their capacity to win awards in the new NY-SUN MWB program, which is a function of the bidder's capacity to quickly develop projects at scale. Further, we suggest DOCC's consult with NYSERDA to gain additional perspective on the respective bidder's NYSERDA program track record. The current "Attachment 16 - Cost Proposal Worksheet", also referred to on VI. 6., Page 20, Paragraph 1 of the RFP references a NYSERDA "incentive bid." This should be eliminated.</p>	Page 30	<p>DOCCS has revised the proposal and scoring language and methodology. A new Cost Proposal spreadsheet will be forthcoming soon to replace Attachment 16. DOCCS is interested in the lowest \$/kWh from an experienced, responsible developer. Section VI 6 and VII 2-B have been modified accordingly. Reference to NYSERDA PON's and Incentives have been eliminated.</p>
39	<p>Section VI.1.B., Page 17, Paragraph 1 States "... and whether it can be completed within the program Timely Completion limit of eight (8) months from (NYSERDA) award notification." Please confirm it is 18 months, per the NYSERDA MWB program manual.</p>	Page 17	<p>New grid-connected solar photovoltaic (PV) systems greater than 200 kW eligible to receive performance-based incentives under the NY-Sun initiative must be installed, interconnected, and in commercial operation no later than eighteen (18) months from the date of the NYSERDA approved Incentive Application.</p>
40	<p>Per our discussions during the mandatory in-person RFP meeting, SoCore Energy requests clarification on Section 15 (Termination). Could the Department clarify 1) that the Awardee would be made whole in the event of Termination for Convenience and 2) if in the case of Lack of Funds, if the State would propose to pay termination amounts to remedy Awardee?</p>	Page 38-39, Section IX: 15	<p>Yes. See, the PPA, Section 2.2. See response to Question #16.</p>
41	<p>The largest driver of cost uncertainty in any of the proposals that the Department will receive for this opportunity will be a result of interconnection results, which are largely outside of the bidder's control. Some public entities have attempted to levelize bids by requesting that the bidder include its assumptions on interconnection costs, with a request for a \$/kWh deviation in its bid price for each incremental interconnection cost variance. For example, a bidder might submit pricing with a base case interconnection cost of \$200,000 with a \$.005/kWh adder for each \$100,000 delta from that base case cost. Would the Department request such information from each bidder to provide it further clarity for the purposes of bid evaluation?</p>		<p>The interconnection costs are outside of DOCCS control. Bidders are encouraged to research the local distribution companies (LDC) electrical infra-structure system and make an assessment based on experience of the relative costs to connect, or modifications necessary for connection to the LDC system, and include those costs in their bid accordingly.</p>
42	<p>As mentioned, during the pre-bid meeting, for Remote Net Metered projects, the DOCCS current costs are not relevant as these projects will provide credits based on tariff values from the utilities. Therefore, we suggest that Section II.1 be revised to allow DOCCS to consider proposals that will provide DOCCS with immediate savings. The PPA rate might be higher than DOCCS market price, but would be lower than tariff value of the Remote Net Metering credits.</p>	Section II.1: page 3 and Section V11.2.B: page 30	<p>See response to #4 above.</p>
43	<p>Please confirm that DOCCS will be willing to be property lessee to ensure that projects qualify for Remote Net Metering.</p>	Section II.1: Type 2, page 3	<p>No.</p>

44	For customer-sited projects, Developer is to enter into a no-cost license. Can NY DOCCS confirm that this refers to the license granted in Section 7.2(d) of the PPA?	Section II.3:Type 2, page 4	Yes.
45	Please allow the use of Code compliant PVC conduit for underground wiring enclosures	Section IV.6.B, page 10	Electrical components, equipment, and systems shall be designed and constructed in accordance with the provisions of NFPA 70 and the 2010 Building Code of New York State.
46	To ensure valid comparison of vendor bids, we suggest that DOCCS directs bidders to all use same Incentive Block assumption. Would suggest Block 2. Monetary for Remote Net Metered projects and Volumetric for Behind the Meter projects.	Section IV.8, page 10	DOCCS will not direct an incentive block level to be used by developer's in preparing their bid.
47	To ensure valid comparison of vendor bids, we would suggest that DOCCS direct bidders to assume interconnection allowance for remote net metered sites. Suggest value of \$150,000.	Section IV.9, page 10	DOCCS will not set an allowance for the interconnection costs.
