



# Solicitation

**BIDS MAY BE SENT TO THE ABOVE ADDRESS ONLY  
(E-Mail or Facsimile Bids are NOT Acceptable)**

<b>BID OPENING:</b> <b>DATE:</b> 6/12/2015 <b>TIME:</b> 11:00 AM ET	<b>TITLE:</b> Group 38700 Advanced Scientific Equipment & Instruments (Statewide) <b>Classification Codes:</b> 41 and 42		
<b>SOLICITATION NUMBER:</b> 22962	<b>SPECIFICATION REFERENCE:</b> As Incorporated in the Solicitation		
<b>CONTRACT PERIOD:</b>	Up to 5 years with 2 possible 1-year renewals		
<b>DESIGNATED CONTACTS:</b>			
PRIMARY CONTACT Jennifer Kuhn <a href="mailto:Jennifer.Kuhn@ogs.ny.gov">Jennifer.Kuhn@ogs.ny.gov</a>	SECONDARY CONTACT John Normile	MWBE CONTACTS <a href="#">See Section 6.22.4, MWBE Designated Contacts</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 SOLICITATION, Appendix A (Standard Clauses for New York State Contracts), Appendix B (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/defaultSFL\\_139j-k.asp](http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp)

<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>		
Legal Business Name of Company Bidding:				
D/B/A – Doing Business As (if applicable):				
Street	City	State	County	Zip Code
If applicable, place an "x" in the appropriate box(es) <i>(check all that apply)</i>	<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business	
If applicable, place an "x" in the appropriate box(es) <i>(check all that apply)</i>	<input type="checkbox"/> Manufactured Within NYS	<input type="checkbox"/> Solely Manufactured Outside NYS	<input type="checkbox"/> Partially Manufactured Outside NYS % (outside)	
Bidder's Signature:		Printed or Typed Name:		
Title:		Date:		
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:				

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

**ACKNOWLEDGEMENT FORM**

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGEMENT**

The acknowledgement 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 SOLICITATION, Appendix A (Standard Clauses for New York State Contracts), Appendix B (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).

STATE OF \_\_\_\_\_ }  
 COUNTY OF \_\_\_\_\_ } **SS.:**

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he/she maintains an office at \_\_\_\_\_, and further that:

**(Check One)**

**(If an individual):** he/she executed the foregoing instrument in his/her name and on his/her own behalf.

**(If a corporation):** he/she is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he/she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

**(If a partnership):** he/she is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he/she is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

**(If a limited liability company):** he/she is a duly authorized member of \_\_\_\_\_ LLC, the limited liability company described in said instrument; that he/she is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
**Notary Public Signature**  
**Registration No. & Expiration:**

**RETURN THIS PAGE AS PART OF BID**

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## Appendices and Attachments

### APPENDICES

- Appendix A – Standard Clauses for New York State Contracts (January 2014)
- Appendix B – General Specifications (June 2014)

### ATTACHMENTS

- Attachment 1 – Price Pages
- Attachment 2 – NYS Required Certifications
- Attachment 3 – Bidder Questionnaire
- Attachment 4 – Encouraging Use of NYS Businesses in Contract Performance
- Attachment 5 – Insurance Requirements
- Attachment 6 – Contractor and Reseller Information
- Attachment 7 – Report of Contract Purchases
- Attachment 8 – Inquiry and Solicitation Deviation Template

## SECTION 1 INTRODUCTION

The New York State Office of General Services (OGS) Procurement Services proposes to establish multiple statewide centralized Contracts with manufacturers of Advanced Scientific Equipment & Instruments for use by Authorized Users. This Solicitation is being conducted as a non-competitive periodic recruitment. Contract awards will be made to all responsive and responsible Bidders who meet minimum qualifications and offer reasonable, not to exceed prices as determined by OGS.

OGS is seeking qualified and experienced Bidders to provide Bids as outlined in this solicitation. All applicable information required for submitting a Bid is contained herein. To ensure compliance with Solicitation requirements and prevent possible disqualification, Bidders should follow all instructions in [Section 3, BID SUBMITTAL](#). Bidders are also advised to pay strict attention to [Section 2, BIDDER REQUIREMENTS](#), as Bidders who cannot meet the requirements of this Section will be disqualified.

### 1.1 LOT OVERVIEW/DETAILED SCOPE

Bids MUST contain Products in Lot 1 – Equipment & Instruments. Bidder must be the manufacturer of **ALL** Products offered in Lot 1. Products in Lots 2 – 5 will be considered for award only in conjunction with a Bid from manufacturers of Products in Lot 1. Bidder need not manufacture Products offered in Lots 2-5.

Note this solicitation is not intended for “Custom” Products, but “Made to Order” Products may be included. Both terms are defined in Section 1.8, Glossary.

Examples of Products within each Lot are provided below. Examples are not meant to be exhaustive.

### Lot 1 – Equipment & Instruments

Products which are part of laboratory equipment, but are considered more sophisticated and more specialized than other equipment/instruments (such as refrigerators, freezers, desktop centrifuges, scales, meter sticks, chronometers, or thermometers).

