

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
SOLICITATION 22962				
1	General		Two business units of <vendor> (<vendor> and <vendor>) will be submitting responses to solicitation 22962. Both have the same FID number, both are in the same <vendor> instrumentation group, and both have the same VP/General Manager. Is it necessary to submit two separate responses, or can both business units' product lines be offered in one response?	Per Section 1.1, Lot Overview/Detailed Scope: "Bidder must be the manufacturer of ALL Products offered in Lot 1." Both Product lines may be offered in one response, provided that the entity bidding is the manufacturer of both Product lines.
2	1.1 Lot Overview/Detailed Scope		<Vendor> requests to be deemed to be the manufacturer for the purposes of this bid because we are wholly-owned by the manufacturer, <vendor> (a UK-based company), and we are authorized by our parent to represent our collective interests with the State of NY for the purposes of this bid. We have the relevant business qualifications (D&B number, FEIN, and NY State Vendor ID number) which our parent does not. Further, <vendor> will be charged with administration and fulfillment of the contract with the State of NY. Please confirm that we will be so deemed and advise any documentation required, if any, from our parent to confirm the aforementioned relationship.	Per Section 1.1, Lot Overview/Detailed Scope: "Bidder must be the manufacturer of ALL Products offered in Lot 1." OGS does not have the authority to deem your company a manufacturer.
3	1.1 Lot Overview/Detailed Scope		When a product that is being offered in "Lot 1" is no longer available and does not have any type of replacement item, does that make the associated products in the other "Lots" no longer valid as they may be accessories or consumables still needed for the discontinued item which will still be serviceable?	No. The Products offered in Lots 2-5 do not have to be directly tied to a Product in Lot 1. Note: There must be a Product offering in Lot 1 at all times.
4	1.1 Lot Overview/Detailed Scope		Please confirm that items offered in Lots 2 - 5 do not have to be manufactured by the bidder.	Confirmed. Per Section 1.1, Lot Overview/Detailed Scope: "Bidder must be the manufacturer of ALL Products offered in Lot 1" "Bidder need not manufacture Products offered in Lots 2-5."
5	3.5 Format and Content of Bid Submittal	3.5.3 Additional Requirements	Please define "regular" format for published price lists. For example, does this mean Word, PDF, or Excel?	See Section 4.1, Published Price List. Regular refers to any format that is available to the public, and is not created for this bid (no NYS-specific references, and not marked confidential). This may be Word, PDF, Excel, or any other format.
6	4.1 Published Price List		When submitting our Published Price List with the bid is it acceptable to remove any items that will not pertain to New York State Purchases? If no, what process should be followed in identifying the items that won't pertain to New York State purchases on the Published Price List?	Per Section 4.1, Published Price List: the price list should be in the regularly published format. Do not remove items. "Every Published Price List submitted must... highlight all Products the Bidder is offering".

