

Inquiries and Responses Relating to MWBE

#	Solicitation Document Name	Document Section (Name or Number)	Page Number	Comment / Question / Bid Deviation	Response
716	Solicitation	4.10.3.1 M/WBE Contract Goals		If a company is not partnered with a MWBE, can it still be a part and bid on this contract?	Yes. To be qualified to respond to this Solicitation, the Manufacturer must offer IT Products in at least one of Lots 1, 2 or 3. A Manufacturer may use the NYS MWBE Directory (ny.newnycontracts.com), list of Prospective Certified MWBEs, and Primes Networking Session Attendee List to identify MWBE's to partner with. Please see Solicitation Sections 4.10.3.5 Required Good Faith Efforts and 4.10.3.4 Request for Waiver for additional information.
564	Solicitation	4.10.3 Business Participation M/WBE	37	If a Contractor is not permitted to utilize a MWBE Reseller to achieve the goals of Lot 1 and/or Lot 4, are there other methods the Contract can use to fulfill the goals/requirements? For instance, can a Contractor provide MWBE training or professional development or establish procurement goals in other Lots/Commodities (Indirect Spend) in order to demonstrate our commitment?	The OGS Office for Minority- and Women- Owned Business Enterprises evaluates Manufacturer's actions on a case-by-case basis to determine whether the Manufacturer has demonstrated sufficient good faith efforts. Questions regarding compliance with MWBE participation goals should be directed to the OGS Office for Minority- and Women- Owned Business Enterprises Designated Contacts identified in Solicitation Section 4.10.3.1.
483	Solicitation	4.10 MWBE	36	We fully support MWBE goals, but have concerns over the state goals of the NY OGS contract. While we support utilization of MWBE, the customer often chooses the reseller with whom they transact their business and some of our resellers are SBE. Based on this, we do not fully control meeting the goals and request the goals be reduced to 5% per category.	OGS respectfully declines the request. The MWBE participation goals for these contracts are as set forth in Solicitation Section 4.10.3.1. Please see Solicitation Sections 4.10.3.5 Required Good Faith Efforts and 4.10.3.4 Request for Waiver for additional information. Questions and discussions regarding MWBE participation throughout the contract term should be directed to the OGS Office for Minority- and Women- Owned Business Enterprises Designated Contacts identified in Solicitation Section 4.10.3.1.
511	Solicitation	4.10 MWBE	32	Does "Vendor" provide the Staffing Plan/Form 100 in hard copy submission, electronic submission, or both?	Yes. Manufacturer is required to submit with the Manufacturer Submission a staffing plan (form EEO 100) both in hard copy and electronic format.
576	Solicitation	4.10 MWBE	32	Section 4.10.2, page 37 requires submission of a staffing plan on the EEO 100 form. The EEO 100 form is not listed under the electronic or hardcopy submission. requirements. Does OGS require this be submitted with the offeror's proposal to Solicitation 22802?	Yes. Manufacturer is required to submit with the Manufacturer Submission a staffing plan (form EEO 100) both in hard copy and electronic format. Solicitation Section 3.1.2, has been amended to add to the list of required documents, "Form EEO 100."
696	Solicitation	4.10 MWBE		How do we do M/WBE for anything other than implementation? What is 20% or 30% of a software license or a mainframe computer?	A Manufacturer may use the NYS MWBE Directory (ny.newnycontracts.com), list of Prospective Certified MWBEs, and Primes Networking Session Attendee List to identify MWBE's to partner with. Please see Solicitation Sections 4.10.3.5 Required Good Faith Efforts and 4.10.3.4 Request for Waiver for additional information. It will be up to the Manufacturer to determine if a Reseller and/or subcontractor for their organization would be providing a commercially useful function. MWBE participation goals reflect the percentage of aggregate State agency expenditures over the entire Contract term.