Examples include:

- Automated Nucleic Acid Extraction System
- Automatic Immunoassay System
- Auto-Sampler
- DNA Sequencer (Small Genome and High Throughput)
- Gas Chromatograph
- High Throughput Analyzer
- Hybridization Equipment
- Liquid Chromatograph (HPLC, UPLC)
- Liquid Handling System
- Mass Spectrometer
  - Quadrupole, Sector Field, Time of Flight, Ion Trap
  - Organic MS (GC-MS, LC-MS, MS/MS)
  - Inorganic MS (ICP-MS)
- Microscope
- Multiplex Bioassay System
- Multi-Puncher
- Oscilloscope
- Plate Reader and Stacker
- Real-Time PCR Instrument
- Spectrometer
  - UV, VIS, Fluorescence

- Radiological Instrumentation (Alpha, Beta, Gamma Spectrometers)
- NMR Spectrometer
- Thermo Cycler
  - PCR Machine
  - DNA Amplifier

## Lot 2 – Consumables & Supplies

Proprietary to Advanced Scientific Equipment/Instruments and may be discarded, destroyed, dissipated, wasted, or spent.

Examples include:

- Capillary
- Columns
- Diagnostic Test Kits
- Reagents
- Recalibration Kits

## Lot 3 – Accessories & Peripherals

Any nonexpendable piece of equipment which has been fixed in place or attached to equipment & instruments, but which may be severed or removed without impairing the piece removed or affecting the basic function of the object.

Examples include:

- Computer
- Power Cord
- Pump
- Uninterruptable Power Supply (UPS)
- Software, Including Software Updates

NOTE: Accessories & Peripherals will be considered for award where equipment is to be interfaced with, or dedicated to, Advanced Scientific Equipment as a complete system. Bids for stand-alone Accessories & Peripherals will not be accepted.

Software offered under this Contract must: (1) be in a format that does not require any conversion by the Authorized User; (2) be available as part of the Contractor's standard commercial offerings; and (3) be directly related to operational functions of the Advanced Scientific Equipment/Instrument acquired by the Authorized User.

Further, any software currently on the NYS Miscellaneous Software Catalog Contract Prohibited List, or any subsequent replacement contract, is excluded from purchase under this Contract, except when the software is pre-loaded on the Advanced Scientific Equipment/Instrument at the time of purchase; in such cases, price may not exceed the NYS Miscellaneous Software Catalog price, or the price on any subsequent replacement contract. The Prohibited List may be accessed on the OGS website: <http://www.ogs.ny.gov/purchase/snt/awardnotes/79518Prohibited.pdf>.

Additionally, operating system software shall be licensed in accordance with the terms and conditions offered on the software developer's direct NYS software Contract, if available. License and warranty terms shall be furnished to Authorized User at the time of purchase in either hard copy or electronic form. Notwithstanding the foregoing, warranty coverage for software must start co-terminously with the product warranty period set forth in this Contract (see Appendix B). Any costs associated with this requirement shall be borne by the Contractor.

## Lot 4 – Maintenance & Warranties

Sometimes called a Service Agreement, Service Contract, or a Maintenance Agreement, offer prolonged warranties in addition to the standard warranty.

Examples include:

- Extended Warranty
- Preventive Maintenance
- Service Contract, Including Regulatory and Quality Compliance

## Lot 5 - Miscellaneous

Examples include:

- Education/Training
- Installation
- Relocation
- Repair Parts
- Service

### 1.2 HISTORICAL SPEND AND QUANTITIES

The Contracts resulting from this Solicitation will be Indefinite Delivery, Indefinite Quantity (IDIQ) Contracts. Historically, the previous award (March 2008 to September 2014, including all Contracts) has produced sales in the range of \$10M to \$20M per year. Numerous factors could cause the actual volume of Products purchased under the Contracts resulting from this Solicitation to vary substantially from historical volumes. Such factors include, but are not limited to, the following:

- Such Contracts will be nonexclusive Contracts;
- There is no guarantee of volume to be purchased, and there is no guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the Contract period;
- 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.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from historical volumes.

### 1.3 PERIODIC RECRUITMENT

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State and will only be utilized if deemed necessary to meet the State's ongoing requirements. Additional recruitment periods will be advertised in the NYS Contract Reporter. [See Section 1.4, BIDDER NOTIFICATION](#). Bids shall be evaluated under the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements currently in effect at the time of the new Bid Solicitation.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration. If a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

Any Contract(s) awarded under periodic recruitment will commence upon OGS approval in accordance with [Section 4.5, NOTIFICATION OF TENTATIVE AWARD](#) and will all terminate as described in [Section 6.33, CONTRACT TERM](#).

#### 1.4 BIDDER NOTIFICATION

In order to receive notification about this solicitation (or information on other OGS bidding opportunities) YOU MUST REGISTER FOR THE NEW YORK STATE CONTRACT REPORTER AT: <https://www.nyscr.ny.gov> and navigate to "I want to find Contracts to bid on" to register for your free account. If you do not register for the New York State Contract Reporter, you will not receive information on OGS bidding opportunities.

#### 1.5 KEY EVENTS/DATES

Event	Date	Time
Solicitation Release	4/22/2015	N/A
Registration Deadline for Pre-Bid Conference	5/5/2015	12:00 PM ET
Pre-Bid Conference	5/6/2015	TBD
First Inquiry Period Questions Due	5/13/2015	12:00 PM ET
OGS Response (tentative)	5/22/2015	N/A
Second Inquiry Period Questions Due	<del>5/29/2015</del> 6/2/2015	12:00 PM ET
OGS Response (tentative)	6/5/2015	N/A
Bids Due/Bid Opening	6/12/2015	11:00 AM ET

#### 1.6 INQUIRIES AND PROPOSED SOLICITATION DEVIATIONS

Bidders must use Attachment 8 – Inquiry and Solicitation Deviation Template to submit questions, comments, Solicitation deviations, and/or extraneous terms.