48	We request DOCCS to please remove the requirement for "battery backup". Data can be safeguarded without battery backup. Please clarify that vendor provided wireless interconnection is allowed (no interaction with DOCCS internet facilities)	Section IV.13, page 12	The requirement for battery backup for the meter is waived provided the meter data is maintained during a loss of power. Wireless technology is acceptable.
49	Quarterly reporting on MWBE goals during the term of the project. This requirement should be limited to the construction period, when the majority of work and expense associated with the project will occur. It should end at the time the PV system is placed into service.	Section VI.7.C.xii, page 23	The quarterly MWBE reporting will need to occur until all such subcontracting or potential subcontracting ends.
50	Bidder's submission of a proposal constitutes a binding offer to perform and provide the services. SolarCity's offer will be strictly subject to any exceptions and other terms stated in its proposal.	Section VI.9.J, page 28	The proposal must adhere to the RFP, otherwise the proposal may be considered to be non-responsive.
51	Including the RFP and proposal in the PPA will result in conflicting terms and the potential for disputes throughout the term of the project. Additionally, including the RFP and proposal in the PPA results in significant additional financing and legal costs as financing parties and their lawyers must review not only the PPA, but also the RFP and Proposal and determine what additional obligations and risks may exist in these other documents. SolarCity takes exception to the incorporation or inclusion of the RFP and proposal in the PPA in any form. That said, SolarCity would be happy to work with NY DOCCS to ensure that the key portions of the RFP and proposal (including, for instance, Exhibit A, NYS Standard Contract Clauses) are identified and included in the negotiated PPA.	Section VII.3.E, page 31	The RFP and Proposal must be included as part of the PPA. However, the PPA will be first in the order of precedence
52	Much of the subject matter covered by the General Terms and Conditions in the RFP is covered in the PPA. To the extent a particular subject matter (e.g., indemnification, insurance, etc.) is covered by the PPA, SolarCity's expectation is that subject matter would be exclusively governed by the provisions in the PPA.	Section VIII, page 32-39 (General Terms and Conditions)	See response to Question # 57.
53	Including the RFP and proposal in the PPA will result in conflicting terms and the potential for disputes throughout the term of the project. Additionally, including the RFP and proposal in the PPA results in significant additional financing and legal costs as financing parties must review not only the PPA, but also the RFP and Proposal and determine what additional obligations and risks may exist in these other documents. SolarCity takes exception to the incorporation or inclusion of the RFP and proposal in the PPA in any form.	Attachment 9 - WHEREAS Clauses 1 & 2	See response to Question # 57.
54	NY DOCCS to confirm that it does not desire the inclusion of a purchase option.	Attachment 9 - 1.1 & 2.4	NYS DOCCS does not want a purchase option.

55	This section ties the Commercial Operation Date to the date on which all utility approvals have occurred and certain testing has been conducted. SolarCity prefers to have Commercial Operation Date defined as the date on which it declares that the system is mechanically complete and capable of generating electric energy. This definition provides the solar developer with greater predictability around COD for purposes of scheduling financing tranching and has no adverse impact on the Purchaser as in all cases, the Provider must obtain all necessary approvals before it can actually commence operating the system and delivering electricity.	Attachment 9 - 3.3	The Commercial Operation Date shall remain as defined in Attachment 9 - PPA, Section 3.3
56	This section should make clear that Purchaser's right to claim any Environmental Attributes is subject to any claims or requirements of NYSERDA under the applicable NYSERDA incentive. It should also make clear that the Provider is entitled to all Tax Incentives and Environmental Incentives (where Environmental Incentives would be defined to include financial incentives, such as the NYSERDA award and Tax Incentives would defined to include all available federal, state, local tax credits and other incentives associated with System ownership). Suggest striking the reference to Green-e certification.	Attachment 9 - 5.3 (Environmental Attributes)	Answer will be forthcoming soon.