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7	4.2 Reasonableness of Price		Would a reseller contract be acceptable form of documentation?	No. The documentation of reasonableness of price must be that of the Bidding entity.
8	4.2 Reasonableness of Price		Because of the custom nature of <vendor> NMR products, <vendor> does not have invoices for every NMR product it can offer as part of <vendor>'s bid submission. <Vendor> does not have other government contracts. Can OGS provide guidance, then, on how best to proceed?	Per Section 4.2, Reasonableness of Price: "Bidder must provide documentation of reasonableness of price for each Product offered" ... "Any Products offered which do not have corresponding documentation will not be considered." This solicitation is not intended for custom items.
9	4.2 Reasonableness of Price		Contractor would like to request the removal of this requirement to submit documentation, such as specific contract terms and pricing, for every SKU offered to the State of New York. The State is already going to receive pricing that will be lower than what is offered to Contractor's general customer base and Contractor will provide the State with the Published List Price as a support. The documentation the State is requesting, contract terms and pricing, are often confidential for each customer. The Contractor intends to submit a bid with tens of thousands of products and to obtain price support for each and every SKU does not seem to be a reasonable request.	OGS declines to make the requested change.
10	4.2 Reasonableness of Price		The solicitation states that only Contract Price List or invoices have to be included with the Bid. At the Pre-bid conference OGS states that it is also looking for contract terms, please confirm whether contract terms would also be required as these tend to be confidential.	An update to Section 4.2, Reasonableness of Price was published on 5/12/2015. We do require the contracts. The acceptable contracts listed are all with government entities and are public information.
11	4.2 Reasonableness of Price		Please confirm that the Other US Government Entity Contract Price List can be from an expired or expiring Contract and must be the Price List that was in effect at the Contract expiration date.	That is correct, provided that Bidder does not have a current contract, and the pricing offered to NYS is equal to or better than the pricing from the expired/expiring contract.
12	5.2 Contract Price List Modifications	5.2.1 General Information	As the bid documentation does not outline any annual price increase restrictions, our assumption is there are none. Please confirm.	See Section 5.2.2, Submission of Update Requests: OGS has reserved rights concerning "reasonableness of price" for any requests. See Section 5.22.3, Supporting Documentation for all documentation requirements that must accompany any modification request. In addition, the contract price list may only be modified or amended upon mutual written agreement of OGS and the Contractor. See Appendix B, § 28, Modification of Contract Terms.

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13	5.2 Contract Price List Modifications	5.2.2 Submission of Update Requests	Modify the words 30 -60 days prior to anniversary date as follows: "30 – 60 days prior to prices or additions becoming effective" Reason: <vendor>'s prices for product commonly update the 1st of January each year and for Service Agreements after the 1st of March each year. This may not coincide with the Anniversary date of this Agreement.	OGS declines to make the requested change.
14	5.2 Contract Price List Modifications	5.2.2 Submission of Update Requests	What documentation will be required to be submitted, in addition to the Published Price List, with any request for annual price increase?	See Section 5.2.3, Supporting Documentation.
15	5.2 Contract Price List Modifications		a) During the life of the contract if a product becomes obsolete and a direct replacement is available, can the direct replacement be substituted and added to the contract immediately? If yes, what is the process? b) If no, would New York State need to be notified that a product is no longer available?	a) No. Additions will only be made in accordance with Section 5.2, Contract Price List Modifications. b) Yes, contractors must notify NYS if a Product is no longer available. See Appendix B § 38, Product Substitution for additional information.
16	6.2 Ordering	6.2.2 Ordering	First paragraph: Please add at the end of first sentence: ", however any orders \$10,000 or more must be submitted in writing." Please change the first sentence of the second paragraph to state: "All orders shall reference Contract number, Contractor's Quotation Number, requisition and/or purchase order (if applicable)." Explanation: Contractor's Ordering Department requires the Quotation Number to be able to process the order in accordance with the contract.	OGS declines to make the requested change. However, see revised language in Solicitation Section 6.2.2, Ordering. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.
17	6.2 Ordering	6.2.3 Procurement Card	May we limit the dollar amount that can be charged to p-cards?	Yes. See revised language in Solicitation Section 6.2.3, Procurement Card. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.
18	6.3 Discrepancies		Modify the words "within five (5) business days of notification" as follows: within ten (10) business days of notification"	OGS agrees to the requested change. See revised language in Solicitation Section 6.3, Discrepancies. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.
19	6.3 Discrepancies		Sentence two, the words "no payment may be approved by the Commissioner for the merchandise until the amount of actual damages has been determined" to be deleted in their entirety. Reason: <vendor> will not be liable for any consequential or perceived damages due to delays, product defect or customer dissatisfaction with product.	OGS declines to make the requested change.