**Bid deviations or extraneous terms shall only be submitted during the first inquiry period.**

Responses to all questions, comments, deviations, and extraneous terms of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document, which will be posted on the OGS website.

Inquiries in the second inquiry period must be limited to a clarification of inquiries or answers from the first inquiry period. **During the second inquiry period, a Bidder shall only raise potential questions, assumptions, exceptions, caveats, etc. to the terms and conditions, and requirements of this Solicitation with respect to language altered by OGS as a result of the first inquiry period.**

The deadlines for submission of questions for the first and second inquiry periods are stated in [Section 1.5, KEY EVENTS/DATES](#). Inquiries submitted after the deadline will not be answered.

The completed template must be emailed to [Jennifer.Kuhn@ogs.ny.gov](mailto:Jennifer.Kuhn@ogs.ny.gov).

Bidders are advised that OGS will not entertain any deviations to Appendix A. Deviations to Appendix B are strongly discouraged. OGS will also not entertain any exceptions to the Solicitation that are of a material or substantive nature.

A Bidder should note that all clarifications and proposed deviations including those relating to the terms and conditions of a Contract are to be resolved prior to submitting a Bid.

#### 1.7 PRE-BID CONFERENCE

Participation in the Pre-Bid Conference is not mandatory but is strongly encouraged. A Bidder must register for the Pre-Bid Conference by sending an email to the designated contract for this Solicitation on or before the “Registration Deadline for Pre-Bid Conference” listed in [Section 1.5, KEY EVENTS/DATES](#). The email should indicate the Bidder’s legal business name and the name and title of Pre-Bid Conference attendees. With respect to attendance of the Pre-Bid Conference at the Empire State Plaza, each interested Bidder is limited to three (3) representatives.

The Pre-Bid Conference will be held at the time and date indicated in [Section 1.5, KEY EVENTS/DATES](#). Bidders may attend in person at the Empire State Plaza, Albany, New York, or via conference call. The room location and conference call number will be provided to all registered Bidders prior to the conference.

The purpose of the Pre-Bid Conference is to review requirements for Bid submittal. No inquiries will be accepted at the Pre-Bid Conference. All inquiries shall be submitted per [Section 1.6, INQUIRIES AND PROPOSED SOLICITATION DEVIATIONS](#).

At the discretion of OGS, materials may be posted to the OGS website for viewing or provided prior to the Pre-Bid Conference.

## 1.8 GLOSSARY

Term	Definition
Bid	A Bidder’s complete response to this Solicitation.
Bidder	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”.
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State and Federal holidays.
<u>Custom</u>	<u>Products which are developed specifically for an Authorized User to their unique specifications, are not documented on a published price list, and are one of a kind.</u>
Contract Price List	A list of Products approved by OGS that contains the Net Prices for Authorized Users.
Equipment	Major Products that are not expendable except through depreciation or wear and tear and which, although they may be fixed or positioned in prescribed places, do not lose their identity or become integral parts of other Products or installations.
Form, Function, and Utility	Shall refer to the minimum essential requirements that will meet an Authorized User’s needs for a Product and/or for an order. These requirements are defined by the Authorized User. Requirements may include quality, quantity, delivery terms, packaging, performance standards, and compatibility, among others.
Government Entity	An entity at the federal, state, county, or city level.
Installation	The placement and/or assembly of Product(s), after which they are ready for use. <a href="#">See section 6.16, PUBLIC WORKS</a> for exclusions.
List Price	Shall mean a basic published or advertised price, often subject to discount. See also “Published Price List”.
<u>Made to Order</u>	<u>Products which have to be made or assembled upon receipt of an order, are documented on a published price list, are not developed specifically for an Authorized User, and are not one of a kind.</u>
Manufacturer	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.
MWBE	Shall refer to a business certified with the New York State Empire State Development (ESD) as a Minority and/or Women-Owned Business Enterprise.
N/A	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.
Net Price	Shall refer to the price extended to New York State after all discounts, rebates, etc. have been allowed. All prices are FOB destination and include all customs, duties, and charges to any destination in New York State.
NYS Vendor File	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.
NYS Vendor ID	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”.
Preventive Maintenance (PM)	Planned activities undertaken to retain equipment or instruments in a serviceable condition; including scheduled inspection, testing, servicing, and classification as to serviceability, repairs, rebuilding, and reclamation.
Procurement Services	Shall refer to the division of the New York State Office of General Services which is authorized by law to issue centralized, statewide Contracts for use by Authorized Users.
Published Price List	Shall refer to a set of prices from which a Bidder offers Products for sale that is comprehensive, published, most current, regularly maintained, contains non-discounted and non-NYS specific prices. See also “List Price”.
Remedial Maintenance	Activities undertaken only in response to a failure or breakdown of equipment or instruments which results in a loss of production.
Service Agreement	A legally binding agreement between a customer and a Contractor that details the level and quality of service to be provided.
Solicitation	Shall refer to this document and its Appendices and Attachments.
Vendor	Shall refer to any business entity who submits a response to this Solicitation, can be either before or after execution of a Contract.