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713	Solicitation	4.10 MWBE		Are SBE's and MWBE's treated equally or is that up to the AU? i.e. is SBE status eligible for same opportunities as MBE's? Are the goals the same?	There are no Small Business Enterprise goals associated with this Solicitation and resulting Contracts.
512	Solicitation	4.10 MWBE, 8.35		Section 4 and Section 8 have several subsections that address the same topic but may not be the same in terms of wording or requirements (example: 8.35 and 4.10). In the event of inconsistency or a conflict, which section has precedence?	Certain terms in Solicitation Section 4.10 and Section 8.35 may differ because Section 4.10 is applicable to Manufacturers at the Solicitation stage, while Section 8.35 provides terms and conditions that will be included in resultant Contracts.
10	Solicitation	4.10.3 Business Participation MWBE	37	Will only currently NYS certified M/WBE's be allowed as disadvantaged resellers in counting toward contract goals? If not, at what point do they need to hold the certification	MWBEs must be NYS certified at the time of Contract performance in order for their work to count towards fulfillment of MWBE participation goals. Further, Manufacturer is required to identify only NYS certified MWBEs it intends to use to perform the State Contract in its Utilization Plan.
249	Solicitation	4.10.3 Business Participation MWBE	37	In regard to the MWBE goals, would named contract resellers under our contract, who are Minority or Women-owned businesses qualify toward our goal?	It will be up to the Manufacturer to determine if a Reseller and/or subcontractor for their organization would be providing a commercially useful function. If so, certified MWBE Reseller sales count towards MWBE goal fulfillment. Please see Solicitation Sections 4.10.3.5 Required Good Faith Efforts and 4.10.3.4 Request for Waiver for additional information.
563	Solicitation	4.10.3 Business Participation MWBE	37	Regarding MWBE goals for software--can a Contractor use a MWBE Reseller Partner (that is certified by the State of NY) to fulfill the requirement of Lot 1?	It will be up to the Manufacturer to determine if a Reseller and/or subcontractor for their organization would be providing a commercially useful function. Please see Solicitation Sections 4.10.3.5 Required Good Faith Efforts and 4.10.3.4 Request for Waiver for additional information.
586	Solicitation	4.10.3 Business Participation MWBE	37	Please confirm that the MBE/WBE goals are aggregate percentages over a one year period.	MWBE participation goals reflect the percentage of aggregate State agency expenditures over the Contract term.
587	Solicitation	4.10.3 Business Participation MWBE	37	For hardware and software, the Authorized User has the choice which reseller to use and the OEM cannot dictate which reseller is selected by the AU. Please confirm that the OEM's inclusion of MBE/WBEs on the list of state approved fulfillment subcontractors will be sufficient to demonstrate good faith efforts to provide meaningful participation. See also 8.35.3, p. 58.	To clarify, per Solicitation Section 1.1 Overall Scope, The Authorized User transaction will be competitive, based on the development of a specific project by an Authorized User in accordance with the Contractual terms, resulting in an Authorized User Agreement. Inclusion of MWBEs on utilization plan may establish good faith efforts for Contract award. It will be up to the Manufacturer to determine if a Reseller and/or subcontractor for their organization would be providing a commercially useful function. If so, certified MWBE Reseller sales count towards MWBE goal fulfillment. Please see Solicitation Sections 4.10.3.5 Required Good Faith Efforts and 4.10.3.4 Request for Waiver for additional information.

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323	Solicitation	4.10.3.1 M/WBE Contract Goals	37	Manufacturer currently has a waiver for MWBE goals. Please confirm waiver will be applicable to this resultant contract as well.	Any previously approved waiver of MWBE goals will not be accepted for this Solicitation. Please see Solicitation Sections 4.10.3.5 Required Good Faith Efforts and 4.10.3.4 Request for Waiver for additional information.
741	Solicitation	4.10.3.1 M/WBE Contract Goals		The perception of the reseller community is that we will not be allowed to do business with NYS unless we are MWBE Business. This is based on the criteria of the implementation contract. Can you address this concern?	OGS has not restricted the pool of Resellers and therefore cannot comment on perceptions.
565	Solicitation	4.10.3.2 Commercially Useful Function Requirement	38	Would a MWBE Reseller considered to be performing a commercially useful function, as required by this language 4.10.3.2?	It will be up to the Manufacturer to determine if a Reseller for their organization would be providing a commercially useful function.
484	Solicitation	4.10.3.3 MWBE Contractor Agreements	38	IS the MWBE requirements based on aggregate of offered product/services or executed on a transactional basis?	MWBE participation goals reflect the percentage of aggregate State agency expenditures over the entire Contract term.
495	Solicitation	4.10.3.3 MWBE Contractor Agreements	38	Does NYS envision MBWB compliance to be looked at from a total contract perspective or for actual percentages of single deals to be split out if possible to MBWB?	MWBE participation goals reflect the percentage of aggregate State agency expenditures over the entire Contract term.
496	Solicitation	4.10.3.3 MWBE Contractor Agreements	38	Some agencies have expressed concerns about the specialized personnel that some MBWB's employ to deploy complex projects as compared to other some non MBWB entities. How does the State propose to handle these concerns while fulfilling these very important initiatives?	OGS cannot answer this inquiry as we do not understand the question.
497	Solicitation	4.10.3.3 MWBE Contractor Agreements	38	Will certified NYS small businesses get any preferential treatments in the new contract like MBWB?	There are no Small Business Enterprise goals associated with this Solicitation and resulting Contracts.
514	Solicitation	4.10.3.3 MWBE Contractor Agreements	38	This section requires "Vendor's" to submit a completed Utilization Plan via the New York State Contract System (NYSCS) at the time of submission. How should "Vendor" submit the Plan? Should "Vendor" submit a completed Utilization Plan on Form MWBE 100 with its "Vendor" Submission?	Yes. A Manufacturer is required to submit a completed Utilization Plan on Form MWBE 100 with its Solicitation response. Solicitation Section 3.1 Contents has been revised to add to the list of required documents, "Form EEO 100." See revised Solicitation Section 4.10.3.3 (b) Utilization Plan.
577	Solicitation	4.10.3.3 MWBE Contractor Agreements	38	Please clarify the address the offeror should use to submit a completed utilization plan (on Form MWBE 100) in the event the offeror cannot submit on NYSCS. "Vendor" submissions are to be addressed to OGS Procurement (38th floor) but section 8.35.4.B states plans should be sent to OGS MWBE on the 29th floor.	The completed Utilization Plan on Form MWBE 100 must be submitted to OGS with the Solicitation response. Solicitation Section 3.1 Contents has been revised to add to the list of required documents, "Form EEO 100." Certain terms in Solicitation Section 4.10 and Section 8.35 may differ because Section 4.10 is applicable to Manufacturers at the Solicitation stage, while Section 8.35 provides