57	This section states that "Other than as provided in this Agreement," the Purchaser will keep the System free from liens. It also only requires Purchaser to indemnify Provider against the final judgment of such liens and only to the extent they arise from the Purchaser's negligence. Because financing parties will not allow any other party to have a right to place liens against the system, this language should be deleted, along with any provision elsewhere in the Agreement that would allow the Purchaser to place a lien on the System. The Purchaser's obligation to indemnify should include all of Provider's losses related to any lien the Purchaser allows to attach to the System, regardless of whether Provider receives a final judgment or whether the lien resulted from the Purchaser's negligence.	Attachment 9 - 7.2(b) (Liens)	DOCCS will remove the following section under 7.2(b) that starts with "If Purchaser breaches its obligations under this section...when acting within the course and scope of their employment."
58	Payments of amounts already due and owing is not addressed in the Force Majeure clause. The provision should be clear that a party isn't excused from making payments that were already due and owing at the time the Force Majeure event arose.	Attachment 9, 10.2 (Excused Performance of Force Majeure)	See Page 15, Section 10.2 of the PPA "other than the failure to pay amounts due hereunder"
59	Given that termination of the contract is such a draconian result, the right to terminate should be limited to material breaches of material terms, based on a reasonable standard. In no case should a termination be based on a determination made in a party's "sole discretion." Any breaches that can be cured within 30 days should be cured within 30 days. However, longer cure periods should be included, provided that the breaching party has commenced material efforts to cure within 30 days.	Attachment 9 - 11.1(a) (Provider Defaults)	DOCCS agrees to change the language stating that it is a "material breach" and regarding the time to cure it will say "a reasonable time."
60	Purchaser's remedy following a termination for Provider default is payment of the difference between FMV of replacement services and the contract price PLUS the Services Payment, suggesting that the Provider will have to pay for both the Purchaser's cost to cover AND the amounts that Purchaser would have otherwise paid Provider. Provider's termination payment to Purchaser in case of a termination for a Provider default should be limited to amounts necessary to place the Purchaser in the position it would have been in had Provider continued to perform – in other words, the difference between the contract price and FMV of replacement services for the remainder of the term, plus Purchaser's reasonable costs and expenses incurred in securing replacement services.	Attachment 9 - 11.1 (c)	This should say "Purchaser may terminate the Agreement and shall be entitled to liquidated damages in an amount equal to the positive difference, if any, between the Fair Market Value....and the Services payment..."

61	While provider has 10 business days to cure a payment default, Purchaser has 30 days. Typically, both parties have 10 days to cure a payment default; we would expect those same terms in the NY DOCCS PPA.	Attachment 9 - 11.2(a) Purchaser Defaults and Provider Remedies	Agreed.
62	Provider is exposed to unlimited liability for death, personal injury, and property damage resulting from negligence of Provider, its employees, or agents. SolarCity typically requires an absolute limit on liability, except for liability arising from indemnification claims.	Attachment 9 - 12.1 Limitation and Liability	Liability terms are set by the NYS Office of the State Comptroller.
63	This section fails to provide Provider with the complete set of assignment rights SolarCity would require to ensure financing. SolarCity will require its standard rights to assign for financing purposes, including the ability to assign in certain circumstances without notice or consent.	Attachment 9 - 13 Assignment	As per New York State Finance Law Section 138, the State must approve all assignments.
64	Purchaser's obligation to indemnify is limited to final judgments, but Provider's is not. Each party's obligation to indemnify the other should be subject to the same restrictions. Thus, either Provider's indemnification of Purchaser should be limited to final judgments, or Purchaser's indemnification of Provider should not be limited to final judgments.	Attachment 9 - 16.1 & 16.2 Indemnification	DOCCS will remove the Indemnification Clause for Providers.
65	Certain insurance requirements included are either not market or not commercially available. SolarCity reserves the right to negotiate the insurance requirements, including minimum coverage requirements, limits on retentions, and requirements around notice for changes and cancellation based on SolarCity's policies and the specific site requirements. Further, we note that the requirement that the Purchaser be made a loss payee on the Provider's policy should be omitted as the Purchaser has no insurable interest in the PV System.	Attachment 9 - 17. Insurance	DOCCS retains the right to negotiate the PPA after tentative award and is not asserting any rights to the System itself.
66	"The Purchaser reserves the right, in its sole discretion, to suspend activities under the contract at any time and may terminate the contract based on a finding of non-responsibility." SolarCity requests clarification from the NY DOCCS that this language is required for NY DOCCS contracts. To the extent the language is legally mandated, SolarCity will require additional language to make clear that Purchaser will remain responsible for Provider's lost revenue during any suspension and for an early termination fee if, in either case, if Purchaser's determination of "non-responsibility" is determined to have been in error.	Attachment 9 - 18.13 Grounds to Termination for Provider's Responsibility	No, the remedy would be sought in litigation.