## SECTION 2 BIDDER REQUIREMENTS

A Bidder is advised that the State's intent in listing the following requirements is to ensure that only qualified and reliable Bidders be considered for Contract award. A Bidder submitting a Bid shall have the burden of demonstrating to the State's satisfaction that it meets the qualifications and can perform the work in order to be considered for Contract award.

### 2.1 QUALIFICATION OF BIDDER

Bids will only be accepted from manufacturers of Products in Lot 1 – Equipment & Instruments. Manufacturers may, if they desire, designate Resellers or Distributors with whom purchase orders may be placed; however, they must also indicate of such Reseller(s) and/or Distributor(s) are authorized to ship direct and/or receive payment. Reseller(s) and/or Distributor(s) shall be listed in Attachment 6 – Contractor and Reseller Information.

## 2.2 PAST GOVERNMENT SALES

Bidder must be able to provide documentation of past sales of Products offered to Government entities.

## SECTION 3 BID SUBMITTAL

All Bids must be signed by a person authorized to commit the Bidder to the terms of the solicitation and the content of the Bid.

### 3.1 NOTICES TO BIDDERS

Receipt of this Solicitation 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 the evaluation of your Bid compared to the specific requirements and qualifications contained in these Bid documents.

The Commissioner of OGS shall 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.

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submittal.

### 3.2 BID LIABILITY

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

### 3.3 BID DELIVERY

Bids must be received at the specified location on or before the date and time specified in [Section 1.5, KEY EVENTS/DATES](#). 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 Bids 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 22962)
3. Bid Opening Date and Time listed in [Section 1.5, KEY EVENTS/DATES](#)
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 Section 3.4, IMPORTANT BUILDING ACCESS PROCEDURES.](#)

## 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 Opening 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 [Section 1.5, KEY EVENTS/DATES](#) 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 submittal 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 – Price Pages will result in immediate disqualification.**

Please note that in the case of discrepancies between paper copies and electronic submissions, the electronic copy shall take precedence over the paper copy. A Bidder is ultimately responsible for reviewing the completed Attachments prior to submitting a Bid and ensuring that all necessary fields have been populated correctly.

A complete Bid consists of the following:

### 3.5.1 Electronic Requirements (2 copies)

- Completed Attachment 1 – Price Pages (Microsoft Excel)
- Pages 1 and 2 of the Solicitation (signed and scanned, PDF)
- Completed Attachment 3 – Bidder Questionnaire (Microsoft Excel)
- Completed Attachment 4 – Encouraging Use of NYS Businesses in Contract Performance (Microsoft Word)
- Proof of compliance with Attachment 5 - Insurance Requirements (PDF)
  - Commercial General Liability Insurance
    - Waiver of Subrogation
    - Endorsement to the Policy
  - Comprehensive Business Automobile Liability Insurance
    - Waiver of Subrogation
    - Endorsement to the Policy
  - Workers' Compensation
  - Disability Benefits

- Completed Attachment 6 – Contractor and Reseller Information (Microsoft Word)
- Completed MWBE Utilization Plan (Form MWBE 100) (PDF)
- Completed Equal Employment Opportunity Staffing Plan (Form EEO 100) (PDF)

### 3.5.2 Hard-Copy Requirements (2 originals)

- Pages 1 and 2 of the Solicitation with original ink signatures
- Completed Attachment 2 – NYS Required Certifications with original ink signatures
- Form ST-220-CA with original ink signatures

### 3.5.3 Additional Requirements - format may vary (1 copy)

- Published Price List(s) in **regular** format
- Documentation of Reasonableness of Price (paper copies, PDF, any format)
- Certificate of Completion of online NYS Vendor Responsibility Questionnaire **OR** paper questionnaire with original ink signatures
- **Terms and Conditions of any services offered in Lot 4 or Lot 5**

## 3.6 DEVIATIONS/EXTRANEIOUS TERMS

As set forth in [Section 1.6, INQUIRIES AND PROPOSED SOLICITATION DEVIATIONS](#), OGS has established a specific process for the submission of extraneous terms and Bid deviations. Any extraneous terms submitted with the Bid shall not be considered part of the Bid or resulting OGS Centralized Contract, and shall be disregarded.

## 3.7 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.

## 3.8 INCORPORATION

Portions of the successful Bidder's Bid and of this Solicitation shall be incorporated into a Contract to be executed by the Contractor and OGS. Therefore, the Bid must be signed by a partner, corporate officer, or other person authorized to commit the Bidder to all provisions of the Solicitation and the Bid as submitted.

## 3.9 ELECTRONIC BID OPENING RESULTS

Procurement Services posts Bid information on the OGS 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:

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time, at the sole discretion of the Agency;
- C. Make an award under the Solicitation in whole or in part;

- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bids;
- F. Prior to the Bid opening; amend the Solicitation specifications to correct errors or oversights, or to supply additional information as it becomes available;
- G. Prior to the Bid opening; direct Bidders to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the scheduled dates with notification through the NYS Contract Reporter;
- I. Waive any requirements that are not material;
- J. Utilize any and all ideas submitted in the Bids received;
- K. Adopt all or any part of a Bid;
- L. 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 Bids;
- M. 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 Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- N. 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;
- O. 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;
- P. 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;
- Q. 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

This Solicitation is being conducted as a non-competitive periodic recruitment. Contract awards will be made to all responsive and responsible Bidders who meet minimum qualifications and offer reasonable, not to exceed prices as determined by OGS. [See Section 6.1, PROCUREMENT INSTRUCTIONS](#) for information on how Authorized Users may purchase from the centralized Contracts.

