



# Invitation For Bids

**IMPORTANT: SEE "NOTICE TO BIDDERS" CLAUSES HEREIN  
BIDS MAY BE SENT TO THE ADDRESS NOTED IN SECTION 3.3.1 ONLY  
(E-Mail or Facsimile Bid Submissions Are NOT Acceptable)**

<b>BID OPENING</b> DATE: <b>June 2, 2015</b> TIME: <b>11:00 AM</b>	<b>TITLE: Group 10201- PHARMACEUTICALS-Individual Prescriptions (Statewide &amp; Regional)</b>  Classification Code(s): 51 & 85
<b>INVITATION FOR BIDS NUMBER:</b> <b>22884</b>	<b>SPECIFICATION REFERENCE:</b> As Incorporated Herein
<b>CONTRACT PERIOD: Five (5) Years</b>	
<b>DESIGNATED CONTACTS:</b>	
Vivian Basile Contract Management Specialist 1 E-mail address: <a href="mailto:SSTPharmaceuticals@ogs.ny.gov">SSTPharmaceuticals@ogs.ny.gov</a>	John Normile Contract Management Specialist 3 E-mail address: <a href="mailto:SSTPharmaceuticals@ogs.ny.gov">SSTPharmaceuticals@ogs.ny.gov</a>

The bid must be fully and properly executed by an authorized person. **By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this INVITATION FOR BIDS, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).** Information may be accessed at:

Procurement Lobbying: <http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>

<b>Bidder's Federal Tax Identification Number:</b> <i>(Do Not Use Social Security Number)</i>	<b>NYS Vendor Identification Number:</b> <i>(See "New York State Vendor File Registration" clause)</i>
If applicable, place an "x" in the appropriate box <b>(check all that apply):</b>	<input type="checkbox"/> NYS Small Business _____ #Employees
	<input type="checkbox"/> Minority Owned Business
	<input type="checkbox"/> Women Owned Business
Legal Business Name of Company Bidding:	
D/B/A - Doing Business As (if applicable):	
Street	City
State	Zip
	County
If applicable, place an "x" in the appropriate box <b>(check all that apply):</b>	<input type="checkbox"/> Manufactured Within New York State
	<input type="checkbox"/> Manufactured Outside New York State
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____.	
Bidder's Signature:	Printed or Typed Name:
Title:	Date:
Phone : ( ) - ext ( )	Toll Free Phone : ( ) - ext ( )
Fax : ( ) - ext ( )	Toll Free Fax : ( ) - ext ( )
E-mail Address:	Company Web Site:

**RETURN THIS PAGE AS PART OF BID OR NO BID**



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**APPENDICES**

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## SECTION 1 INTRODUCTION

This Invitation for Bids (IFB) is issued by the New York State (NYS) Office of General Services (OGS), Procurement Services. This IFB does not constitute an offer. OGS may, at its sole discretion, award a Contract as a result of this solicitation. The commodity Contracts awarded as a result of this IFB for Pharmaceuticals-Individual Prescriptions (Statewide & Regional), will be up to two (2) centralized Contracts for each lot, as specified in the METHOD OF AWARD Section of this Solicitation. The centralized Contract(s) awarded as a result of this solicitation will be used by Authorized Users, which include, but are not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

This IFB contains a total of five (5) lots, which are specified in the METHOD OF AWARD Section of this Solicitation. A Bidder is not required to bid on every lot. A Bidder may bid on as few or as many lots as desired. Awards will be made in accordance with the METHOD OF AWARD Section of this Solicitation. Multiple Bidders may receive awards. In the event that a Bidder receives multiple awards under this IFB, a single Contract will be executed covering all awards.

This IFB outlines the terms and conditions, and all applicable information required for submitting a bid. A Bidder should pay strict attention to the bid submission date and time to prevent disqualification. To ensure compliance with bid requirements and prevent possible disqualification, a Bidder must follow the format and instructions in the BID SUBMITTALS Section of this Solicitation.

### 1.1 SCOPE

The intent is to award multiple statewide and regional contracts to contractors in order to provide New York State facilities, political subdivisions and other authorized entities that do not have in-house pharmacists to dispense drugs with the ability to purchase and have delivered dispensed individual prescriptions and/or limited over the counter pharmaceutical products at discounted prices.

### 1.2 ESTIMATED SPEND AND QUANTITIES

This Contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value of all Contracts awarded under this solicitation, based on historical and anticipated needs, is approximately \$20 Million annually. The individual value of each Contract is indeterminate. The anticipated dollar value is the State's best estimate on future purchases and is based upon historical and anticipated future needs. See Appendix B §30 Estimated/Specific Quantity Contracts and §27 Participation in Centralized Contracts.

Numerous factors, including, but not limited to, the following could cause the actual volume of Product purchased under the Contract to vary substantially.

- All Contracts will be nonexclusive Contracts;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of the Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the Contract period; and
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In Procurement Services' experience, depending on the price of a particular Product, the actual volume of purchases for that Product could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual Contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual Contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. The Contractor(s) acknowledge the foregoing and agree that actual good faith purchasing volumes during the term of the resulting Contract could vary substantially.

## 1.3 KEY EVENTS/DATES

Event	Date	Time
<b>Closing Date for Inquiries</b>	May 12, 2015	12:00 PM ET
<b>Intent to Bid Due</b>	May 19, 2015	12:00 PM ET
<b>Anticipated OGS Response to Inquiries</b>	May 26, 2015	N/A
<b>Bids Due</b>	June 2, 2015	11:00 AM ET

## 1.4 INQUIRIES

All questions must be submitted in writing using Attachment 8, Inquiries Form, citing the applicable IFB document name and document section. The completed Attachment 8, Inquiries Form, must be e-mailed to [SSTPharmaceuticals@ogs.ny.gov](mailto:SSTPharmaceuticals@ogs.ny.gov) by the “Closing Date for Inquiries” indicated in the KEY EVENTS/DATES Section of this Solicitation. Inquiries submitted after the deadline indicated will not be answered. A Bidder is strongly encouraged to submit questions at its earliest convenience. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document which will be posted to the OGS website. Notification of this posting will be advertised in the NYS Contract Reporter. You must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications about this solicitation.

## 1.5 INTENT TO BID

A Bidder is requested to indicate its intent to bid by completing Attachment 9, Intent to Bid, and returning the form via e-mail to [SSTPharmaceuticals@ogs.ny.gov](mailto:SSTPharmaceuticals@ogs.ny.gov) on or before the “Intent to Bid” deadline indicated in the KEY EVENTS/DATES Section of this Solicitation. The intent to bid should indicate the Bidder’s legal business name and which lot(s) the Bidder intends to bid. Note that the Intent to Bid is discretionary, not mandatory, and as such is not binding in any way. However, it is highly recommended.

## 1.6 PRE-BID CONFERENCE

OGS will not be hosting a Pre-Bid Conference in connection with this solicitation.