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					terms and conditions that will be included in resultant Contracts. See revised Solicitation Section 4.10.3.3 (b) Utilization Plan.
89	Solicitation	4.10.3.5 Required Good Faith Efforts	39	Are all 6 items required to demonstrate good faith efforts?	The six items are provided as guidance. The OGS Office for Minority- and Women- Owned Business Enterprises evaluates Manufacturer's actions on a case-by-case basis to determine whether the Manufacturer has demonstrated sufficient good faith efforts. Questions regarding compliance with MWBE participation goals should be directed to the OGS Office for Minority- and Women- Owned Business Enterprises Designated Contacts identified in Solicitation Section 4.10.3.1.
251	Solicitation	4.10.3.6 Monthly MWBE Contractor Compliance Report	40	This section describes the required reporting of MWBE Subcontractor and Supplier Payments made by the Contractor to the MWBE firm. In the event that the MWBE is providing meaningful participation as an Authorized Reseller, NYS would be making the payment to the MWBE. Would we then report the paid invoice amount by NYS to the MWBE on this Compliance Report?	Payments to a Contractor's Reseller will be credited to the Contractor through the NYS Contracting System or through the Monthly MWBE Contractor Compliance Report on Form MWBE 102.
307	Solicitation	4.10.3.6 Monthly MWBE Contractor Compliance Report		To align with requirement of purchase history reporting and to allow "Vendor's"/resellers enough time request that this requirement be adjusted from monthly to quarterly?	Assuming that this question is a request to adjust the Monthly MWBE Contractor Compliance reporting requirement from monthly to quarterly, OGS respectfully declines to make the requested change.
630	Solicitation	4.10.3.6 Monthly MWBE Contractor Compliance Report	40	This section appears to not be applicable to resellers under Contractor. Please confirm that for resellers, only reporting is required on a quarterly basis as set forth in Attachment 9 – Report of Contract Sales. In addition, Contractor, as an OEM, can not dictate the final price to the Authorized User and therefore can not guarantee a certain margin or specific payment amount -- the M/WBE would have control of how much margin they retain for the resale of hardware and software in Lots 1 and 2. Further, fulfillment partners independently determine their price for installation and configuration services and the OEM cannot dictate or control that.	The Contractor is responsible for completing and submitting on a quarterly basis revised Attachment 9 Report of Contract Sales. The Contractor is also responsible for completing and submitting the Monthly MWBE Contractor Compliance Report.
96	Solicitation	8.35 Contractor MWBE	57	Please provide guidance on the distinction between the requirements of sections 4.10 and 8.35. They appear to be largely the same.	Certain terms in Solicitation Section 4.10 and Section 8.35 may differ because Section 4.10 is applicable to Manufacturers at the solicitation stage, while Section 8.35 provides terms and conditions that will be included in resultant Contracts.
97	Solicitation	8.35 Contractor MWBE	59	Do sections 8.35.4 (Utilization plan) and 8.35.7 (monthly reporting) apply to providers of Cloud products?	No. However, the requirements of Sections 4.10.1, 4.10.2, 8.35.1, and 8.35.2, regarding Equal Opportunity Requirements, do apply to Lot 3 Cloud.

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478	Solicitation	8.35 Contractor MWBE	58	As a manufacturer, we maintain MWBE resellers on our contract. The solicitation states, "To perform a commercially useful function, a MWBE must, where applicable and in accordance with any State Agency specifications, also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installing." Does an MWBE that has ability to determining quantity of supplies/materials, negotiating price, accepting order but not installing meet the Commercially Useful requirements?	It will be up to the Manufacturer to determine if a Reseller for their organization would be providing a commercially useful function. Please see Solicitation Sections 4.10.3.5 Required Good Faith Efforts and 4.10.3.4 Request for Waiver for additional information.
479	Solicitation	8.35 Contractor MWBE	58	The installation and configuration of our hardware and software is a very complex task. We require partners that have successfully passed certification classes in order to install our product. Due to the complexity and educational requirements, the vast majority of installation is completed by our internal Professional Services department.	There is no question, this is only a statement to which a response is not required.
64	Solicitation	8.35.3 Contract Goals	58	Please confirm that since there are no MWBE contract goals for Lot #3 Cloud, the following sections will be waived and no submission will be required: 4.10.3.3, 4.10.3.3©, 4.10.3.4, 4.10.3.5, and 4.10.3.6.	OGS confirms that the sections indicated in the question do not apply to Lot 3 – Cloud, however, the requirements of Sections 4.10.1, 4.10.2, 8.35.1, and 8.35.2, regarding Equal Opportunity Requirements, do apply to Lot 3 - Cloud.
385	Solicitation	8.35.3 Contract Goals	58	Are the contract goals for MWBE annual or quarterly goals.	MWBE participation goals reflect the percentage of aggregate State agency expenditures over the Contract term.
388	Solicitation	8.35.4 MWBE Utilization Plan	59	Are there any stipulations on the submission of the Utilization Plan?	The question does not contain sufficient details for OGS to provide a response other than to refer to the provisions contained within Solicitation Section 4.10.
386	Solicitation	8.35.7 Monthly MWBE Contractor Compliance Report	60	Sales Reports are required quarterly – but MWBE required monthly – would OGS considered making both quarterly.	OGS respectfully declines to make the requested change.
596	Solicitation	8.35.8 Breach of Contract and Liquidated Damages	61	How would liquidated damages be calculated where the OEM cannot dictate whether an Authorized User decides whether to purchase through an authorized M/WBE fulfillment partner? In that instance, the OEM does not dictate the final price to the Authorized User and therefore does not guarantee a certain margin or specific payment amount -- the M/WBE would have control of how much margin they retain for the resale of hardware and software in Lots 1 and 2. Further, fulfillment partners independently determine their price for installation and configuration services and the OEM cannot dictate or control that.	A Contractor must be found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract to be assessed liquidated damages. Please see Solicitation Section 8.35.8 Breach of Contract and Liquidated Damages, item B for additional information.