### 4.1 PUBLISHED PRICE LIST

All Products offered must be available on at least one of the following types of Published Price Lists:

- Manufacturer's Suggested List Price (MSLP)
- Manufacturer's Suggested Retail Price (MSRP)
- US Government Price list
- Manufacturer's Commercial Price List
- Manufacturer's Online Store Pricing (acceptable only if it contains the complete current list of Products and prices offered on the price list without having to navigate to any other webpages to view the complete information)

Bidder may offer Products from multiple Published Price Lists provided that the Published Price Lists meet the requirements of this Section. If Products are not available through one of the types of Published Price Lists referenced, the Products will not be offered under the Contract.

**For each Lot a Bidder is responding to, Bidder must submit a Published Price List that includes the list price for Products offered in that Lot.**

Every Published Price List submitted must:

1. Be a current copy of the Published Price List;
2. Be in its regularly published format;
3. Detail current list prices (non-discounted, not NYS specific); and
4. Highlight all Products the Bidder is offering.

If NYS net prices are based on a GSA Schedule or WSCA Contract, that pricing must be submitted with the Bid.

**Failure to provide Published Price Lists as described above may result in rejection of the Bid.**

#### 4.2 REASONABLENESS OF PRICE

Bidder must demonstrate to OGS' satisfaction that the NYS Net Price offered in Attachment 1 – Price Pages for each Product offered is equal to or better than pricing offered to other Government Entities.

OGS reserves the right to conduct additional research and request additional information to verify the information provided and/or assess the reasonableness of pricing. If verification shows that pricing is incorrect, a Product may be removed. If reasonableness of pricing is not demonstrated to OGS's satisfaction, Products offered may be removed, a Lot or Lots may be deemed non-responsive and ineligible for Contract award, or Bids may be deemed non-responsive and ineligible for Contract award.

**Bidder must provide documentation of reasonableness of price for each Product offered, as indicated below and in Attachment 1 – Price Pages. Any Products offered which do not have corresponding documentation will not be considered.**

Acceptable documentation of reasonableness of price includes any of the following:

NYS Contract:

- Contract must have been approved and executed ([submit entire agreement](#))
- Contract Price List must be the most currently approved or the Price List in effect at Contract expiration
- Contract Price List must be included with Bid

Federal Contract:

- Contract must have been approved and executed ([submit entire agreement](#))
- Contract Price List must be the most currently approved or the Price List in effect at Contract expiration
- Contract Price List must be included with Bid

Other US Government Entity Contract ([state, local, county, etc.](#))

- Contract must have been approved and executed ([submit entire agreement](#))
- Contract Price List must be the most currently approved or the Price List in effect at Contract expiration
- Contract Price List must be included with Bid

Paid invoices from US Government Entities:

- Paid invoices of Products from the same Lot(s) in response to this Solicitation

<ul style="list-style-type: none"> <li>• Sufficient information must be included on the invoice to identify the qualifying Lot Product(s) including the following: <ul style="list-style-type: none"> <li>○ US Government Entity</li> <li>○ Description of Qualifying Lot Product(s)</li> <li>○ Manufacturer Part Number (SKU)</li> <li>○ Net price of each qualifying item</li> </ul> </li> <li>• All paid invoices must be included with Bid</li> </ul>
<p>Bidder will also enter the following information for each Product offered in Attachment 1 – Price Pages:</p> <ol style="list-style-type: none"> <li>1. Type of Documentation provided for reasonableness of price (NYS Contract, Federal Contract, etc.);</li> <li>2. Contract or Invoice Number for the documentation provided for reasonableness of price; and</li> <li>3. Net Contract or Invoice Price as indicated in the documentation provided for reasonableness of price.</li> </ol>
<p><b>Failure to provide documentation of reasonableness of price as indicated above may result in rejection of the Bid.</b></p>

#### 4.3 ATTACHMENT 1 – PRICE PAGES

See Attachment 1 – Price Pages for instructions.

A Bidder is encouraged to offer their best possible pricing. Additionally, Authorized Users may negotiate better pricing with Contractors at any time throughout the Contract term. Additional information can be found in Appendix B, §28 *Modification of Contract Terms*.

#### 4.4 COST 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.

#### 4.5 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, who shall thereupon be obligated to execute a formal contract.

Once a Contract is fully executed, the OGS website will include a notice of contract award, contract updates, procurement instructions, and Contractor's contact information.

#### 4.6 CONDITIONS OF TENTATIVE AWARD

Upon notification of tentative award, successful Bidder(s) shall provide all items requested within the time-frame specified in the request.

## SECTION 5 ADMINISTRATION

### 5.1 CONTRACT ADMINISTRATOR

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Administrator shall be set forth in Attachment 6 - Contractor and Reseller Information. Contractor must notify OGS within five (5) business days, and

provide an interim contact person as needed, if their Contract Administrator changes. Contractor may submit any change in contact information by submission of a revised Attachment 6 - Contractor and Reseller Information via e-mail to the individual shown on the front of the Contract Award Notice. Any changes in Reseller or Distributor information should be submitted in the same manner.