## 1.7 DEFINITIONS – As they pertain to this IFB

Term	Definition
<b>Authorized User(s)</b>	As defined in Section 1(b) of Appendix B and New York State Finance Law Section 163(1)(k).
<b>AWP / Average Wholesale Price</b>	AWP refers to the average value at which wholesalers sell drugs to physicians, pharmacies, and other customers as per Wolters-Kluwer Health’s (Medi-Span).
<b>Bidder</b>	Shall refer to any business entity who submits a response to this Solicitation. At the time that the Bidder executes a Contract with the State, a Bidder shall become a “Contractor.” See also “Contractor.”
<b>Brand Name Drug</b>	For the purpose of this solicitation the term will be defined as a drug marketed under a proprietary, trademark-protected name.
<b>Contract</b>	As defined in Section 1(d) of Appendix B.
<b>Contractor</b>	As defined in Section 1(f) of Appendix B.
<b>Dispense as Written (“DAW”)</b>	An order on a prescription commanding the pharmacist to provide the recipient with the prescription exactly as it was written.
<b>Discounts</b>	The Bidder’s fixed, contracted, guaranteed cost reduction for Products expressed as a percent reduction off of AWP.
<b>Dispensing Fee</b>	The amount reimbursed to the pharmacy to cover the costs of professional services, overhead and delivery. Not applicable to Over the Counter medications.
<b>Generic Drug</b>	For the purposes of this solicitation a generic drug is identical to a brand name drug in dosage form, safety, strength, route of administration, quality, performance characteristics and intended use. Although generic drugs are chemically identical to

	<p>their branded counterparts, they are typically sold at substantial discounts from the branded price.</p> <p>Generic prescription products must be chemically identical or bio-equivalent as defined by the FDA Orange Book located at <a href="http://www.accessdata.fda.gov/scripts/cder/ob/docs/querytn.cfm">http://www.accessdata.fda.gov/scripts/cder/ob/docs/querytn.cfm</a></p>
<b>High Cost Tier</b>	A limited group of newly patented or exceedingly high cost drugs used for the treatment of chronic and life threatening illnesses. These drugs will be named in a bidder's response and updated during the term of the resulting Contract(s). The mechanism for determining and updating a bidder's list of High Cost Drugs will be defined herein.
<b>Invitation For Bid ("IFB")</b>	This document and all of its attachments and appendices.
<b>Mandatory</b>	Refers to items or information that the State has deemed that a Bidder must submit as compulsory, required, and obligatory. These items or information are noted as such, or the requirements may be phrased in terms of "Must" or "Shall." Mandatory requirements must be met by the Bidder for the Bidder's Bid to be considered responsive.
<b>Manufacturer</b>	A person or business entity that creates, makes, processes, or fabricates a Product or something of value, which changes a raw material or commodity from one form to another, or creates a new Product or commodity.
<b>May</b>	Denotes the permissive in a Contract clause or specification. "May" does not mean required. See also "Should."
<b>Wolters Kluwer Health's ("Medi-Span")</b>	Provides a codified drug dictionary, drug vocabulary, and drug pricing, including AWP, for prescription drugs and medication-based over the counter products in the United States.
<b>Must</b>	Denotes the imperative in a Contract clause or specification. "Must" is synonymous with "required." See also "Shall" and "Mandatory."
<b>M/WBE</b>	Shall refer to a business certified with the New York State Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.
<b>N/A</b>	A common abbreviation for "not applicable" or "not available," used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.
<b>National Drug Code ("NDC")</b>	A unique 11-digit, 3-segment number. It is a universal Product identifier for human drugs in the United States. The code is present on all nonprescription (OTC) and prescription medication packages and inserts in the US. The 3 segments of the NDC identify the labeler, the Product, and the commercial package size. The first set of numbers in the NDC identifies the labeler (manufacturer, repackager, or distributor). The second set of numbers is the Product code, which identifies the specific strength, dosage form (i.e. capsule, tablet, liquid) and formulation of a drug for a specific manufacturer. Finally, the third set is the package code, which identifies package sizes and types. The labeler code is assigned by the FDA, while the Product and package code are assigned by the labeler.
<b>Procurement Services</b>	Formerly known as Procurement Services Group (PSG) and New York State Procurement (NYSPRO), Procurement Services shall mean a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide Contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such Contracts.
<b>NYS Vendor File</b>	Shall refer to a centralized repository to maintain timely and reliable information on all Contractors registered to do business with the State. The Office of the State Comptroller's Bureau of State Expenditures created the Vendor Management Unit (VMU) to manage this file.
<b>NYS Vendor ID</b>	Shall refer to the ten-digit identifier issued by New York State when a vendor is registered with the NYS Vendor File. See also "NYS Vendor File."
<b>Over-the-Counter ("OTC")</b>	A drug defined by the Food and Drug Administration (FDA) as safe and effective for use by the general public without a doctor's prescription.

<b>Prescription</b>	The written or electronic request for drugs issued by a physician duly licensed to make such a request in the ordinary course of his or her professional practice. The order must be written in the name of the person for whom it is prescribed or be an authorized refill of that order.
<b>Product</b>	As defined in Section 1(t) of Appendix B.
<b>Shall</b>	Denotes the imperative in a Contract clause or specification. "Shall" is synonymous with "required". See also "Must" and "Mandatory."
<b>Should</b>	Denotes the permissive in a Contract clause or specification. "Should" does not mean required. See also "May."
<b>U.S. Food and Drug Administration (FDA)</b>	The federal agency of the United States Department of Health and Human Services, responsible for protecting and promoting public health through the regulation and supervision of food safety, tobacco products, dietary supplements, prescription and over the counter pharmaceutical drugs (medications), vaccines, biopharmaceuticals, blood transfusions, medical devices, electromagnetic radiation emitting devices (ERED), cosmetics, animal foods & feed and veterinary products.

## SECTION 2 BIDDER REQUIREMENTS

### 2.1 QUALIFICATION OF BIDDERS

Bids will only be accepted from established NYS licensed and registered "pharmacy establishments." Bidders are advised that the State's intent in listing the following requirements is to ensure that only qualified and reliable vendors submit Bids and are considered for contract award. Bidders submitting offers shall have the burden of demonstrating to the State's satisfaction and that they can in fact perform in order to be considered for contract award. OGS reserves the right to request additional information, if needed, to verify Bidder capabilities.

The bidder shall submit copies of their NYS Board of Pharmacy, NYS Bureau of Narcotic Enforcement, and DEA licenses. The copies of these licenses must be provided with bid submittal.

OGS reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract. See Appendix B, §42 *Employees/Subcontractors/Agents*. See also the NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY Section of this Solicitation.

### 2.2 REFERENCES

Upon written request from OGS, a Bidder must provide a minimum of three (3) references; including references from two (2) of the Bidder's largest customers. References shall be commercial or governmental accounts, and should demonstrate the ability of the Bidder to provide Products of the nature and complexity of those described in this Solicitation. The reference shall include the:

- Name, address, contact, telephone number, fax number, and number of years Bidder has serviced the referenced account
- Volume of business performed within the past three (3) years for each referenced account

References must be provided within five (5) business days of request.