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	Solicitation	4.10.2 Equal Opportunity Requirements	36	My firm is a woman-owned company, headquartered in Canada. Will NYS certify a Canadian firm as a WBE?	<p>The following are the requirements a company would have to meet to apply for certification as a WBE:</p> <ul style="list-style-type: none"> • The company must have a “significant business presence.” Significant business presence means, “A business authorized to do business in New York State, and that makes a contribution to the New York State economy through payment of taxes, or the purchase of made in New York State products or materials, or that has any payroll in New York State” (i.e. at least one person who gets paid in the state) • The company must be a “Small business”, which is defined as “A business which has a significant business presence in the State, is independently owned and operated, and is not dominant in its field, but in no event employs more than three hundred people.” • The company must also be a “Women-owned business enterprise.” To be a WBE, the following must be met: <ul style="list-style-type: none"> “(i) at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in this State and which is independently owned and operated; (v) an enterprise owned, either directly or through a holding company, by an individual or individuals, whose ownership, control and operation are relied upon for certification, with an individual personal net worth at the time of application that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year starting in 2011”
700	Solicitation	General		How will OGS make firms like ""Vendor" X" give MWBE "Public sec for Addendum" (PSA) so that they can sell to government agencies. Most OEM use the vehicle to prevent MWBE from participating in government contracts.	OGS cannot answer this inquiry as we do not understand the question.

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	Solicitation	4.10.3.3 (b) Utilization Plan		The MWBE Utilization Form requires a Dollar Value Of Subcontracts/Supplies/Services and Intended Performance Dates of each component of the Contract. This work has not been done yet, how do I supply intended dates and costs?	OGS will accept a response of 'to be determined' (TBD).
	Solicitation	4.10.3.3 (b) Utilization Plan		Do I need to complete MWBE 100 for every Lot?	Form MWBE 100 is required for each Lot (i.e. Lots 1, 2 and 4) with MWBE goals a Manufacturer is responding to.
	Solicitation	4.10.3.3 (b) Utilization Plan		There is no space to identify the Lot on the MWBE 100 Form. What do I do?	A Manufacturer will indicate the applicable Lot number on the top of each form.
219	Solicitation	8.35.8 Breach of Contract and Liquidated Damages	61	Please confirm that the damages specified in this section are subject to the agreed upon contractual limitation of liability.	It is anticipated that liquidated damages as calculated under Solicitation Section 8.35.8 will fall below the limitation of liability set forth in Appendix B.

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For all Lots, evidence of insurance must be provided in the form of full policies for all required insurance as specified in Section 2 of Attachment 5 Vendor Insurance Requirements. Evidence of insurance shall be submitted in accordance with Solicitation Section 3.1 Contents.					
629	Attachment 5 – Vendor Insurance Requirements	1 Conditions Applicable to Insurance	1	Can the additional insured requirements be limited to the CGL and Auto and Umbrella insurance required, so that it does not extend to the E&O/Cyber policy and Crime policy? That is, can the last sentence of Section 1 be amended as follows, “The additional insured requirement does not apply to Workers’ Compensation and Disability coverage, and Data Breach and Privacy/Cyber and Technology Errors and Omissions coverage and Crime coverage.” Reason: It is not standard to agree to add a customer or client to an E&O policy as additional insured. And additional insured concepts do not apply to Crime insurance. The State of New York would want to be included as a	See Revised Attachment 5 - Vendor Insurance Requirements, Section 1 Conditions Applicable to Insurance.

