

GENERAL INFORMATION

1. **SCOPE:**

1.1 The Wayne-Finger Lakes BOCES and certain school districts, counties, cities, towns, and villages require electricity. The BOCES, et al, have agreed to form a Cooperative Bid Group as authorized by General Municipal Law Section 119-o. It is the intent of the Cooperative Bid Group (hereinafter referred to as "Participants") to contract with vendor(s) and to establish prices for this service for the stated contract term.

1.2 This Invitation for Bids and Specification describes a contract for the purchase of electricity directly from electric producers or electric supply companies. The direct purchase of electricity is in conformance with electric deregulation action of the Federal Energy Regulatory Commission, the New York State Legislature, and the New York State Public Service Commission. The bid for the supply of electricity to the Participants is developed to allow any qualified bidder to be considered.

1.3 ADDITIONS:

- a) The Participants reserve the right to add additional sites to the contract at any time.
- b) The BOCES reserves the right to add to, or remove from, the contract at any time using Organizations, Departments, Agencies and School Districts ***when mutually agreeable with the awarded vendor(s).***

1.4 DELETIONS: The Participants reserve the right to remove from the contract any site for reasons including but not limited to sale, fire, demolition, etc. Notice will be given, if possible.

2. **AMENDMENTS TO BID:**

Any verbal information obtained from or statements made by representatives of Wayne-Finger Lakes BOCES at the time of examination of the documents or site shall not be construed as, in any way, amending contract documents. Only such corrections or addenda as are used by the BOCES in writing to all Contracts shall become a part of the Contract. Any addendum issued during the time of bidding shall be included in bids and become a part of the Contract Agreement.

3. **RESPONSIBILITY OF CONTRACTOR:**

The contractor shall be responsible for providing the services ordered resulting from this bid. The contractor is responsible for following all instructions as described in this document.

4. **BOCES' RESPONSIBILITY:**

Although this bid was issued, evaluated, and awarded by the Wayne-Finger Lakes BOCES at the request of itself and the other participants, BOCES' liability under contract is limited to coordination and BOCES issued purchase orders only. Participants are required to generate their own purchase orders (to the successful vendors) in accordance with the bid provisions and the attached schedule of awards.

5. **PARTICIPANTS' RESPONSIBILITY:**

Purchase Orders will be issued to the designated vendor(s) by the participants listed, authorized in accordance with established Municipal Accounting Practices. Those participants are solely responsible in contract for obligations entered into with the vendors.

6. OBLIGATION OF BIDDERS:

At the time of the opening of the bids, each bidder will be presumed to have read and be thoroughly familiar with the contract documents. The failure or omission of any bidder to receive or examine any form, instrument, or document shall in no way relieve any bidder from any obligation in respect to the submitted bid.

7. IRAN DIVESTMENT ACT:

7.1 By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

7.2 During the term of the Contract, should BOCES receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, BOCES will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then BOCES shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

7.3 BOCES reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

8. CONTRACT PERIOD:

Contract period shall be from January 1, 2025, and shall expire on December 31, 2025. The contract may be extended for up to one (1) additional period of one year or less by mutual agreement of the parties. This extension includes price, terms and conditions mutually agreed upon by both parties.

9. SHORT TERM EXTENSION:

In the event the replacement contract has not been issued, any contract let and awarded hereunder by the BOCES, may be extended unilaterally by the BOCES for an additional period of up to one month, or less upon notice to the Seller with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such one-month extension), price, and delivery requirements. With the concurrence of the Seller, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

10. INDEMNIFICATION:

Each party hereby agrees to indemnify, defend and hold harmless the other party from all suits, claims and the liability for injury or damage to persons or property resulting from or arising out of any activity conducted by either the respective parties or their agents, employees, invitees or designees except for injuries or damage caused or contributed to by the acts, omissions or negligence of the other party.