## SECTION 3 BID SUBMITTALS

### 3.1 NOTICE TO BIDDERS

A Bidder should take note of the following:

- A. Receipt of these bid documents does not indicate that OGS Procurement Services has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on evaluation of bid submissions compared to the specific requirements and qualifications contained in these Bid documents;
- B. This IFB contains a total of five (5) lots, which are specified in the METHOD OF AWARD Section of this Solicitation. A Bidder is not required to bid on every lot; A Bidder that submits a bid for any lot(s) is required to bid on all items within the applicable lot(s) bid;
- C. To be considered responsive, a Bidder must submit a bid that satisfies and addresses all requirements stated in this solicitation. EXCEPT AS OTHERWISE PROVIDED IN THIS SOLICITATION, A BID THAT FAILS TO CONFORM TO THE REQUIREMENTS OF THE SOLICITATION MAY BE CONSIDERED NONRESPONSIVE AND MAY BE REJECTED;
- D. The Commissioner of OGS will receive bids pursuant to the provisions of Article XI of the State Finance Law. All bids and accompanying documentation shall become the property of the State of New York and shall not be returned;
- E. If a Bidder wishes to submit more than one bid, such bid(s) are to be submitted separately and are to be listed as "alternate" bids. "Alternate" bids must satisfy and address all requirements stated in this solicitation, and will be evaluated as separate bids;
- F. Portions of the successful Bidder's bid shall be incorporated into a final Contract, executed by the Contractor and OGS. Therefore, the bid must be signed by a partner, corporate officer, or other person authorized to commit its firm to all provisions of this solicitation and its bid as submitted. Once the Contract resulting from this solicitation is executed and approved, it will be posted on the OGS website.

### 3.2 BID LIABILITY

The State of New York will not be held liable for any cost incurred by the Bidder for work performed in the preparation of a bid or for any work performed prior to the formal execution of a Contract.

Bids must remain open and valid for at least 365 days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable subsequent to such 365 day period until either tentative award of the Contract is made by OGS or withdrawal of the Bid is made in writing by the Bidder.

### 3.3 BID DELIVERY

Bids must be received at the location specified below on or before the date and time specified as "Bids Due" in the 1.3 KEY EVENTS/DATES Section of this Solicitation. Bidders assume all risk for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to OGS prior to the date of the bid opening. Late bids shall be rejected, except in accordance with Appendix B, §6 Late Bids Rejected. E-mailed or faxed bid submissions are NOT acceptable and shall not be considered. The received time of bids will be determined by OGS by the clock at the location identified.

### 3.3.1 Bid Envelopes and Packages

All bids are to be packaged, sealed, and labeled on the outside of the box or package itemizing the following information:

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Bid number (Bid 22884)
3. Bid Opening Date and Time listed in the 1.3 KEY EVENTS/DATES Section of this Solicitation
4. The number or boxes or packages (1 of 2, 2 of 2, etc.)

Failure to complete all information on the bid envelope and/or packages may necessitate the premature opening of the bid and may compromise confidentiality. See Appendix B, §5 Bid Submission. Bids shall be delivered to:

New York State Office of General Services  
Procurement Services  
Corning Tower – 38<sup>th</sup> Floor Reception Desk  
Empire State Plaza  
Albany, NY 12242

### 3.3.2 Hand Deliveries

Bidders must allow extra time to comply with the building access procedures in effect at the Empire State Plaza when hand delivering bids or using deliveries by independent courier services. A Bidder assumes all risks for timely, properly submitted hand deliveries. See the 3.4 IMPORTANT BUILDING ACCESS PROCEDURES Section of this Solicitation.

## 3.4 IMPORTANT BUILDING ACCESS PROCEDURES

To access the Corning Tower, all visitors must check in by presenting photo identification at the Information Desk at the base of the Corning Tower. A Bidder who elects to deliver its Bid is encouraged to pre-register for building access by contacting the Procurement Services receptionist at 518-474-6262 at least 24 hours prior to the bid submission date. Visitors who are pre-registered can check in directly with the Information Desk. Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services receptionist. The receptionist will register the visitor at that time, but delays may occur. Bidders who intend to deliver Bids or conduct Procurement Services business should allow extra time to comply with these procedures. Building access procedures may change or be modified at any time. Note: Bids not received within Procurement Services by the time and date specified in the 1.3 KEY EVENTS/DATES Section of this Solicitation will be considered late.

## 3.5 FORMAT AND CONTENT OF BID SUBMITTAL

After the bid opening, each Bid will be screened for completeness and conformance with the stated requirements for bid submission as set forth herein. Any bid not meeting these requirements may be deemed non-responsive and denied further consideration for award. Failure to submit Attachment 1, Pricing Pages or submission of requests for exclusions of any drugs in the NYS Medicaid formulary may result in immediate disqualification. The High Cost Tier has been established to allow Bidders to propose a separate discount for the drugs specified in that Tier. Bidders will not be allowed to exclude those drugs. Any substantive modification to the formatting of any attachment may result in the bid being found non-responsive and may result in disqualification.

Please note that in the case of discrepancies between paper copies and electronic submissions, (copies on electronic media i.e. CD-ROM, DVD, or USB flash drive), the wet ink paper copy shall take precedence over the electronic submissions. A Bidder is ultimately responsible for reviewing the completed attachments prior to Bid submittal and ensuring that all necessary fields have been populated correctly.

A complete Bid consists of the following:

3.5.1 Three (3) electronic copies (example: on CD, DVD, or USB Flash Drive labeled with company name and IFB#) of the following in the formats specified:

1. Pages 1 and 2 of the Solicitation (signed and scanned, PDF)
2. Completed Attachment 1 Pricing Pages (Microsoft Word)
3. Completed Attachment 2 NYS Required Certifications (Microsoft Word)
4. Completed Attachment 3 Mandatory Contractor Questionnaire (Excel)
5. Completed Attachment 4 Encouraging NYS Business (Microsoft Word)
6. Completed Attachment 5 Insurance Requirements (Microsoft Word)
7. Completed Attachment 6 Contractor and Reseller Information (Microsoft Word)
8. ST-220-CA
9. NYS Vendor Responsibility Questionnaire (signed and scanned, PDF)  
\*Not required if completed on-line via the New York State VendRep System  
([http://www.osc.state.ny.us/vendrep/info\\_vrsystem\\_vendor.htm](http://www.osc.state.ny.us/vendrep/info_vrsystem_vendor.htm))
10. MWBE Section Forms (see <http://www.ogs.ny.gov/MWBE/Forms.asp>)
11. Copies of Licenses/Certifications per the BIDDER QUALIFICATIONS Section of this Solicitation

3.5.2 Three (3) Originals of each of the following:

1. Pages 1 and 2 of the Solicitation with original ink signatures
2. Completed Attachment 1 Pricing Pages (Microsoft Word)
3. Completed Attachment 2 NYS Required Certifications with original ink signatures (Microsoft Word)
4. Completed Attachment 3 Mandatory Contractor Questionnaire (Microsoft Excel)
5. Completed Attachment 4 Encouraging NYS Business (Microsoft Word)
6. Completed Attachment 5 Insurance Requirements (Microsoft Word)
7. Completed Attachment 6 Contractor and Reseller Information (Microsoft Word)
8. Form ST-220-CA
9. NYS Vendor Responsibility Questionnaire with original ink signatures  
\*Not required if completed on-line via the New York State VendRep System  
([http://www.osc.state.ny.us/vendrep/info\\_vrsystem\\_vendor.htm](http://www.osc.state.ny.us/vendrep/info_vrsystem_vendor.htm))
10. MWBE Section Forms (see <http://www.ogs.ny.gov/MWBE/Forms.asp>)
11. Hard copies (original not required) of Licenses/Certifications per the BIDDER QUALIFICATIONS Section of this Solicitation.