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				loss payee, as its interests may appear, which is the way Clause 2.4 is written.	
624	Attachment 5 – Vendor Insurance Requirements	1.3 Certificates of Insurance/Notices	2	Can the first sentence at the top of page 2 of 8 be amended to apply only to cancellation and non-renewal. Reason: It is not possible to get the wording required, which requires notice not only of cancellation and nonrenewal, but also material change.	OGS respectfully declines to make the requested change.
574	Attachment 5 – Vendor Insurance Requirements	1.3 Certificates of Insurance/Notices	2	Our insurance provider does not provide written notice of material change in insurance policies. "Vendor" is willing to contract to provide this notice. Will OGS allow for this change in responsibility?	OGS respectfully declines to make the requested change.
34	Attachment 5 – Vendor Insurance Requirements	1.5 Policy Renewal/Expiration	2	<p>Section 1.5 requires Contractors to provide evidence of policy renewal or replacement policies at least thirty (30) days prior to the expiration of any policy.</p> <p>We have extensively evaluated the challenges of meeting this requirement in actual practice. Based on decades of corporate experience in insurance and risk management operations and input from multiple independent experts, we contend that as written this requirement forces Contractors to agree to terms they cannot in practice comply with.</p> <p>Our corporate VP for Risk Management has 40 years of experience in risk management and insurance, including 11 years with our company. After reviewing the RFP terms, he states that we cannot guarantee that we can comply with this requirement. In practice, he states, “underwriters typically do not get serious in negotiating terms and pricing until inside of 30 days from expiration,” presumably due in part to other, earlier renewals due with other companies. He further states, “The practicality of renewals is that oftentimes they are completed the final week before expiration.”</p> <p>Continued in Inquiry #35</p>	This inquiry is continued within Inquiry # 35.

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35	Attachment 5 – Vendor Insurance Requirements	1.5 Policy Renewal/Expiration	2	<p>Continuation of Inquiry # 34</p> <p>As a customer of the insurance providers, a Contractor can request a service level that will allow the Contractor to comply with these RFP terms, but in reality the Contractor cannot force its insurance providers to operate in such a way that compliance is certain.</p> <p>This concern is apparently widespread, as more than a dozen Bidders requested that OGS reconsider similar contract language in another recent OGS solicitation. Although OGS has repeatedly refused to reconsider changing this requirement, we respectfully request that OGS recognize the untenable position that it puts Contractors in and change the requirement so that policy renewal/replacement documentation is required by the date of policy expiration.</p>	This is a continuation of Inquiry # 34. This inquiry is also continued within Inquiry # 36.
36	Attachment 5 – Vendor Insurance Requirements	1.5 Policy Renewal/Expiration	2	<p>Section 1.5 requires Contractors to provide evidence of policy renewal or replacement policies at least thirty (30) days prior to the expiration of any policy.</p> <p>We respectfully request that OGS explain the rationale behind this requirement, given the widespread concerns of Bidders on other OGS solicitations about being able to comply with this requirement.</p>	<p>This is a continuation of Inquiries 34 and 35.</p> <p>Thirty days gives a reasonable amount of time for new coverage or acceptable coverage to be obtained before the existing coverage ends or changes.</p>
37	Attachment 5 – Vendor Insurance Requirements	1.5 Policy Renewal/Expiration	2	<p>Section 1.5 requires Contractors to provide evidence of policy renewal or replacement policies at least thirty (30) days prior to the expiration of any policy. The tangible and meaningful benefit to the State from requiring that specified levels/types of insurance be maintained at all times is the protection afforded by the insurance coverage. Requiring “Vendor’s” to provide updated replacement Certificates of Insurance not less than 30 days prior to expiration does nothing to increase the protection and value to the State, as long as the required levels of coverage are maintained. This requirement does, however, place an inequitable and unnecessary administrative burden on “Vendor’s” even though it provides no real value to</p>	OGS respectfully declines to make the confirmation.

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				<p>the State.</p> <p>We respectfully request that OGS recognize the untenable position that it puts Contractors in and change the requirement so that policy renewal/replacement documentation is required by the date of policy expiration.</p>	
38	Attachment 5 – Vendor Insurance Requirements	1.5 Policy Renewal/Expiration	2	<p>Section 1.5 requires Contractors to provide evidence of policy renewal or replacement policies at least thirty (30) days prior to the expiration of any policy.</p> <p>We fully agree that the OGS has a valid interest in requiring that Contractors maintain prescribed levels and types of insurance to protect the State. However, the RFP requirements go far beyond defining “what” a Contractor has to deliver. The RFP terms attempt to prescribe “how” a Contractor has to meet the valid requirement for keeping adequate insurance coverage in place at all times during the contract term. Contract terms of this nature define and limit how Contractors operate to meet contract requirements and often have unintended results, such as limiting competition, discouraging Contractor innovation, and increasing overall costs to the State. Industry best practice is that the State should define the contract deliverables and then allow Contractors determine the best way to deliver the required services and/or products. As long as a Contractor maintains the required levels of insurance coverage, it should be immaterial to the State how the Contractor interacts with its insurance providers.</p> <p>We respectfully request that OGS recognize the untenable position that it puts Contractors in and change the requirement so that policy renewal/replacement documentation is required by the date of policy expiration.</p>	OGS respectfully declines to make the confirmation.