11. INSURANCE:

Insurance shall be procured, and certificate delivered prior to contract award or issuance of purchase order. However, all bids and quotes shall include the required proof of insurance forms with the response, failure to do so may deem the proposer non-responsive; *See Appendix A with the insurance requirements for this solicitation and a sample ACORD form showing the correct coverage. ACORD Form needs to be submitted with your proposal.*

12. DISCREPANCY:

In the event of any discrepancy, disagreement or ambiguity among the documents which comprise this Bid and the Vendor's Bid, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity; 1) the Bid Document; 2) the Vendor's proposal or bid.

13. GOVERNING LAW:

Any dispute arising under this Contract shall be governed by the laws of the State of New York, County of Wayne, Town of Arcadia. Any litigation under this Contract if commenced by Contractor shall be brought in a Court of competent jurisdiction in the State of New York. However, if the issue in dispute is not covered by the New York law or if there is a conflict between New York law and Federal law, i.e., decisions of the Federal courts, regulations and statues, the New York court shall apply the Federal law. Pending the resolution of any dispute, the Contractor shall proceed as directed by BOCES in writing.

14. EXECUTORY CLAUSE:

14.1 The Contractor specifically agrees that this contract shall be deemed executory only to the extent of monies available and no liability shall be incurred by BOCES or the Participants beyond the monies available for this contract.

14.2 For purposes of this clause "force majeure" which interferes with the Participant's ability to use Electricity shall be deemed to occur no later than twelve (12) hours after receipt of notification thereof by the Participant.

15. NO ARBITRATION:

Disputes involving this contract including breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

16. FORCE MAJEURE:

16.1 All obligations of the parties to this agreement (except for the payment of money for electricity delivered) shall be suspended while and for so long as compliance is prevented in whole or in part by an act of God, strike, lockout, war, civil disturbance, explosion, breakage, accident to machinery or electric lines, failure of generators or sources of electric supply, federal or state or local law, inability to secure material or rights of way or permits or approvals or licenses, binding order of a Court of Government Agency, the failure of any local distribution company to accept electricity for delivery for any reason, the default of any party to other contracts (other than Buyer and Seller), or by any other cause beyond the reasonable control of Buyer and Seller.

16.2 For purposes of this clause "force majeure" which interferes with the Participant's ability to use electricity shall be deemed to occur no later than twelve (12) hours after receipt of notification thereof by the Participant.

17. JUDGMENTS/LEGAL FINDINGS:

By submitting a bid for consideration, the vendor affirms that they currently have no judgments or other legal findings against the company or any of its executives, with any federal, state or local governmental entities that in any way could impact or have the potential to impact their ability to complete any contract awarded them as a result of this bid. Failure to disclose any such judgments and/or findings will result in the termination of any contracts and other penalties as deemed legal and appropriate by BOCES.

18. NEW YORK STATE SEXUAL HARASSMENT LAWS:

By submission of this Bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the NYS labor law. A model policy and training has been created by the NYS Department of Labor and can be found here: <https://www.ny.gov/programs/combating-sexual-harassment-workplace>

19. PAYMENTS:

Payments of any claim or invoice shall not preclude BOCES or Participants from making claims for adjustments on any item found not to have been in accordance with the contract specifications.

20. NON-ASSIGNMENT:

It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or his right, title, or interest therein, or his power to execute such Contract, to any other person, company, or corporation, without the previous written consent of BOCES.

21. EXCEPTIONS:

Any exceptions to this bid must be in writing and written on the Questionnaire Form.

22. TIEBREAKING:

22.1 In the event that BOCES receives two or more low responsive and responsible tie bids for a solicitation, BOCES shall use the recognized "lottery method" to break the tie bid to determine the awardee. Supplier early payment discounts shall not be used in determining the low bidder.

22.2 All bidders that participated in the solicitation shall be notified by email of the tie bid and shall be invited to publicly witness the breaking of the tie bid in the BOCES Business Office. Those bidders shall be asked to respond back, via email, to the agency regarding their intention to witness this event.