Bidders are responsible for ensuring that the most recently updated version of all required documents has been submitted. Any updated versions released after the initial bid release date will be posted at <http://www.ogs.ny.gov/purchase/biddocument/22884bid.asp> and announced via the NYS Contract Reporter.

### 3.6 BID DEVIATIONS

In accordance with the requirements set forth in Appendix B, §8 *Extraneous Terms*, a Bid must conform to the terms set forth in the Solicitation. A Bidder shall explain any requested deviation(s) or qualification(s) in Attachment 3 *Mandatory Contractor Questionnaire*. Extraneous terms or material deviations (including additional, inconsistent, conflicting, or alternative terms) may render the bid non-responsive and may result in rejection of the bid. Bidders are advised that OGS will not entertain any exceptions to Appendix A (New York State Standard Clauses).

### 3.7 RESPONSIVENESS

To be considered responsive, a Bidder must submit a complete bid that satisfies and addresses all requirements stated in this Solicitation, 3.5 **FORMAT AND CONTENT OF BID SUBMITTAL**. A bid that fails to conform to all requirements may be considered non-responsive and may be rejected.

### 3.8 PERFORMANCE AND BID BONDS

There are no bonds for this Contract. In accordance with Appendix B, §45 *Performance/Bid Bond*, the Commissioner of OGS has determined that no performance, payment or bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the term of the resulting Contracts.

### 3.9 ELECTRONIC BID OPENING RESULTS

NYS Procurement Services posts bid information on the OGS NYS Procurement Services web page. The web page makes information available about the list of Bidders that responded to a solicitation. The Bid Opening Results page is available at: <http://www.ogs.ny.gov/purchase/bidresults/bidresults.asp>

### 3.10 NEW YORK STATE PROCUREMENT RIGHTS

New York State reserves the right to:

1. Reject any or all Bids received in response to the Solicitation;
2. Withdraw the Solicitation at any time, at the sole discretion of the Agency;
3. Make an award under the Solicitation in whole or in part;
4. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
5. Seek clarifications and revisions of the Bid;
6. Prior to the bid opening; amend the Solicitation specifications to correct errors or oversights, or to supply additional information as it becomes available;
7. Prior to the bid opening; direct Bidders to submit Bid modifications addressing subsequent Solicitation amendments;
8. Change any of the scheduled dates with notification through the NYS Contract Reporter;
9. Waive any requirements that are not material;
10. Utilize any and all ideas submitted in the Bids received;
11. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
12. Negotiate with a Bidder responding to this Solicitation within the Solicitation requirements to serve the best interests of the State; this includes requesting clarifications of any or all Bidders' Bids;
13. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
14. Consider a proper alternative or corrected reference/parameter/component/product, etc. and have such evident proper alternative or corrected item prevail, if an incorrect reference/parameter/component/product, etc. is stated by the State or by the Bidder;
15. Have the flexibility to consider Bids with minor deviations or technicalities and to waive minor deviations or technicalities that may be consistent with the intent and scope of the Solicitation. This flexibility may permit a reasonable outcome in cases where the results of a fair, competitive process are clear but the award of a Contract is threatened due to a minor technicality or a minor deviation;
16. Reject an obviously unbalanced Bid as determined by the State, such as a Bid that contains prices that are significantly understated for some Products and/or significantly overstated for other Products such that there is a reasonable doubt that the Bid will result in the lowest overall cost to the State;
17. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing.

SECTION 4 METHOD OF AWARD

4.1 METHOD OF AWARD

This section sets forth the method of award for the solicitation.

As specified in Section I Introduction, the IFB includes five (5) lots, which may each receive up to two (2) awards. Awards for all lots shall be based on the lowest grand total overall price submitted by responsive and responsible Bidders. A method of price evaluation has been established that assigns a weight to the item numbers within each lot. The lots shall be awarded on the basis of lowest price, to a responsive and responsible Bidder, as set forth below. Authorized Users will be advised to utilize the Contractor that offers the most attractive pricing.

The following is the evaluation criteria for the various lots:

Method of Price Evaluation

Lots I - IV:

Item 1: Brand name:	\$ 41,875,000 x (1 - % discount from AWP/100)
Item 2: Generic:	\$ 37,500,000 x (1- % discount from AWP/100)
Item 3: High Cost Tier	\$ 13,000,000 x (1- % discount from AWP/100)
Item 4: Dispensing Fee	250,000 prescriptions x Dispensing Fee (not applicable to OTC drugs)
Item 5: Over the Counter	\$ 3,372,000 x (1- % discount from AWP/100)
Grand Total:	\$ _____

Lot V:

Item 1: Brand name:	\$167,500,000 x (1 - % discount from AWP/100)
Item 2: Generic:	\$150,000,000 x (1- % discount from AWP/100)
Item 3: High Cost Tier	\$50,000,000x (1- % discount from AWP/100)
Item 4: Dispensing Fee	1,000,000 prescriptions x Dispensing Fee (not applicable to OTC drugs)
Item 5: Over the Counter	\$13,488,000 x (1- % discount from AWP/100)
Grand Total:	\$ _____

The following is an example of the calculation of Lot V based on:

% Discount for Brand Name	25%
% Discount off of Generic:	22%
% Discount off of High Cost Tier	12%
Dispensing Fee	\$2.75 (not applicable to OTC drugs)
Discount % off of Over the Counter	10%

<del>_____ \$167,500,000 x (1-25/100)</del>	<del>_____ = _____</del>	<del>_____ \$41,875,000.00</del>
<del>_____ \$150,000,000 x (1-22/100)</del>	<del>_____ = _____</del>	<del>_____ \$33,220,000.00</del>
<del>_____ \$100,000,000 x (1-12/100)</del>	<del>_____ = _____</del>	<del>_____ \$12,000,000.00</del>
<del>_____ 1,000,000 x \$2.75</del>	<del>_____ = _____</del>	<del>_____ \$ 2,750,000.00</del>
<del>_____ \$13,488,000 x (1-10/100)</del>	<del>_____ = _____</del>	<del>_____ \$ 1,348,000.00</del>
<del>_____</del>	<del>_____ = _____</del>	<del>_____</del>
<del>_____ <b>GRAND TOTAL</b></del>	<del>_____ = _____</del>	<del>_____ <b>\$ 91,193,800.00</b></del>

\$167,500,000 x (1-25/100)	=	\$125,655,000.00
\$150,000,000 x (1-22/100)	=	\$117,000,000.00
\$ 50,000,000 x (1-12/100)	=	\$ 44,000,000.00
\$ 1,000,000 x \$2.75	=	\$ 2,750,000.00
\$ 13,488,000 x (1-10/100)	=	\$ 12,139,200.00
<b>GRAND TOTAL</b>	<b>=</b>	<b>\$ 301,514,200.00</b>

The State reserves the right to make "NO AWARD" if prices are deemed to be unbalanced or excessive or if an error in the solicitation becomes evident. The State reserves the right to reject any Bidder that does not demonstrate reasonable pricing in response to this IFB. The State reserves the right to require additional documentation to support the reasonableness of the prices offered.