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20	6.5 Product Returns and Exchanges	6.5.1 Contractor Errors	The Paragraph, "Products returned / exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped or Contract errors otherwise not specified shall be replaced with specified Products or the Authorized User shall be credited/ refunded for the full purchase price." modified as follows: Products returned/exchanged due to quality problems, duplicated shipments, outdated Product, incorrect product shipped, or Contractor errors otherwise not specified must be received by <vendor> within 30 days of Return Material Authorization (RMA) issued. <Vendor> will inspect the product upon receipt and if the product passes inspection shall issue a credit or send replacement for the products.	OGS declines to make the requested change. However, see revised language in Solicitation Section 6.5.1, Contractor Errors. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.
21	6.5 Product Returns and Exchanges	6.5.1 Contractor Errors	The Paragraph, "Products shall be replaced within five (5) business days of written notification to the Contractor. Delivery for a replacement product shall be the same as stated in Section 6.7, Delivery" is modified as follows: Products shall be replaced only after they have been received and inspected by <vendor> and have passed inspection. To receive credit or a replacement product, Customer must return the product in the same condition as delivered, normal wear excepted for instruments.	OGS declines to make the requested change. However, see revised language in Solicitation Section 6.5.1, Contractor Errors. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.
22	6.5 Product Returns and Exchanges	6.5.1 Contractor Errors	The sentence, "Returned Products shall be picked up by the Contractor in accordance with Appendix B, S39" is modified as follows: Returned Products shall be received by <vendor> within 30 days of the Return Material Authorization (RMA) being issued. If the error is a <vendor> error as determined at the sole discretion of <vendor> then <vendor> will be responsible for the freight and insurance cost of the returned product.	OGS declines to make the requested change. However, see revised language in Solicitation Section 6.5.1, Contractor Errors. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.
23	6.5 Product Returns and Exchanges	6.5.1 Contractor Errors	The sentence, "There shall be no restocking fee for products returned under this Section." is deleted in its entirety.	OGS declines to make the requested change.
24	6.5 Product Returns and Exchanges	6.5.1 Contractor Errors	As some products require rigging and are shipped from overseas, it is not possible to commit to 5 day replacement of all items.	See revised language in Solicitation Section 6.5.1, Contractor Errors. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.

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25	6.5 Product Returns and Exchanges	6.5.1 Contractor Errors	Please delete this clause in its entirety and amend as follows: "Contractor will endeavor to replace Products as soon as commercially practicable, depending on availability and any lead time that may apply. Authorization for all Product returns must be approved by Contractor's Customer Services and a return authorization number given to the Authorized User within New York State prior to the return of Products. Not all items will be authorized for return. Items authorized for return must arrive at Contractor's facilities in a state satisfactory for resale to be eligible for product credit. A restocking charge of 25% or \$25 (whichever is greater) shall be charged on returns that are not the result of any error or fault of Contractor. Products may not be returned for credit after 20 days after the Authorized User's receipt of the Products."	OGS declines to make the requested change. However, see revised language in Solicitation Section 6.5.1, Contractor Errors. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.
26	6.5 Product Returns and Exchanges	6.5.2 Authorized User Errors	The sentence, "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" is modified as follows: Products returned/ exchanged due to Authorized User errors shall be received by <vendor> within 30 days of the Return Material Authorization (RMA) being issued	OGS declines to make the requested change. However, see revised language in Solicitation Section 6.5.2, Authorized User Errors. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.
27	6.5 Product Returns and Exchanges	6.5.2 Authorized User Errors	The Paragraph, "Products shall be replaced within five (5) business days of written notification to the Contractor. Delivery for a replacement product shall be the same as stated in Section 6.7, Delivery" is modified as follows: Products shall be replaced only after they have been received and inspected by <vendor> and have passed inspection. To receive credit or a replacement product, Customer must return the product in the same condition as delivered, normal wear excepted for instruments. Authorized User is responsible for paying freight and insurance for all product returns except when it is due to a <vendor> error	OGS declines to make the requested change. However, see revised language in Solicitation Section 6.5.2, Authorized User Errors. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.