22.3 The "lottery method" is based on a random selection drawing of a name from the pool of tie bidders. Pieces of paper (buyer's business card, etc.) with one tie bidder's name per piece of paper shall be put into a container and either the buyer or another designated agency staff member will draw one lot with the winning tie bidder's name. At least two BOCES' staff members shall be required to witness this lottery drawing.

23. COMPLAINTS:

Both Participants and Vendor(s) shall submit all complaints in writing to:

Wayne-Finger Lakes BOCES Business Office,
Attn.: Linda McClean, CPPB
Purchasing Director
131 Drumlin Court
Newark, NY 14513-1863

Within four (4) days of occurrence. The Coordinator will maintain a file of all complaints that are submitted from both the Participants and the Vendor(s).

The BOCES reserves the right to reject any or all bids or to accept any proposal, which in the opinion of the BOCES is in the best interest of the Participants.

OTHER TERMS AND CONDITIONS

1. The BOCES reserve the right to reject any or all bids, or to accept any proposal which in the opinion of the Board of Education is in the best interest of the Participants.
2. Proposals must be submitted in a sealed envelope bearing the bidder's name, time and date of bid, and the group or groups of items on which the bid is being submitted.
3. Sealed proposals for the furnishing and delivery of Electricity as required by the Participants is set forth in the following specifications, will be received and opened at the Business Office, Wayne-Finger Lakes BOCES, 131 Drumlin Court, Newark, NY 14513-1863 on the day and hour stated on the Legal Notice to Bidders.
4. Vendor must be able to act as agent for Participants and make all arrangements for the transportation from the Primary Delivery Point to the Participant's LDC's meter.
5. The bidder shall submit a sample contract agreement and a disclosure statement with the bid. Standard Contract – the bidder shall submit a copy the company's standard contract, modified as necessary to be consistent with the commitments set forth in this bid. The standard contract must specifically reference the firm's proposal and indicate that where a conflict exists between the standard contract and the bid, the bid will take precedence.
6. Each Participant's monthly use in KW and KWH must be carefully identified and the invoice shall be consistent with monthly LDC electric bills. This applies to each account number.
7. Wording or conditions such as: "If Seller concludes that a change in any Law(s) increases Seller's costs, the Purchase Price may be adjusted by Seller to reflect such costs where Law(s) mean all tariffs, laws, orders, rules, decisions, taxes, regulations, transmission rates, utility charges etc. "will not be permitted in any electric supply contract generated from this bid offering.
8. The bidder must pass on any discounted transmission or delivery charges granted to the bidder by LDC. Regulated tariff distribution charges cannot be marked up.
9. A. Pricing: Index plus Adder - the monthly fixed adder price will be that which is listed on the bid summary sheet in \$/KWH.
B. BOCES seeks bids under the rules and regulations of the LDC's ESCO Supply Service.

SPECIFICATIONS

1. DEFINITIONS:

Except in those instances where the text states another meaning, the following terms, as used in this Invitation for Bids and Specifications, shall have the meaning as set forth below:

- CONTRACT - means any contract awarded resulting from this Invitation for Bids.
- DAY – means the period of twenty-four (24) consecutive hours beginning at 8:00AM
- Eastern Time of any calendar day and ending at 8:00 A.M. Eastern time of the calendar day immediately following a contract award.
- NYS ISO – New York State Independent System Operator
- DAY AHEAD MARKET (DAM) INDEX: charge is the published hourly LBMP price provided by the NYISO as applied to the metered Kwh (utilizing hourly metering data or load profiles) of each individual account ISO.
- SELLER - means any bidder to whom a contract award has been made by the District.
- CONTRACTOR – means any bidder/seller with whom a contract is made because of participation in this bid offering.
- PARTICIPANT - See the attached list, aka Buyer
- COORDINATOR: Wayne Finger Lakes BOCES, aka BOCES
- PURCHASING AGENT: Acts as agent for the Coordinator, Wayne Finger Lakes BOCES.
- FIXED ADDER: is applied to metered Kwh and includes: (1) capacity charges, (2) NYISO ancillary (including operating reserve) charges, (3) unaccounted for energy, (4) supplier –specific margin and admin, (5) ANY additional adjustments or costs (other than DA Market energy, losses and CES surcharge which are passed – through). There should be no provisions in the supplier's contract to pass-through any additional costs/adjustments other than DA Market energy (Hourly LBMP), utility tariff line losses and the NYS CES surcharge.
- LINE LOSSES: are factors set in the tariff of each local utility that account for losses on the transmission system. These factors are based on delivery voltage of each account. The loss factor increases the DA Market Index Charge by increasing the metered consumption by the applicable loss %.
- MONTH - means a period beginning at 8:00 A.M. Eastern time on the first day of a calendar month and ending at 8:00 A.M. Eastern Time of the first day of the calendar month immediately following.
- WAP – means weighted average price.

- LDC - means Local Distribution Company providing electric delivery service to Participant's facility in this case:
 - (A) New York State Electric and Gas (NYSEG)
4500 Vestal Parkway E
PO Box 3607
Binghamton, NY 13902-3607
 - (B) Rochester Gas and Electric (RG&E)
89 East Avenue
Rochester, NY 14649
 - (C) National Grid (NG)
PO Box 11742
Newark, NJ 07101-4742
- PRIMARY POINT OF DELIVERY - means the point where the electricity enters the first Transmission or Distribution Line of LDC
- Kwh - kilowatt-hours(s) (one kilowatt used for one hour).

2. TITLE:

2.1 Bidder shall identify "The Primary Point of Delivery", if applicable and the "Alternate Point of Delivery" at which title shall pass to the Participant. Contractor shall be responsible for the coordination and scheduling of transportation volumes including completing all arrangements for transportation services for delivery of the electricity to existing meters at the Participant.

2.2 Seller shall be in control and possession of the electricity delivered hereunder and responsible for any damage or injury caused thereby.

3. TRANSPORTATION CHARGES:

The seller shall pay all costs associated with the transportation of the electricity to the primary point of delivery.

4. USAGE:

The estimated total use for all districts is full requirements.

5. BID CONTRACT PRICE:

5.1 Bidders are instructed to provide an electric supply contract for all electric power delivered to the point of delivery during the Contract period, as set forth in the LDC's tariff specifications, for each tariff level of service requested, using the Index plus adder pricing method. All electric supply will be priced at NYISO DAM plus adder plus losses. Bidders are to provide a fixed index price adder for each service rate classification for the Contract period. The Purchasing Agent will compute the total fixed WAP (weighted average price) adder per Kwh using the Weighting Points method shown on the Bid Summary Sheet to determine the lowest total fixed WAP adder for the Participants.

5.2 Specific and separate weighting factors are used for each LDC in the bid summary sheets. Each Bid Summary Sheet submitted will therefore be evaluated and awarded separately. Weighting factors are based upon the most recent 12-month billing summary for bid participants in each rate classification in each LDC.

5.3 The account database for the Participants will be provided to bidders after completion/return of the Confirmation Receipt Form. **Accounts provided for this bid are as is and any questions pertaining to accounts will be handled with the winning vendor contacting the participant.** All pricing to be based on LDC's dual-billing model wherein Seller renders a separate monthly bill for electric supply under this supply contract.