List of Lots:

Lot 1 (Region 1)	Lot 2 (Region 2)	Lot 3 (Region 3)	Lot 4 (Region 4)	Lot 5 (All Regions/Statewide)
Allegany Cattaraugus Chautauqua Chemung Erie Genesee Livingston Monroe Niagara Ontario Orleans Schuyler Seneca Steuben Wayne Wyoming Yates	Broome Cayuga Chenango Cortland Delaware Fulton Hamilton Herkimer Jefferson Lewis Madison Montgomery Oneida Onondaga Oswego Otsego St. Lawrence Schoharie Tioga Tompkins	Albany Clinton Columbia Essex Franklin Greene Rensselaer Saratoga Schenectady Warren Washington	Bronx Dutchess Kings Nassau New York Orange Putnam Queens Richmond Rockland Suffolk Sullivan Ulster Westchester	All Counties (Statewide)

4.2 COST PROPOSAL REVISION

Prior to award, the State reserves the right to negotiate a greater discount on any Product(s) included on the Price Pages submitted, resulting in a lower net price.

4.3 NOTIFICATION OF TENTATIVE AWARD

The successful Bidder(s) shall be advised by OGS in accordance with Appendix B, §26 *Contract Creation/Execution*. Tentative award of the Contract(s) shall consist of written notice to that effect by OGS to a successful Bidder.

4.4 CONDITIONS OF TENTATIVE AWARD

Upon notification of tentative award, successful Bidder(s) shall provide all items (as promised) in Attachment 3. *Mandatory Contractor Questionnaire*.

#### 4.5 PATIENT RECORDS

Contractors will be required to maintain patient records in a means and for a period of time so as to comply with applicable New York State and Federal Pharmacy laws and regulations. Any requested reporting will be created and provided by the Contractor(s) so as to guard patient confidentiality.

#### 4.6 DISPENSING FEE

Dispensing fees shall only apply to prescriptions for medications for which a prescription is required by the provisions of the Federal Food, Drug and Cosmetic Act or by the Commissioner of Health regardless of whether it was dispensed pursuant to a patient specific prescription. Dispensing fees shall not be charged for over-the-counter (OTC) Products.

#### 4.7 GENERIC AND BRAND NAME PRODUCTS

Contractors shall be required to fill all prescriptions generically, with the least expensive generic alternative in stock, unless otherwise indicated by the Authorized User, such as through the use of a Dispense As Written (“DAW”) order. All medications dispensed shall meet or exceed all New York State and Federal regulations and be FDA approved.

Generic prescription products must be generically equivalent bio-similar as defined by the FDA Orange Book.

<http://www.accessdata.fda.gov/scripts/cder/ob/docs/querytn.cfm>

### SECTION 5 PRICING

#### 5.1 PRICE

All bid pricing shall include all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the Authorized User. Price shall be determined by applying the quoted discount to the Average Wholesale Price (AWP) as listed in the Wolters Kluwer Health’s “Medi-Span” effective at the time of order plus the addition of the quoted dispensing fee. OGS Procurement Services prohibits multiple dispensing fees for partial orders. See further details in the METHOD OF AWARD Section of this Solicitation and “Pricing” clauses.

If “Medi-Span” is unavailable for any given reason, OGS reserves the right to select another AWP benchmark.

The Contractor(s) awarded a contract agree(s) to sell Authorized Users all prescription pharmaceuticals, as listed or included by reference as a part of this Contract at a pricing structure that is in compliance with Section 17 (f) of Appendix B Best Pricing Offer. All price percentages shall remain in effect for the term of the Contract or shall be adjusted in compliance with Section 17 (f) of Appendix B Best Pricing Offer. Discount reduction will not be allowed. Price decreases or discount increases are permitted at any time

The Bidder shall submit a discount for each of the following categories: "Generic," "Brand Name," "High Cost Tier" and "Over The Counter" (OTC) medications. In addition to the discount offered, a dispensing fee (only in the case of prescription drugs) may be included as part of the bid. Dispensing fees shall not be charged on OTC items.

For multi-source drugs, the maximum allowable cost charged to the authorized users shall be less than or equal to the lowest cost AWP drug available in the marketplace, minus the appropriate percent discount. Contractors will agree to random audits and will agree to provide upon OGS’ request a copy of an invoice listing their acquisition cost for multi-source drugs.

#### 5.2 HIGH COST TIER

The State recognizes that recent advances have brought to market certain brand name drugs that offer exceptional efficacy at very high prices. OGS expects Bidders to offer the best possible pricing for these drugs. With that in mind, OGS will define a limited set of high cost tier to be offered at discounts lower than the other discounts offered for most Brand Name drugs.

At this time, OGS has defined the term High Cost Tier as including Olysio™ (simeprevir), Sovaldi™ (sofosbuvir), Harvoni™ (ledipasvir/sofosbuvir) and Viekira Pak™ (ombitasvir, paritaprevir and ritonavir tablets; dasabuvir tablets).

OGS reserves the right to add new drugs to the High Cost Tier or remove drugs as the market dictates. OGS will remove a drug(s) should its AWP (as defined by Wolters Kluwer) decrease to the point that it is priced similarly to other Brand Name Drugs. This determination will be made by OGS in consultation with our industry experts. If/when a Brand Name Drug is removed from the High Cost Tier it will be priced according to each Contractor's agreed upon Brand Name discount. Contractors will be given sufficient notice and price justification when OGS removes a drug from the High Cost Tier.

OGS will add new drugs to the High Cost Tier if a new drug comes to market priced similarly to the existing drugs in the High Cost Tier. Contractors will be required to discount any new High Cost Tier drug at the same rate proposed in their bid.

OGS will allow the agreed upon discount(s) to stand until market conditions change to the point that existing discounts in the High Cost Tier have to be changed in the best interests of the Authorized Users.

### 5.3 NOTIFICATION OF TENTATIVE AWARD

The successful Bidder(s) shall be advised by OGS in accordance with Appendix B §26 Contract Creation/Execution. OGS also distributes e-mail notification to registered Authorized Users announcing the resultant contract award(s). The e-mail includes a hyperlink to the posted award on the OGS website and is sent via the OGS Purchaser Notification Service (PNS) to registered Authorized Users. Authorized Users may register for the PNS at the following URL address: <http://ogs.ny.gov/PNS/default.asp>. All subsequent contract updates are also sent out via the PNS. Authorized Users of the contract submit Purchase Orders or other such order documents directly to the Contractor. See Appendix B §32 Purchase Orders.

### 5.4 CONDITIONS OF TENTATIVE AWARD

Upon notification of tentative award, successful Bidder(s) shall provide all items within the timeframes specified in Attachment 3 Mandatory Contractor Questionnaire.