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<p>For all Lots, evidence of insurance must be provided in the form of full policies for all required insurance as specified in Section 2 of Attachment 5 Vendor Insurance Requirements. Evidence of insurance shall be submitted in accordance with Solicitation Section 3.1 Contents.</p>					
39	Attachment 5 – Vendor Insurance Requirements	1.5 Policy Renewal/Expiration	2	<p>Section 1.5 requires Contractors to provide evidence of policy renewal or replacement policies at least thirty (30) days prior to the expiration of any policy.</p> <p>1) How does OGS intend to monitor and enforce compliance with this contract requirement?</p> <p>2) Given that multiple Bidders have stated that compliance with this requirement could be beyond a Contractor's control, does OGS anticipate holding a Contractor in breach of the contract if the Contractor is unable to provide renewal certificates at least 30 days prior to policy expiration, even if the insurance coverage is properly maintained in force?</p> <p>3) How will the interests of the State be served if multiple Contractors are no longer able to bid on RFQs because they have been unable to comply with this requirement, despite their best good faith efforts?</p>	<p>1) OGS declines to share its internal procedures on monitoring Contract compliance. Any failure of a Contractor to fulfill any term and condition within the resulting Contract may at the discretion of OGS be deemed breach.</p> <p>2) The State reserves the right to exercise all rights and remedies available to it under the Contract, at law and in equity.</p> <p>3) OGS respectfully declines to respond to this question.</p>
40	Attachment 5 – Vendor Insurance Requirements	1.5 Policy Renewal/Expiration	2	<p>Section 1.5 requires Contractors to provide evidence of policy renewal or replacement policies at least thirty (30) days prior to the expiration of any policy.</p> <p>These requirements represent a significant change and escalation from the insurance requirements of previous OGS contracts.</p> <p>We respectfully request that OGS help Bidder's understand the reasons behind this unprecedented change in contract terms related to insurance.</p>	<p>This requirement adheres to the requirements of the Council of Contracting Agencies Procedure Manual for Insurance Requirements in Agreements and is utilized by numerous state entities.</p>
625	Attachment 5 – Vendor Insurance Requirements	1.5 Policy Renewal/Expiration	2	<p>1) Can the first sentence of 1.5 be changed from “thirty (30) days prior to the expiration” to “ten (10) days within renewal of”. Reason: It is not possible to provide a renewal certificate of insurance prior to when the coverage renews.</p> <p>2) Alternatively, please insert "if any required insurance is cancelled or nonrenewed, such "Vendor" or Contractors shall replace such insurance so that no lapse in coverage occurs, and shall provide a revised certificate of insurance evidencing same.”?</p> <p>Reason: It is no longer possible to buy insurance policies that obligate the</p>	<p>1) and 2) OGS respectfully declines to make the requested change.</p>

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#	Solicitation Document Name	Document Section (Name or Number)	Page Number	Comment / Question / Bid Deviation	Response
For all Lots, evidence of insurance must be provided in the form of full policies for all required insurance as specified in Section 2 of Attachment 5 Vendor Insurance Requirements. Evidence of insurance shall be submitted in accordance with Solicitation Section 3.1 Contents.					
				insurer to give prior notice of cancellation to certificate holders. We have been using for the past two years or so the language quoted above in lieu of the language used in the Solicitation.	
626	Attachment 5 – Vendor Insurance Requirements	1.5 Policy Renewal/Expiration	2	Can the sentence in 1.5 regarding OGS's or Authorized Users ability to withhold payment be deleted? Reason: The remedy of contract breach of the promise to provide insurance should be sufficient. In addition, for large publicly held companies with the financial ability to absorb losses up to the insurance limits, such company should not be penalized because this term or that of its insurance program is deemed by OSG as not being in compliance.	OGS respectfully declines to make the requested change.
680	Attachment 5 – Vendor Insurance Requirements	1.5 Policy Renewal/Expiration		The RFP states that a "Vendor" shall renew it's insurance no less than 30 days before the insurance policy expires. The insurance industry does not work in a way that enables "Vendor's" to be able to meet this 30 day requirement. Historically and customarily insurance providers almost always renew and negotiate the renewal a week or even days before and insurance policy expires. Will OGS change this requirement to best effort by the "Vendor" to renew in 30 days?	OGS respectfully declines to make the requested change.
627	Attachment 5 – Vendor Insurance Requirements	1.6 Self-Insurance Deductibles	2	Can the second sentence of 1.6 be deleted? Reason: Our Crime insurance policy has a deductible in excess of \$100,000, and as a publicly traded company we have sufficient ability to cover a crime loss in excess of \$100,000.	See Revised Attachment 5 - Vendor Insurance Requirements, Section 1.8 Self-Insured Retention/Deductibles.
628	Attachment 5 – Vendor Insurance Requirements	1.6 Self-Insurance Deductibles	2	What is the process for OGS to approve a self-insurance retention?	OGS respectfully declines to respond to this inquiry.
41	Attachment 5 – Vendor Insurance Requirements	1.7 Subcontractors	3	Additional Insureds does not apply to Workers Compensation and Disability coverage. Additional Insureds also should not apply to fidelity coverage and professional liability/errors and omissions coverage. We respectfully request that this paragraph be modified to recognize these exceptions.	See Revised Attachment 5 - Vendor Insurance Requirements, Section 1 Conditions Applicable to Insurance.