5.4 Buyers may request thru WFL BOCES Purchasing Agent that the Seller switch some of their accounts to a single-billing model in-order to take advantage of energy credits produced from renewable energy project(s) when they install such projects. Seller must comply with this change. **The POR charges are included in the Supplier's billing charge rate stated on the bill and are not shown as a separate line item by the LDC at this time. However, the Supplier must notify the customer of this charge addition directly prior to commencement of single billing. The energy credits calculated are solar energy credits calculated by the LDC's to be applied on the customer billing from the LDC. These credits are a result of the interconnection of a solar project with the LDC for the electric customer. For the customer to receive the greatest cost savings from the solar project, the credits must be applied against both delivery and supply charges. Per LDC's the only way to make this happen is to have the supply charges added in the LDC's invoices. This is called "single bill model". All known alternative energy projects for this bid are included in Appendix B. Any further information regarding these projects must be obtained directly from the bid participant.**

6. METHOD OF AWARD:

6.1 Award shall be recommended to the responsive and responsible bidder(s) submitting a bid proposal that produces the **lowest** total WAP adder for electric supply for the Contract period for the Participants. The lowest total WAP adder for each LDC will be independently awarded.

6.2 BOCES reserves the right to add Participants to the contract at any time upon notification of the seller(s). **The Contract supplier can charge a fair market adjusted Adder rate for any electric account(s) added by a bid participant during the Contract period.**

7. RECOMMENDATION OF AWARD:

7.1 The Purchasing Agent will notify the "Recommended Bidder(s)" within seven (7) business days of the date of the bid opening. Award recommendations made by Purchasing Agent will be forwarded to the bid participants for their approval. Contracts and purchase orders will be awarded by each Participant for the purchase of electric supply used by each Participant's electric service.

7.2 All bid prices shall remain unchanged from bid date to Contract award date (not-to-exceed five (5) business days) except the winning bidder(s) whose bid prices shall remain unchanged while each Buyer executes a supply contract with them.

8. PAYMENT TERMS:

The Participant's strive to pay Net 30. Interest penalties will not be allowed.

9. PRODUCT SPECIFICATIONS:

Electricity tendered for delivery shall meet all the requirements of the Participant's LDC and the NYS ISO.

10. QUALIFICATION OF BIDDER:

All bidders must have been previously approved by NYSEG, RG&E, National Grid, and the New York State Public Service Commission before responding to this bid.

- a. The successful bidder must warrant absolute clear title to all electricity.

- b. The successful bidder shall maintain records of the metering, measurement and related facilities required to measure the electricity purchased by the Participant.
- c. The successful bidder must comply with all Federal and New York State requirements involved with the sale and transmission of electricity.
- d. Seller must adhere to the Customer Enrollment process specified by each LDC. Such a request will not be sent the LDC less than their specified business days prior to the next scheduled meter read for each Buyer's accounts. Refer to LDC's energy Supplier Manuals for details.
- e. Seller may reassign any portion of a Contract with a Buyer to a third party provided that said third party is recognized by the NYS PSC, NYS ISO and LDC as an ESCO or ESCO agent authorized to provide electric energy supply services within the LDC's service territory for that particular class of tariff customer with written approval of BOCES.

11. WARRANTY OF TITLE:

Seller warrants title to all electricity delivered by it and warrants that it has the right to sell the same and that such electricity is free from liens and adverse claims of every kind. Seller shall indemnify and save the Participant harmless against all loss, damage, and expense of every kind on account of adverse claims, which accrue before delivery to the Participant.

12. TERMINATION FOR CAUSE:

12.1 Either Participant or Seller shall have the right to terminate for cause in the event of default by either party. The right to terminate the contract is conditioned upon prior written notice to the other party by certified prepaid mail. The defaulting party shall have fifteen (15) days after the receipt of such notice to remedy such default. If the default is remedied within said fifteen (15) days, the contract shall not be terminated. In the event of termination, the terminating party loses the right to damages, which accrue after the date of such termination.

12.2 The default of one Participant shall not be deemed the default of the other Participant(s) and the contract shall remain in full force and effect with the non-defaulting Participant(s) and the contractor.

13. CANCELLATION CLAUSE:

The Participants reserve the right to cancel the contract at any time during the contract term upon thirty (30) days written notice of cancellation mailed to the address of the vendor(s).