Unsuccessful Bidders shall be notified. A Bidder shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Requests for debriefings may be made both prior to and after Contracts are awarded. For debriefings prior to Contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that Bidder's bid or bid. After Contract award, OGS shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to the solicitation, regarding the reason that the bid or bid submitted by such Bidder was not selected for a Contract award. Requests for debriefings by unsuccessful Bidders must be addressed to OGS in writing. The debriefing should be submitted to the Contract Management Specialist listed on the cover page of this IFB within 30 calendar days of notification of non-award or sent to.

New York Procurement Services  
A Division of the Office of General Services  
38th Floor, Corning Tower  
Empire State Plaza  
Albany, NY 12242

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## SECTION 6 TERMS AND CONDITIONS

### 6.1 ORDERING

#### 6.1.1 Minimum Order

Minimum order shall be one prescription.

#### 6.1.2 Ordering

Authorized Users may submit orders over the phone. In addition, Authorized Users must be able to submit orders electronically via a contractor's web-based ordering, e-mail, or facsimile at any time in accordance with NYS laws and regulations. Orders submitted prior to 2:00 p.m. shall be deemed received by Contractor on the date submitted. Orders submitted after 2:00 p.m. shall be deemed received by Contractor on the next day.

All orders shall reference the Contract number, requisition, and/or purchase order number (if applicable). Upon the Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile on the date received as defined in the preceding paragraph. Order confirmation shall be itemized, and include the purchase price, date of purchase, anticipated delivery date, delivery information (if applicable), Authorized User's name, and sales representative (if applicable).

The contractor must contact the Authorized User by phone upon receipt of the order if there is any issue with fulfilling the order.

#### 6.1.3 Electronic Prescriptions

"Electronic prescription" means an electronic prescription created, recorded or stored by electronic means; issued and validated with an electronic signature; and transmitted by electronic means **directly from the prescriber to a pharmacist/pharmacy.**

#### 6.1.4 Statewide Financial System

The NYS Statewide Financial System (SFS) went live for state agencies in April 2012. Future SFS procurement functionality envisions the ability to fully host Contract catalogs, to integrate Contractor-hosted punch-out catalogs, and/or to submit and process invoices electronically. OGS reserves the right to integrate any or all of these future catalog functions with a Contractor during the contract period. By submittal of a bid, a Bidder agrees to coordinate with SFS, OGS, and/or a third party host for integration if OGS exercises its right to do so. No costs or expenses associated with providing information and integration shall be charged to New York State. Technical requirements for the data elements such as data types, maximum field lengths, and cXML element names shall be provided by SFS, OGS, and/or a third party host during integration. For further information on SFS, its use, and its capabilities, please visit the SFS website: <http://www.sfs.ny.gov/>

### 6.2 INVOICING

The Contractor shall provide the Authorized User with an invoice for each order at the time of delivery. Invoices must include detailed line item information to allow Authorized Users to verify that pricing at the point of receipt matches the correct price on the original date of order. At a minimum, the following fields must be included on all invoices:

- Vendor Billing Address
- Vendor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Order Date
- Authorized User's Order Number
- RX#
- Exact NDC # dispensed for the prescription
- Product Descriptions

- Drug Price (AWP) for the dispensed quantity
- Discount to drug price
- Dispensing fee
- Total price per prescription (Drug Price – Discount + Dispensing Fee)
- Quantity
- Unit of Measure

### 6.3 PRODUCT RETURNS AND EXCHANGES

In compliance with all applicable laws, unused packaged medication may be returned for credit and/or destruction in accordance with all Federal and State regulations in force. The Contractor shall issue a full credit equal to the cost of sale of all usable or unused doses returned. The Contractor shall also accept for return and destruction and shall issue a full invoice credit for any product deficient in quality or packaging as to render it unusable for its intended purpose as determined by the Authorized User. All credits must be identified by both product and patient name. Credits shall be issued on the invoice for the month in which the return was made. These credits are not eligible for a restocking fee. The invoice must contain a reference to the medications that were not billed to the facility, such as those billed through Medicare or Medicaid, which CANNOT be returned for credit.

In the alternative, upon agreement by the Authorized User, Products returned due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, or Contractor errors shall be replaced with specified Products. Delivery for a replacement Product shall be the same as stated in the DELIVERY Section of this Solicitation. Returned Products shall be picked up by the Contractor at the time of delivery of the replacement Product, or within ten (10) calendar days of receipt of written notification by the Contractor if a credit/refund is to be issued.

### 6.4 EMERGENCY PURCHASING

The Contractor shall provide a toll free telephone number for emergency service, available and staffed seven (7) days a week, twenty-four (24) hours a day. Given the nature of the Products, emergency service contact information including the toll free number, fax, and e-mail must be provided in Attachment 6, Contractor and Reseller Information. Failure to provide emergency contacts may result in delay or suspension of contract award.

### 6.5 DELIVERY

When an order is received before 2:00 p.m. EST (Monday through Friday), the contractor will deliver the item(s) before noon on the following day to the address provided with the order.

Orders received after 2:00 p.m. EST will be delivered to the address provided with the order no later than 12:00 noon two days later. Every effort should be made to complete deliveries on the same or next day.

### 6.6 PACKAGING

All pharmaceuticals must be packaged in accordance with the best commercial practice and shall comply with applicable Federal and New York State requirements. Prescriptions for non-controlled substances may be valid for up to 1 year (i.e. blood pressure medications and other maintenance medications). The contractor shall dispense no more than a 30 day supply of medication at each filling. Blister packaging, bingo cards or unit dose must be available. Tamper resistant containers are preferred for all pharmaceuticals.

### 6.7 REPORT OF CONTRACT PURCHASES

The Contractor shall furnish a report of all Product provided under the Contract during each quarterly period, no later than ten (10) days following the close of the quarterly period. The report shall be submitted using Attachment 7, Report of Contract Purchases. Quarterly periods will end on March 31st, June 30th, September 30th and December 31st. If the

Contract period begins or ends in a fractional portion of a reporting period only the actual Contract sales for this fractional period should be reported in that quarterly report. Purchases by all Authorized Users under the Contract shall be reported in the same report and be indicated as required. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided, in Microsoft Excel 2003, or newer (or as otherwise directed by OGS), to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the OGS group number, award number, Contract Number, sales period, and Contractor's (or other authorized agent) name, and all other fields required. OGS reserves the right to amend the report template during the Contract term. The report in Attachment 7, Report of Contract Purchases is the minimum information required. Additional sales information, such as monthly reports and/or detailed Authorized User purchases may be required by OGS on behalf of an Authorized User. In the event of such a request, reports of contract purchases by that Authorized User will have to be supplied in the requested electronic format (i.e. Excel) via e-mail within ten business days of the end of a reporting period. Failure to submit reports on a timely basis may result in Contract cancellation and designation of the Contractor as non-responsible. Please follow Protected Health Information (PHI) Guidelines and do not include any patient identifying information on the sales reports.

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/De-identification/guidance.html>

## 6.8 CONFLICT OF TERMS AND CONDITIONS

Conflicts among the documents in this IFB shall be resolved in the following order of precedence:

1. Appendix A, Standard Clauses for New York State Contracts;
2. This IFB;
3. Appendix B, Office of General Services General Specifications; and
4. Bidder's Bid.