Inquiries and Responses Relating to Insurance

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For all Lots, evidence of insurance must be provided in the form of full policies for all required insurance as specified in Section 2 of Attachment 5 Vendor Insurance Requirements. Evidence of insurance shall be submitted in accordance with Solicitation Section 3.1 Contents.					
22	Attachment 5 – Vendor Insurance Requirements	2.1 Waiver of Subrogation	5	Document Language states-"Vendor" and Contractor as a result of this Solicitation shall cause to be included in each of the above referenced policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS. A Waiver of Subrogation Endorsement shall be provided at the time of bid submission and thereafter, within three (3) days of request. 1) Can a "Vendor" take exception to the waiver of subrogation and still be found responsible	No. A Manufacturer must provide all Attachment 5 - Insurance Requirements to be considered for a Contract.
575	Attachment 5 – Vendor Insurance Requirements	2.2 Automobile	4	As we do not own any automobiles, our insurance coverage is limited to Non-Owned Automobile Liability which includes hired vehicles. We would like to provide this insurance in place of the Comprehensive Business Automobile Liability Insurance. The Comprehensive Business Automobile Liability Insurance would apply if we purchased or leased any automobiles.	OGS respectfully declines to make the change. See revised Attachment 5 - Vendor Insurance Requirements, Section 2.2 Comprehensive Business Automobile Liability Insurance: Such insurance shall cover "... owned, leased, hired and non-owned automobiles."
24	Attachment 5 – Vendor Insurance Requirements	2.2.1 Auto - Waiver of Subrogation	5	Document language states-"Vendor's" and Contractor as a result of this Solicitation shall cause to be included in each of the above referenced policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OGS. A Waiver of Subrogation Endorsement shall be provided at the time of bid submission and thereafter, within three (3) days of request. 1) "Vendor" question-Can a "Vendor" take exception to the waiver of subrogation and still be found responsible	A Manufacturer must provide all revised Attachment 5 - Insurance Requirements to be considered for a Contract.
42	Attachment 5 – Vendor Insurance Requirements	2.2.1 Auto - Waiver of Subrogation	4	Is a blanket Waiver of Subrogation satisfactory for meeting this requirement?	Yes, if the blanket Waiver of Subrogation provides the requisite coverage. Documentation will be considered upon submission evaluation.
43	Attachment 5 – Vendor Insurance Requirements	2.2.1 Auto - Waiver of Subrogation	4	Is a blanket Waiver of Subrogation satisfactory for meeting this requirement?	Yes, if the blanket Waiver of Subrogation provides the requisite coverage. Documentation will be considered upon submission evaluation.

Inquiries and Responses Relating to Insurance

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<p>For all Lots, evidence of insurance must be provided in the form of full policies for all required insurance as specified in Section 2 of Attachment 5 Vendor Insurance Requirements. Evidence of insurance shall be submitted in accordance with Solicitation Section 3.1 Contents.</p>					
26	Attachment 5 – Vendor Insurance Requirements	2.2.2 Auto - Endorsements	6	<p>Document language states- The following ISO forms must be endorsed to the policy:</p> <ul style="list-style-type: none"> - CG 20 10 11 85 or an equivalent- Additional Insured-Owner, Lessees or Contractors (Form B); and - Waiver of Subrogation Endorsement. <p>1) "Vendor" question-Can a "Vendor" take exception to the waiver of subrogation and still be found responsible</p>	A Manufacturer must provide all revised Attachment 5 - Insurance Requirements to be considered for a Contract.
44	Attachment 5 – Vendor Insurance Requirements	2.2.2 Auto - Endorsements	4	<p>A business automobile policy cannot include fidelity coverage. We respectfully request that the following language be deleted:</p> <p>The policy shall include coverage for third party fidelity including cyber theft if not provided as part of Cyber Liability and name The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation as an Authorized User and their officers, agents, and employees as "Loss Payees."</p>	See revised Attachment 5 - Vendor Insurance Requirements, Section 2.2 Comprehensive Business Automobile Liability Insurance.
30	Attachment 5 – Vendor Insurance Requirements	2.3 Data Breach . . .	6	We maintain \$10,000,000 per claim limits for the Tech E&O (which falls into high) and \$5,000,000 per claim on our Fidelity/Blanket Crime policy (Moderate). Which would fall between high and moderate--which should we select on the chart?	A Manufacturer must demonstrate all Minimum Insurance Coverages to qualify for a Contract. In this instance, the Manufacturer would not meet the minimum requirements for Lot 3 - Cloud (High Risk) because they do not have the minimum Crime Insurance necessary for that level of risk.
253	Attachment 5 – Vendor Insurance Requirements	2.3 Data Breach . . .	5	Att 5 is "Vendor" Insurance. On page 5 , sect 2.3 for cloud - there is a classification of the data risk – low, medium, high. We must provide insurance to cover the risk level. The Authorized User is required to do a data categorization study prior to RFQ (Att 11, 3.6.4) . Can we expect to receive the study, or just the end result of low, medium, high?	The Authorized User's RFQ will at a minimum include results from the study and associated risk factors. See Attachment 11 - How To Use The Manufacturer Umbrella Contract, Section 3.6.4.2 Data Categorization Study.
45	Attachment 5 – Vendor Insurance Requirements	2.3.1 Data Breach - Claims-Bade Basis	5	Extended discovery is an option that can be purchased if a policy is not renewed. We would agree to purchase a 3-year extended discovery period if we do not continue coverage. Is this approach acceptable?	No. The policy must have all necessary coverage at the time proof of coverage is submitted.