## 5.2 CONTRACT PRICE LIST MODIFICATIONS

### 5.2.1 General Information

The Contract Price List may be modified annually, on the anniversary date of individual Contract approval, or at any time at the request of OGS Procurement Services. Modifications may include addition/deletion of items within the scope of the Contract or any changes in List Price, based on Published Price Lists. Discounts may be increased, but may not be reduced.

### 5.2.2 Submission of Update Requests

Modification requests must be submitted to the Contract Manager listed on the Contract Award Notification 30-60 days prior to the anniversary date. Contractor will submit an updated Attachment 1 - Price Pages. The Price Pages shall identify:

- Price increases
- Price decreases
- Products being added
- Products being deleted

OGS will review modification requests for “reasonableness of price” of any new or existing Products and reserves the right to:

- Request additional information
- Reject Contract modifications
- Remove Products from Contracts
- Remove Products from modification requests
- Request additional discounts for new or existing Products

### 5.2.3 Supporting Documentation

Modification requests must be accompanied by the Published Price List, highlighting any items included in the request, documentation of reasonableness of price, and Attachment 1 - Price Pages as required in the Bid. If NYS net prices are based on a GSA Schedule or WSCA Contract, that pricing must also be included in the update request.

## SECTION 6 TERMS AND CONDITIONS

### 6.1 PROCUREMENT INSTRUCTIONS

The resultant Contracts will be issued under a multiple award structure. Authorized Users shall procure Products that best meet their form, function, and utility requirements.

Before proceeding with their purchase, Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law, particularly §162, regarding commodities/services provided by preferred source suppliers.

Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.

## 6.2 ORDERING

### 6.2.1 Minimum Order

Minimum order shall be \$100.00.

Contractor may elect to honor orders for less than the minimum order. For such orders only, at the Contractor's option, shipping costs from the Contractor's address (as stated in the Bid) may be added to invoice with a copy of the freight bill.

### 6.2.2 Ordering

Authorized Users may submit orders over the phone. Contractor may request orders over a certain dollar amount in writing. Orders submitted during business hours shall be deemed received by Contractor on the date submitted. If available, Authorized Users may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted after business hours shall be deemed received by Contractor on the next business day. [See Section 1.8, GLOSSARY](#), "Business Day."

All orders shall reference Contract number, requisition, and/or purchase order number (if applicable), and any other information agreed to by the Contractor and Authorized User. Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation shall be itemized, and include purchase price, date of purchase, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

### 6.2.3 Procurement Card

A Bidder must accept a Procurement Card as payment for purchases, but may provide a limit on the dollar value they will allow. Authorized Users are encouraged to use a Procurement Card as a primary means of payment. For all purchases executed using a Procurement Card, Contractor shall provide an itemized receipt with each delivery.

### 6.2.4 NYS 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 submitting 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/>.

## 6.3 DISCREPANCIES

The Contractor shall resolve all order and/or invoice discrepancies (shortages, breakages, etc.) within ~~five (5)~~ **ten (10)** business days of notification. If any merchandise delivered under a Contract has been used or consumed by an Authorized User and upon testing is found not to comply with specifications, no payment may be approved by the Commissioner for the merchandise until the amount of actual damages has been determined.

The Commissioner shall seek to collect reimbursement for damages based upon the actions or omissions of the Contractor in providing merchandise that does not meet specifications. See Appendix B, §52 *Remedies for Breach*.

#### 6.4 INVOICING

The standard format for invoicing shall be single invoices; meaning 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 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
- Manufacturer Part Numbers
- Vendor Part Numbers
- Product Descriptions
- Price
- Quantity
- Unit of Measure

#### 6.5 PRODUCT RETURNS AND EXCHANGES

##### 6.5.1 Contractor Errors

Products returned/exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, or Contractor errors otherwise not specified shall be replaced with specified Products or the Authorized User shall be credited/refunded for the full purchase price.

Products shall be replaced within five (5) business days of written notification to the Contractor, or within such other time-frame as agreed to by Contractor and Authorized User. Delivery for a replacement Product shall be the same as stated in [Section 6.7, DELIVERY](#).

Returned Products shall be picked up by the Contractor in accordance with Appendix B, §39 *Rejected Product* unless otherwise agreed to by Contractor and Authorized User.

There shall be no restocking fee for Products returned under this Section.

##### 6.5.2 Authorized User Errors

Products returned/exchanged due to Authorized User errors shall be replaced with specified Products or the Authorized User shall be credited/refunded for the full purchase price.

Product shall be replaced within five (5) business days of written notification to the Contractor, or within such other time-frame as agreed to by Contractor and Authorized User. Delivery for a replacement Product shall be the same as stated in [Section 6.7, DELIVERY](#).

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, or within such other time-frame as agreed to by Contractor and Authorized User if a credit/refund is to be issued.

There shall be no restocking fee if returned Products are suitable for resale. Contractor may charge a restocking fee not to exceed the net price of a returned Product if not suitable for resale.

#### 6.6 TOLL-FREE TELEPHONE NUMBER

The Contractor shall provide a ~~toll-free~~ telephone number for Authorized Users, staffed Business Days. Capacity must allow users to leave a message seven (7) days a week, twenty-four (24) hours a day. The ~~toll-free~~ telephone number is to be provided in Attachment 6 - Contractor and Reseller Information.

#### 6.7 DELIVERY

Delivery of all Contract Products shall be made in accordance with Appendix B, §33 *Product Delivery* and §35 *Shipping/Receipt of Product*.