67	This Section should be deleted as non-appropriation events are already covered in Section 6.1.	Attachment 9 - 18.14 Non-Appropriations Event	No.
68	While we understand and appreciate that NY DOCCS is a public entity and thus subject to the applicable public records act, SolarCity anticipates that any NDA executed would be bilateral, offering SolarCity confidentiality protections to the full extent available under law.	Attachment 25 - NDA	Agreed.
69	SolarCity believes that any assignment to an Affiliate of the Provider under the PPA should be allowed without notice or consent to facilitate financing. This will be particularly key for NY DOCCS' projects, as all of them will need to be placed in service (and therefore assigned to financing party) no later than December 31, 2016 to qualify for the full 30% ITC. If NY DOCCS does require consent to assignment, then it must agree that it will be responsible for the Provider's inability to claim the full ITC based on any failure by the Purchaser or any other approving party to provide its consent in a timely fashion.	Attachment 27 - Contract Assignment Form	As per New York State Finance Law Section 138, the State must approve all assignments.

70	<p>The agreement does not address allocation of responsibility of taxes. SolarCity's pricing assumes that the Purchaser will be responsible for any and all taxes that are assessed against the system, the delivery of electricity, interconnection, etc. arising after the date of Proposal submission. The PPA should include a provision expressly providing for Purchaser's reimbursement to Provider of any such taxes.</p>		No.
71	<p>The Cost Proposal Worksheet asks only for the \$/kWh for each year in Part 2. Therefore, it does not account for the actual cost to DOCCS which is a function of the \$/kWh multiplied by the expected kWh that a given bid / project will generate: how does this take into account the fact that a bidder might propose a system producing a different number of kWh? This could be due to different size of system (for a whole variety of reasons like area at developer's site) or different design or components and even shading or insulation (amount of sun) and as a result produces different expected kWh per year.</p> <p>This Part 2 appears to be mathematically incomplete and actually incorrect in terms of accounting for the savings that DOCCS might realize through one bid versus another. Why: DOCCS will have to assume a value for the Remote Meter Credits (RMC) it will receive per kWh against which all bids in that same utility / ISO Zone are measured, then reviewers will have to multiply the kWh expected by that RMC value to get the value to DOCCS of that bid and then subtract the PPA bid as \$/kWh multiplied by the same number of expected kWh to get it's likely savings. Further, the Dept. will have to presume some utility price escalator to apply to the RMC values for each year past Year 1 just to be realistic about the value of the RMC over time.</p> <p>Further, the amount of kWh produced by an array will diminish slightly over time, so the # of kWh each year will vary as it diminishes, again to be realistic. Spelling out the kWh expected in a column would account for this annual degradation.</p> <p>If, for example, two bids are slightly different in their Year 1 PPA price in \$/kWh, but one produces more kWh than the other, it may well be that the absolute value in dollars of Remote Meter Credit that are provided to the DOCCS Satellite Meter are higher from the bid that has a higher \$/kWh but also produces more kWh and therefore more RMC and more savings to DOCCS. The current form has no way to discern this and therefore does not represent this overall equation or even the actual PPA dollar DOCCS is likely to pay each year.</p> <p>It seems that the Part 2 of the form would need to have an additional column for at least the amount of kWh expected to be produced and another column for the total PPA dollars DOCCS will pay for the kWh as a function of the two.</p>	Attachment 16 - Cost Proposal Worksheet Part 2	<p>DOCCS has revised the proposal and scoring language and methodology. A new Cost Proposal spreadsheet will be forthcoming to replace Attachment 16. DOCCS is interested in the lowest \$/kWh from an experienced, responsible developer. Section VI 6 and VII 2-B have been modified accordingly. Reference to NYSEDA PON's and Incentives have been eliminated. Equipment efficiency and degradation over time is the contractor's responsibility. The spreadsheet allows these factors to be accounted for. The number of kWh of solar power available each day has been obtained from a national source for solar power data for the Albany NY area. Sections VI and VII will be revised in Attachment 16.</p>