Inquiries and Responses Relating to Insurance

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<p>For all Lots, evidence of insurance must be provided in the form of full policies for all required insurance as specified in Section 2 of Attachment 5 Vendor Insurance Requirements. Evidence of insurance shall be submitted in accordance with Solicitation Section 3.1 Contents.</p>					
247	Attachment 5 – Vendor Insurance Requirements	2.4 Crime		<p>1) Is Crime coverage a mandatory requirement? 2) "Vendor" carries some coverage, but not the comprehensive coverage of a stand-alone policy and with the limits and terms required in this Section. "Vendor" does not carry Third Party Crime insurance. 3) What "Cyber theft" exposure is the State of New York concerned about? If privacy security and data, then we do have this under our Cyber liability policy. However, if tangible property, we will need to look at adding additional crime coverage. 4) Please see Attachment 5 with comments/questions from our insurance provider.</p>	<p>1) Yes 2) A Manufacturer must submit all revised Attachment 5 – Vendor Insurance Requirements with Submission response. 3) OGS respectfully declines to respond to this inquiry. 4) OGS respectfully declines your request to review the attached document with comments. Please see inquiry responses related to Insurance and revised Attachment 5 Vendor Insurance Requirements.</p>
243	Attachment 5 – Vendor Insurance Requirements	Attachment 5		<p>Sent a copy of Attachment 5 "Vendor" Insurance Requirements with edits. See following link to document.</p>	<p>OGS respectfully declines your request to review the attached document with comments. Please see inquiry responses related to Insurance and revised Attachment 5 Vendor Insurance Requirements.</p>
7	Attachment 5 – Vendor Insurance Requirements	General	1	<p>Is there a requirement to obtain proof of insurance as a condition of proposing or alternatively, is the requirement to obtain proof insurance as a within 20 business days of tentative award. There appears to be an inconsistency between Attachment 02 which states ""Vendor" has provided proof of all necessary insurance, including Cyber and Crime, as detailed in Attachment 5 – "Vendor" Insurance Requirements" and Attachment 05 which states "A "Vendor" shall be required to procure, at its sole cost and expense, all insurance required by this Attachment and, unless otherwise required by this Section, provide proof of the same within twenty (20) business days of tentative award and before commencing any work under any Contract resulting from this solicitation."</p>	<p>Proof of insurance is required with Solicitation response. Please see revised Attachment 5 - Vendor Insurance Requirements.</p>
272	Attachment 5 – Vendor Insurance Requirements	General		<p>Is it possible for a manufacturer to purchase the necessary special insurance policies within the cloud services lot within some time frame AFTER being awarded a contract with NYS OGS or as necessitated by a subsequent RFQ?</p>	<p>Proof of insurance is required with Solicitation response. Please see revised Attachment 5 - Vendor Insurance Requirements.</p>

Inquiries and Responses Relating to Insurance

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<p>For all Lots, evidence of insurance must be provided in the form of full policies for all required insurance as specified in Section 2 of Attachment 5 Vendor Insurance Requirements. Evidence of insurance shall be submitted in accordance with Solicitation Section 3.1 Contents.</p>					
314	Attachment 5 – Vendor Insurance Requirements	General		<p>In the first paragraph of Attachment 5, you state “A "Vendor" shall be required to procure, at its sole cost and expense, all insurance required by this Attachment and, unless otherwise required by this Section, provide proof of the same within twenty (20) business days of tentative award and before commencing any work under any Contract resulting from this solicitation.”, yet further down in the document, paragraph 1.3, you state ““Vendor’s” shall provide a Certificate or Certificates of Insurance and required amendatory endorsements, in a form satisfactory to OGS, at the time of "Vendor" Submission, thereafter, within three (3) business days of request.” Which is it? Do we need to provide Proof of Insurance with our bid submission, or does it need to be provided within 20 business days of tentative award?</p>	<p>Proof of insurance is required with Solicitation response. Please see revised Attachment 5 - Vendor Insurance Requirements.</p>
579	Attachment 5 – Vendor Insurance Requirements	General		<p>"Vendor" can generally comply with the insurance requirements of this section, however "Vendor" proposes the following: 1) that OGS acceptance of the form of the policies not be unreasonably withheld; 2) that replacement policies be provided as soon as reasonably possible; 3) that the primary insurance and the naming of New York as an additional insured applies to the liability assumed by "Vendor" under the agreement (i.e. “Vendor’s” fault or negligence) and that in light of naming New York as an additional insured that the right of subrogation be removed from the agreement.</p>	<p>1) Please see Revised Attachment 5 - Insurance Requirements, Introduction, paragraph 2. 2) OGS respectfully declines to make the requested change. 3) OGS respectfully declines to make the requested change.</p>