#### 6.8 SHIPPING CHARGES

All prices as set forth in Attachment 1 - Price Pages, shall include all customs, duties, and charges for delivery and be net FOB destination for delivery to any location designated by the Authorized User within New York State. There shall be no additional charges for delivery except as follows:

##### 6.8.1 Special Handling

Contractor will provide information on "special handling", including what constitutes special handling, and the terms, conditions, and pricing which will apply when it is required. The Authorized User must be informed of the special handling prior to delivery and agree in writing to the additional terms.

##### 6.8.2 Expedited Delivery

Expedited delivery will only be allowable and charged to the Authorized Users when such delivery is requested in writing by the Authorized User. The Authorized User must be informed of the additional cost prior to delivery and agree in writing to the additional charge. Shipping costs must be prepaid by the Contractor and may be added to the invoice with a copy of the freight bill.

#### 6.9 PACKAGING

All Products furnished must be in the original, standard packaging, clearly marked as to part number and contents.

#### 6.10 INSTRUCTION MANUALS

Simultaneous with delivery, the Contractor shall furnish to the Authorized User a complete instruction manual for each Product and for each component supplied. The manual shall include complete instructions for unpacking, inspecting, installing, adjusting, aligning, and operating the Product, together

with layout and interconnection diagrams, schematic and wiring diagrams, preventive and remedial maintenance procedures, and complete parts lists, manufacturer's catalog numbers, and ordering information, if applicable. Manuals may be provided in either hard-copy or electronic format, whichever is available, or in the format preferred by the Authorized User when both formats are available.

#### 6.11 SAFETY DEVICES

All Products provided under the resultant Contract(s) shall be equipped with required safety devices to comply with all applicable codes, laws, and regulations that are in effect at the time of delivery.

#### 6.12 RECALLS

During the Contract term, the Contractor must provide written notification to the Contract Manager listed on the Contract Award Notification within five (5) business days of any recalls pertaining to any Products awarded to the Contractor.

#### 6.13 DEBRIEFING

Unsuccessful Bidders shall be notified upon notification of tentative award to the successful Bidder(s). 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 Contract award. For debriefings prior to Contract award, OGS shall, upon request, provide a debriefing which would be limited to a review of that Vendor's Bid.

For debriefings after Contract award, within thirty (30) days of posting of the Contract award on the OGS website, OGS shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to the Solicitation, regarding the reason the Bid submitted by the Bidder was not selected for a Contract award. Requests for debriefings by unsuccessful Bidders must be made in writing via e-mail to the designated contacts located on the front page of the Solicitation.

#### 6.14 REPORT OF CONTRACT PURCHASES

Contractor shall submit Attachment 7 - Report of Contract Purchases including total sales for Authorized Users of this Contract, no later than ~~ten (10)~~ thirty (30) calendar days after the close of each calendar quarter. 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 included in the quarterly report.

In addition to Contractor direct sales, Contractor shall submit sales information for all Resellers or Distributors where such Contract sales are provided by other than the Contractor.

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contractor, Contract Number, and Sales Period.

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 and must be supplied within the time-frame requested.

Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

#### 6.15 DESIGNATED RESELLERS/DISTRIBUTORS

Reseller(s) must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that the Contractor name

additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions.

#### 6.16 PUBLIC WORKS

Installation work which is considered public works is **excluded** from purchase under this Solicitation. Historically, the New York State Bureau of Public Works has maintained that installation, maintenance, and repair of equipment attached to any wall, ceiling, or floor, or affixed by hard wiring or plumbing is public work. In contrast, installation of a piece of equipment which is portable or a "plug-in" free-standing unit would not be considered public work. Thus, this Solicitation does not authorize installation where the equipment becomes a permanent part of the building structure, or is otherwise incorporated into the fabric of the building (e.g. installation on a wall, ceiling, or floor in a fixed location, or affixed by hard-wiring or plumbing). See Appendix B, §10 *Prevailing Wage Rates – Public Works and Building Services Contracts*. For questions about whether a proposed installation constitutes public work, please contact the New York State Department of Labor's Bureau of Public Work district office in your area.

#### 6.17 CONFLICT OF TERMS AND CONDITIONS

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

1. Appendix A, Standard Clauses for New York State Contracts
2. The Solicitation, including any Appendices and Attachments
3. Appendix B, General Specifications

#### 6.18 APPENDIX A

Appendix A, Standard Clauses for New York State Contracts, dated January 2014, attached hereto, is expressly made a part of this Solicitation document as fully as if set forth at length herein.

#### 6.19 APPENDIX B

Appendix B, General Specifications, dated June 2014, attached hereto, is hereby expressly made a part of this Solicitation document as fully as if set forth at length herein and shall govern any situations not covered by this Solicitation document or Appendix A.

##### 6.19.1 Appendix B Amendments

##### A. Section 40 (Installation) is amended as follows:

Unless otherwise agreed to between the Contractor and Authorized User, the following shall apply where installation is required. Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed.

Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

**B. Section 54 (Toxic Substances) is amended as follows:**

Each Contractor furnishing a toxic substance, as defined by Section 875 of the Labor Law, shall provide such Authorized User with not less than one copy of a Material Safety Data Sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Authorized User representative.

**C. Section 59a (Product Performance) is amended as follows:**

- a. Delete: "or for a minimum of one (1) year from the date of acceptance, whichever is longer" from paragraph 3 for LOT 2 ONLY.
- b. Add for all Lots: "To the extent permitted by law, these warranties are exclusive and there are no other express or implied warranties or conditions, including warranties or conditions of merchantability and fitness for a particular purpose."