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28	6.5 Product Returns and Exchanges	6.5.2 Authorized User Errors	The sentence, "Returned Products shall be picked up by the Contractor at the time of delivery of the replacement Product, or within ten (10) calendar days of receipt of written notification by the Contractor if a credit/refund is to be issued" is modified as follows: Returned Products/ exchanged due to Authorized User errors shall be received by <vendor> within 30 days of the Return Material Authorization (RMA) being issued.	OGS declines to make the requested change. However, see revised language in Solicitation Section 6.5.2, Authorized User Errors. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.
29	6.5 Product Returns and Exchanges	6.5.2 Authorized User Errors	The sentence, "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" is deleted and replaced by: If the product can be restocked determined by <vendor>, a 15% processing fee will be incurred. This will be offset against any credit issued.	OGS declines to make the requested change.
30	6.5 Product Returns and Exchanges	6.5.2 Authorized User Errors	Due to the custom nature of spectrometers provided by <vendor>, it is not possible to accept the terms of Section 6.5.2.	This solicitation is not intended for custom products. Therefore, OGS declines to make the requested change.
31	6.6 Toll Free Number		Please remove the second sentence in its entirety. Contractor's toll free number does not have a voicemail, however Contractor is able to provide a different number with such capabilities.	OGS declines to make the requested change. However, see revised language in Solicitation Section 6.6, Telephone Number. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.
32	6.8 Shipping Charges	6.8.2 Expedited Delivery	The last sentence, the words "with a copy of the freight bill" are deleted. <Vendor> cannot supply copies of freight bills.	OGS declines to make the requested change.
33	6.8 Shipping Charges		The Superconducting magnets that are a part of this bid response must be transported carefully and sometimes require special equipment. Since the need for such equipment is entirely related to the designated delivery site and building access, it is not possible to predict a priori when such special equipment will be needed. Bidder requests either deletion of the clause or revision as follows: "Contractor will deliver to the customer site as part of this agreement provided that standard equipment, such as a pallet jack, is sufficient to make delivery. In the event additional equipment is needed to complete delivery to the customer site, additional costs will be itemized by the contractor and the additional costs defrayed by the customer as part of the purchase order"	OGS declines to make the requested change. Information on special handling shall be communicated to the Authorized User prior to delivery, and does not need to be submitted with the Bid.

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34	6.10 Instruction Manuals		Please amend the second sentence to read: "The manual shall include complete instructions on getting started with the Product, site preparation and user-performed maintenance, if any."	OGS declines to make the requested change.
35	6.14 Report of Contract Purchases		Second sentence, the words, "no later than ten (10) days after the close of each calendar quarter" is modified as follows: "no later than thirty (30) days after the close of each calendar quarter." Reason is our resources are limited and we have multiple contract reports at the end of each quarter.	OGS agrees to the requested change. See revised language in Solicitation Section 6.14, Report of Contract Purchases. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.
36	6.22 MWBE	6.22.3 B(3)	Can a bidder's proposal be rejected for any one circumstances (a-d)? Or can the proposal be rejected only if all circumstances (a-d) occur?	OGS may disqualify a Bidder's bid/proposal for any one of the circumstances listed.
37	6.22 MWBE	6.22.3 Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises (MWBEs)	What pricing does our designated MBE/WBE use? Do they utilize the Vendors Price List or are they free to set their own price list?	The MWBE must use the NYS contract pricing and are not able to set their own pricing.
38	6.22 MWBE	6.22.3 C Request for Waiver	If the bidder is submitting a Request for Waiver of MWBE Participation Goal, does the bidder still need to submit a MWBE Utilization Plan with the bid?	Per Section 6.22.3 C, Request for Waiver: A Bidder who is able to document good faith efforts to meet the goal requirements may submit a request for a partial or total waiver, at the same time it submits its MWBE Utilization Plan, which is required to be submitted with the Bid. 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
39	6.22 MWBE		What does a vendor do with regard to the bid if the MWBE Contacts don't respond to e-mail requests for consultation, which is the case thus far?	The MWBE Office will respond to email requests within 1 day. Please contact the MWBE Designated Contacts if you are attempting to contact MWBE's and find them non-responsive.
40	6.22 MWBE		What can a vendor do with regard to the MWBE requirements when all manufacturing is performed overseas where there are no MWBE designations for business entities?	Please contact the MWBE Designated Contacts.