## 6.9 APPENDIX A

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this bid document as fully as if set forth at length herein. Please retain this document for future reference and do not return to OGS as part of the bid submission.

## 6.10 APPENDIX B

Appendix B, Office of General Services General Specifications, dated June 2014, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this bid document or Appendix A. Please retain this document for future reference and do not return to OGS as part of the bid submission.

### 6.10.1 Appendix B Amendments

A. Section 64 (Disputes) is deleted and replaced with the following:

#### 64. DISPUTES

##### I. Policy

It is the policy of OGS to provide Interested Parties, as that term is defined herein, with an opportunity to administratively resolve disputes related to OGS bid solicitations, contract awards or contract administration. Interested Parties are encouraged, but not required, to seek resolution of disputes through consultation with OGS staff through the Informal Dispute Resolution Process described herein, prior to filing a Formal Dispute. All Informal

and Formal Disputes will be accorded full, impartial and timely consideration. OGS Dispute Resolution Procedures may be obtained by contacting the person identified in the Contract as a designated contact or through the OGS website ([www.ogs.ny.gov](http://www.ogs.ny.gov)).

## II. Dispute Resolution Procedures

### A. Informal Dispute Resolution Process

1. In the event there is a dispute under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

2. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Centralized Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result through negotiation.

3. If negotiation between the Contractor and Authorized User fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

4. The Contractor shall extend the informal dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

### B. Formal Dispute Process

#### 1. Definitions

- a. Filed means the complete receipt of any document by OGS before its close of business.
- b. Interested Party for the purpose of filing a dispute relating to a solicitation, as used in this section, means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a Contract or by the failure to award a Contract.
- c. Interested Party for the purpose of filing a dispute relating to a Contract award, as used in this section, means an actual bidder or offeror for the subject Contract.
- d. Interested Party for the purpose of filing a dispute relating to the administration of the Contract, as used in this section, means the awarded Contractor for the subject Contract.
- e. Issuance of award means the Date of Issue identified on the Contract Award Notification transmitted by OGS.
- f. A Formal Dispute means a written objection by an Interested Party to any of the following:
  - i. A solicitation or other request by OGS for offers for a contract for the procurement of commodities, services or technology.
  - ii. The cancellation of the solicitation or other request by OGS.
  - iii. An award or proposed award of the Contract by OGS.
  - iv. A termination or cancellation of an award of the Contract by OGS.
  - v. Changes in the scope of the Centralized Contract by the Commissioner.

- vi. Determination of “materiality” in an instance of nonperformance or contractual breach.
- vii. An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

2. Submission of Formal Disputes

- a. A Formal Dispute must be filed in writing with the Director of OGS Procurement Services by mail or email using the following contact information:

Director, New York Procurement Services  
A Division of the Office of General Services  
38th Floor, Corning Tower  
Empire State Plaza  
Albany, NY 12242  
Facsimile: (518) 474-2437

b. The Formal Dispute must include:

- i. Name, address, e-mail address and telephone numbers of the filer.
- ii. Solicitation or Contract number.
- iii. Detailed statement of the legal and factual grounds for the Formal Dispute, including a description of resulting prejudice to the filer.
- iv. Copies of relevant documents.
- v. Request for a ruling by the agency.
- vi. Statement as to the form of relief requested.
- vii. All information establishing that the filer is an Interested Party for the purpose of filing a Formal Dispute.
- viii. All information establishing the timeliness of the Formal Dispute.

3. Formal Disputes concerning a solicitation shall be filed by an Interested Party (see II.B(1)(b)) with OGS no later than ten (10) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, Formal Disputes concerning the solicitation shall be filed with OGS at least twenty-four (24) hours before the time designated for receipt of bids.

4. Formal Disputes concerning a pending or awarded Contract must be filed within ten (10) business days by an Interested Party (see II.B(1)(c)) after the disputing party knew or should have known of the facts which form the basis of the Formal Dispute; however, a Formal Dispute may not be filed later than ten (10) business days after issuance of the Contract award.

5. Formal Disputes concerning the administration of the Contract after award (see II.B(1)(iv-vii)) must be filed within twenty (20) business days by an Interested Party (see II.B(1)(d)) after the disputing party knew or should have known of the facts which form the basis of the Dispute. However, if Contractor and Authorized User participate in the Informal Dispute Resolution Process, Formal Disputes concerning the administration of the Contract after award must be filed by Contractor within twenty (20) business days after the Contractor and Authorized User failed to reach resolution through the Informal Dispute Resolution Process set forth in Section II.A.

6. Agency Response

- a. OGS will consider all information relevant to the Formal Dispute, and may, in its discretion, suspend, modify, or cancel the disputed procurement/Contract action prior to issuance of a Formal Dispute decision.
- b. OGS reserves the right to require the filer to meet or participate in a conference call with OGS to discuss the Formal Dispute when, in its sole judgment, circumstances so warrant.
- c. OGS reserves the right to waive or extend the time requirements for decisions and final determinations on appeals herein prescribed when, in its sole judgment, circumstances so warrant.
- d. OGS reserves the right to consider or reject the merits of any Formal Dispute.

e. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the Formal Dispute.

7. Appeals

a. Should the filer be dissatisfied with the Formal Dispute determination, a written appeal may be filed with the Chief Procurement Officer, by mail or facsimile, using the following contact information:

Chief Procurement Officer  
New York State Procurement  
A Division of the Office of General Services  
38<sup>th</sup> Floor, Corning Tower  
Empire State Plaza  
Albany, NY 12242  
Facsimile: (518) 474-2437

b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of NYS Procurement Services shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.

c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.

d. An appeal of the decision of the Director of NYS Procurement Services shall not include new facts and information unless requested in writing by the Chief Procurement Officer.

e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

8. Legal Appeals

a. Nothing contained in these provisions is intended to limit or impair the rights of any vendor or Contractor to seek and pursue remedies of law through the judicial process.

#### 6.11 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page of this Solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and to make a determination of the responsibility of the Bidder pursuant to these two (2) statutes. Certain findings of non-responsibility can result in rejection for Contract award and in the event of two (2) findings within a four (4) year period, the Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

[http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL\\_139j-k.asp](http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp)

#### 6.12 MERCURY ADDED CONSUMER PRODUCTS

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any Products containing elemental mercury for any purpose under this Contract.

#### 6.13 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

**NEW YORK STATE LAW**

The New York State Office of General Services (OGS), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority- and Women-Owned Business Enterprises: Evidence from New York" (the "Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises ("MWBEs") and the employment of minority groups members and women in the performance of New York State contracts.

**EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

By submission of a bid or bid in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Bidder further agrees to submit with the bid a staffing plan on Form EEO 100 identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to OGS, a workforce utilization report on Form EEO 101, identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBEs)**

- A. For purposes of this procurement, OGS has conducted a comprehensive search and has determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to the awarded Contractors. Contractors are, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs who perform commercially useful functions on this Contract for the provision of services and materials. To locate MWBEs, the Directory of Certified Businesses can be viewed at:  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.  
Additionally, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- B. Commercially Useful Function

Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. 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. A MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. OGS will assess whether a MWBE is performing a commercially useful function by considering the following:

- (1) the amount of work subcontracted;
- (2) industry practices;
- (3) whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform;
- (4) the credit claimed towards MWBE utilization goals for the performance of the work by the MWBE; and
- (5) any other relevant factors.

C. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include the following:

- (1) A list of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation.
- (2) A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- (3) Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
- (4) A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
- (5) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
- (6) Other information deemed relevant to the request.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

#### 6.14 NEW YORK STATE VENDOR FILE REGISTRATION

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder(s) who accept payment directly from the State must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification

number (Vendor ID) will be assigned to your company and Vendor IDs will be assigned to each of your resellers or distributors (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage certain vendor information in one central location for all transactions related to the State of New York.

#### 6.14.1 For Bidders who are already registered in the Vendor File

The Bidder must enter their ten-digit Vendor ID in Attachment 6 Contractor and Reseller Information. For resellers or distributors already registered in the Vendor File, Bidders must enter their ten-digit Vendor ID along with the reseller's or distributor's information in Attachment 6 Contractor and Reseller Information.

#### 6.14.2 For Bidders who are not currently registered in the Vendor File

The Bidder must request assignment of a Vendor ID from OGS. Complete the OSC Substitute W-9 Form: [http://grantsreform.ny.gov/sites/default/files/sub\\_w9.pdf](http://grantsreform.ny.gov/sites/default/files/sub_w9.pdf) and submit the form to OGS in advance of your Bid. Please send this document to the Primary Designated Contact in this Solicitation. In addition, any reseller(s) or distributor(s) to be used must have a Vendor ID. An OSC Substitute W-9 Form should be completed by each designated reseller or distributor that does not have a Vendor ID and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and their resellers or distributors. Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application. For more information on the Vendor File, please visit the following website: [http://www.osc.state.ny.us/vendor\\_management/](http://www.osc.state.ny.us/vendor_management/).

### 6.15 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY

#### 6.15.1 Questionnaire

OGS conducts a review of prospective contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York State based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that that State will be relying upon the Bidder's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's website: [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or to enroll, go directly to the VendRep System online at [http://www.osc.state.ny.us/vendrep/info\\_vrsystem\\_vendor.htm](http://www.osc.state.ny.us/vendrep/info_vrsystem_vendor.htm).

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

In order to assist the State in determining the responsibility of the Bidder prior to Contract Award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date. A Bidder's Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with the requirements of the Questionnaire in advance of the bid opening to provide sufficient time to complete the Questionnaire.

### 6.15.2 Responsibility

The Bidder agrees that if it is awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

### 6.16 TAX LAW §5-A

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services, and technology valued at more than \$100,000 to certify to the NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Bidder is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Bidder filed the ST-220-TD with the NYS DTF. Website links to the Contractor certification forms and instructions are provided below.

#### 6.16.1 Form ST-220-CA (to OGS)

OGS only receives the Form ST-220-CA. Form ST-220-CA must be submitted to OGS with bid submittal providing the required certification that the Contractor filed the ST-220-TD with the DTF. This form can be found at: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf).

#### 6.16.2 Form ST-220-TD (to DTF)

Form ST-220-TD must be filed directly with DTF. This form only needs to be filed once, unless the information upon which the form is based changes for the Contractor, its affiliate(s), or its subcontractor(s). This form can be found at: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf).

Failure to make either of these filings may render a Bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. Vendors may call DTF at 518-485-2889 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF website: <http://www.tax.ny.gov>.

#### 6.17 USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State supports and encourages contractors to use recycled, remanufactured, or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Solicitation. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, §15 Remanufactured, Recycled, Recyclable, or Recovered Materials.

#### 6.18 ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER 4

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program) (EO4), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on EO4, including specifications for offerings covered by this Contract, may be found at: <http://www.ogs.ny.gov/EO4/Default.asp>. State entities subject to EO4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

#### 6.19 SURPLUS/TAKE-BACK/RECYCLING

I. A State agency is reminded of its obligation to comply with the NY State Finance Law §§ 167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.

II. If Contractor offers a no cost take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Before accepting any medications under this program, the vendor must provide proof of compliance with current State and Federal regulations to any Authorized User that seeks to participate in the Contractor's no cost take-back/recycling program. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.

III. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.

IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention

of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

#### 6.20 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in Contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, §27 Participation in Centralized Contracts. For purchase orders issued by the Port Authority of New York and New Jersey (or any other Authorized User that may have delivery locations adjacent to New York State), services to be provided may include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State Contracts. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Service's Customer Services at 518-474-6717.

#### 6.21 EXTENSION OF USE

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

#### 6.22 EXTENSION OF USE COMMITMENT

The Contractor agrees to honor all orders from State Agencies, political subdivisions, and others authorized by law (see "Extension of Use" clause) which are in compliance with the pricing, terms, and conditions set forth in the resulting Contract document.

Any unilateral limitations/restrictions imposed by the Contractor and/or manufacturer on eligible Authorized Users will be grounds for rejection of the bid or cancellation of the Contract. If a Contract, or any portion thereof, is cancelled for this reason, any additional costs incurred by the eligible purchaser will be borne by the Contractor.

#### 6.23 CONTRACT PERIOD AND RENEWALS

The Contract(s) resulting from this Solicitation shall commence after all necessary approvals and shall become effective upon notification of the final Contract Award Notice by OGS (see Appendix B, §26 Contract Creation/Execution). The Contract(s) awarded from the original solicitation shall be five (5) years measured from the effective date of the Contract Award Notification. All contracts will end co-terminus if they are not for some reason awarded at the same time. OGS retains the option to renew all contracts for up to one additional one (1) year period.

#### 6.24 SHORT TERM EXTENSION

In the event a replacement Contract has not been issued at the end of the Contract term, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to three (3) months upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, prices and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to six (6) months in lieu of three (3) months. However, this extension terminates should the replacement Contract be issued in the interim.

#### 6.25 POOR PERFORMANCE

Authorized Users should notify Procurement Services Customer Services promptly if the Contractor fails to meet the requirements of this Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services. Customer Services may be contacted at:

Office of General Services  
Procurement Services  
38<sup>th</sup> Floor Corning Tower  
Empire State Plaza  
Albany, NY 12242  
E-mail: [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov)  
Telephone: 518-474-6717  
Fax: 518-474-2437

#### 6.26 OVERLAPPING CONTRACT PRODUCTS

Products available in the resulting Contract(s) may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement method that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

#### 6.27 NEW YORK STATE REQUIRED CERTIFICATIONS

A Bidder is required to submit the signed New York State Required Certifications Attachment 2, NYS Required Certifications with a bid. Failure to submit this document may result in a bid being considered non-responsive and possible rejection of the bid.

#### 6.28 INSURANCE REQUIREMENTS

Upon tentative award, Contractor shall be required to provide evidence of all required insurance as detailed in Attachment 5, Insurance Requirements. The Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance pursuant to the requirements outlined. At least thirty (30) days prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to OGS than the expiring policies shall be delivered to OGS in the manner required for service of notice in Attachment 5, Paragraph A, Section 3 Certificates of Insurance/Notices.