**D. Section 59e (Virus Warranty) is amended as follows:**

"The Contractor represents and warrants that any Licensed Software acquired by the Authorized User does not contain any known viruses." Is replaced by: "The Contractor represents and warrants that any Licensed Software acquired by the Authorized User under the Contract does not contain any known viruses."

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

**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.

#### **F. 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 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 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 Procurement Services by mail or facsimile, using the following contact information:

**Director, 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, fax 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**  
**Procurement Services**  
**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 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 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.

## 6.20 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 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)

## 6.21 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.

## 6.22 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

### 6.22.1 POLICY STATEMENT

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 Disparity Study 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 (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

### 6.22.2 EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

By submission of a bid or proposal 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 labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (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 this Contract; or (ii) employment outside New York State.

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.

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

#### A. MWBE Contract Goals

For purposes of this procurement, OGS hereby establishes a goal of 5% for Minority-owned Business Enterprises (MBE) participation and 5% for Women-owned Business Enterprises (WBE) participation (collectively referred to as MWBE) for a total Contract MWBE goal of 10%. The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under this Contract. The directory of New York State Certified MWBEs can be viewed at:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women-Owned Businesses and Community Relations identified in [Section 6.22.4, MWBE Designated Contacts](#).

A Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract (see clause D below). Contractor agrees that OGS may withhold payment pending receipt of the required MWBE documentation.

B. By submitting a bid or proposal, Bidder/Contractor agrees to the following:

#### 1. Breach of Contract and Liquidated Damages

In accordance with 5 NYCRR § 142.13, Bidder/Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and OGS may withhold payment from the Contractor as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

#### 2. Utilization Plan

a. Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid or proposal.

b. The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the Contract, a description of the Contract scope of work the Contractor intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE, and performance dates of each component of the Contract that the Contractor intends to be performed by a MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

c. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt.

d. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

3. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:

- (a) If a Bidder fails to submit a MWBE Utilization Plan;
- (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- (c) If a Bidder fails to submit a request for waiver; or
- (d) If OGS determines that the Bidder has failed to document good faith efforts.

#### C. Request for Waiver

1. A Bidder who is able to document good faith efforts to meet the goal requirements, as set forth in clause D below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation, at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses B(2)(c) & (d) and C(3) will apply.

2. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

3. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office for Minority- and Women-Owned Businesses and Community Relations identified in [Section 6.22.4, MWBE Designated Contacts](#).**

#### D. Required Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

(1) A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.

(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.

#### E. Monthly MWBE Contractor Compliance Report

Contractors are required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State. If a Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS. More information about the NYSCS will be provided if Bidder is awarded a Contract.

#### 6.22.4 MWBE Designated Contacts

For inquiries related specifically to minority and women-owned business enterprises (MWBE) provisions of this procurement Solicitation, the designated contacts are:

New York State Office of General Services  
Office for Minority and Women Owned Business Enterprises  
Empire State Plaza, Corning Tower – 40<sup>th</sup> Floor  
Albany, NY 12242  
Phone: 518-486-9284  
Fax: 518-486-2679  
E-mail:  
[Anuola.Surgick@ogs.ny.gov](mailto:Anuola.Surgick@ogs.ny.gov),  
[Tryphina.Ramsey@ogs.ny.gov](mailto:Tryphina.Ramsey@ogs.ny.gov),  
OR  
[William.Hill@ogs.ny.gov](mailto:William.Hill@ogs.ny.gov)

**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>

#### 6.23 NEW YORK STATE VENDOR FILE REGISTRATION

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder(s) and any designated Reseller(s) or Distributor(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.

#### 6.23.1 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.

#### 6.23.2 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://www.osc.state.ny.us/vendors/forms/ac3237s\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.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/).

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

#### 6.24.1 For Bidders

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.

#### 6.24.2 For Contractors

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.

#### 6.25 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 Sub-Contractors 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.

#### 6.25.1 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, 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).

#### 6.25.2 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 Sub-Contractor(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>.

### 6.26 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*.

### 6.27 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/EO/4/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.

### 6.28 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 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. 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.

#### 6.29 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 Services Customer Services at 518-474-6717.

#### 6.30 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.

#### 6.31 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.

#### 6.32 CONTRACT START DATE

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, who shall thereupon be obligated to execute a formal contract.

OGS may start Contracts on a rolling basis, if necessary. Bids which do not require clarification or the submission of additional supporting documentation from the Bidder will be awarded first. Bids which require clarification or the submission of additional supporting documentation from the Bidder will be awarded as issues are resolved.

#### 6.33 CONTRACT TERM

The Contract(s) awarded from the original Solicitation shall be five (5) years measured from the effective date of the Contract Award Notification. OGS reserves the right to conduct additional periodic recruitment periods. There will be no continuous recruitment. Contracts awarded under any additional periodic recruitment periods will have a lesser initial Contract term than the original Solicitation so that the Contracts from all periodic recruitments end on the same date, regardless of start date. OGS retains the option to renew all Contracts for up to two (2) additional one (1) year periods.

#### 6.34 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 any approved modifications, 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.

#### 6.35 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

### 6.36 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.

### 6.37 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.

### 6.38 INSURANCE REQUIREMENTS

Bidder shall be required to provide with Bid 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.