14. OBLIGATION TO SUPPLY:

Seller shall be required to supply one hundred percent (100%) of the quantities of electricity required by the Buyer(s) during the Contract period to the LDC under its electric tariff excepting those extraordinary circumstances and limitations detailed elsewhere in this document. Seller will comply with the appropriate LDC's Customer Enrollment process requirements when executing this contract. Refer to provision 10.c above.

15. OBLIGATION TO PURCHASE:

Buyer shall purchase one-hundred percent (100%) of the quantities of electricity required during the Contract period from the Seller excepting those extraordinary circumstances and limitations detailed elsewhere in this document, including but not limited to building closings, consolidations, etc., or if Buyer chooses to receive electric supply directly from the LDC.

16. RENEWABLE ENERGY CLAUSE:

16.1 Some Participants may utilize on-site electric power generation facilities for a portion of their electric supply requirements. The Seller will coordinate all electric supply deliveries with the individual Buyer's Business Agent or Facilities Director. *See Appendix B.*

16.2 Should Buyer decide to switch to the single-bill model due to participation in an installation of a renewable energy project, the Seller must comply as detailed in provision 5.4 above.

17. BILLING:

17.1 Seller shall forward a single itemized invoice to each Buyer for all costs for electric delivered to the Point of Delivery for each of LDC's metered locations for that Buyer using the dual-billing model. This invoice shall clearly state quantity delivered, period of time and cost per unit for all electricity delivered to each location. Buyer agrees to pay Seller's invoice within **30 business days of its receipt by Buyer.**

17.2 Buyers may request that the Seller switch some of their accounts to a single-billing model to take advantage of energy credits produced from renewable energy project(s) when they install such projects. See detail in provision 5.4 above.

17.3 All Buyers are tax-exempt organizations registered with the State of New York Department of Taxation and Finance. Current Exemption certificates will be sent by each Buyer to Seller prior to start of Contract period.

18. BILL TO:

Upon bid acceptance, the successful bidder will enter into a formal contract or contracts with each Participant listed in the bid document.

19. PERMITS AND COMPLIANCE WITH LAWS:

19.1 The Contractor shall secure and pay for all permits, fees, and licenses necessary to comply with applicable federal or state laws. The Contractor shall comply with all federal, state, county and municipal laws, codes, and regulations in connection with the prosecution of the work.

19.2 The Contractor shall protect, indemnify and hold harmless BOCES and all of their officers, agents and employees against any and all claims and liabilities arising from or based on the violation of any such requirement or law whether by the Contractor, its employees, agents or subcontractors.

20. AUDIT OF SERVICES:

20.1 Purchasing Agent will be contracting with a third party for verification of all electric invoices to the Participants. The Seller will be required to email a summary copy of all Participant electric invoices each month during the Contract period directly to this third party [in Excel spreadsheet format]. This summary must include the account name, LDC Pod ID #, rate class, read dates, total Kwh, total cost, cost of losses, energy, CES and adder.

20.2 Savings Reports for all Participants shall be provided twice a year (for services completed for billing periods January thru June and July thru December). Reports shall be due in the Purchasing Department of Wayne-Finger Lakes BOCES no later than 30 days after the last billing cycle for these months.

Participation - Extension of Use

Participation by other BOCES, School District, and/or Other Political Subdivision within New York State:

Wayne-Finger Lakes BOCES reserves the right to allow all political subdivisions, municipalities, county, school districts, other BOCES, and not-for-profit organizations all authorized under the General Municipal Laws of the State of New York, to purchase any goods and/or services awarded as a result of this bid in accordance with the latest amendments to NYS GML 100 through 104. However, it is understood that the extension of such contracts is at the discretion of the vendor and Wayne-Finger Lakes BOCES. Participation requires the filing of the appropriate Board Resolution with Wayne-Finger Lakes BOCES. The Participant list will be amended from time to time as additional resolutions are filed with the Purchasing Department at Wayne-Finger Lakes BOCES. Initial contact must be done thru Wayne-Finger Lakes BOCES by contacting the Purchasing Department at wflpurchasing@wflboces.org.