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APPENDIX B				
41	11 Taxes	11a	Paragraph a. the words, "the quoted Bid Price includes all taxes applicable to the transaction" are deleted. <Vendor> prices do not include any applicable sales tax with the offered price lists herein. All taxes will be applied per individual orders. Reason: These are our commercial list prices and offered to all customers regardless of their locations or tax regulations.	OGS declines to make the requested change. See Appendix B §§ 11(b) and (c).
42	17 Pricing	17b Net Pricing	The solicitation notes that prices should include all charges and be net, FOB destination, any point in NY State to include tailgate delivery. While <vendor> can agree to shipping products on an FOB destination basis, we cannot agree to the cost of freight being included in the net price. Over the past few years, the cost for freight has increased dramatically and it is not feasible to absorb these charges. As an alternative, <vendor> would be agreeable to providing a quote for freight charges at the time of a formal, written quote. Those charges would be fixed for the duration of the quote period. With this method, an agency would know what their charges would be prior to placing an order.	OGS declines to make the requested change. See Solicitation § 6.8, Shipping Charges, for information on when delivery charges may be allowed.
43	17 Pricing	17f Best Pricing Offer	Paragraph "f", "During the Contract term, if substantially the same or smaller quantity of Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local government entity, the price under this Contract, at the discretion of the Commissioner shall be immediately reduced to the lower price" is deleted in its entirety. <Vendor> does offer commercial promotions from time to time as the year goes along. We also offer trade-in discounts or other special alternative prices based upon competitive situations which are also offered to State of New York Authorized Users as an option instead of contract prices. Such pricing shall not be allowed to unilaterally change or influence the offered contract discounts or prices. Discounts offered herein are comparable to those offered other state governments with like terms and conditions.	OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 17(f), Best Pricing Offer. Contractors may offer lower prices or promotional pricing to Authorized Users at any time without requiring a global change to pricing. See Appendix B § 17(f).

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44	17 Pricing	17f Best Pricing Offer	Will price reduction triggered by a sale at a lower price be applied retroactively to sales under the contract?	No. Price reductions triggered by the provisions of Appendix B § 17(f) will apply immediately and prospectively from the time of the sale by Contractor of "the same or a smaller quantity of a Product . . . outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity."
45	17 Pricing	17f Best Pricing Offer	Please delete this section (f) in its entirety. Contractor will be offering competitive pricing herein, however is unable to provide any price guarantee or maintenance assurance regarding net prices or any discounts relative to its other customers considering the customer base includes tens of thousands of customers. This particular requirement does not appear even in Contractor's federal government contracts.	OGS declines to make the requested change.
46	17 Pricing	17f Best Pricing Offer	Can taking exception to this term cause our offer to be rejected?	Pursuant to Solicitation § 1.6, Inquiries and Proposed Solicitation Deviations, "Bid deviations or extraneous terms shall only be submitted during the first inquiry period." As such, "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." Further, Solicitation § 3.6, Deviations/Extraneous Terms, provides that "Any extraneous terms submitted with the Bid shall not be considered part of the Bid or resulting OGS Centralized Contract, and shall be disregarded." Contractors will be required to comply with the terms of Appendix B § 17(f) Best Pricing Offer.
47	17 Pricing	17f Best Pricing Offer & 17g Specific Price Decreases	Deviation: <vendor> respectfully seeks deletion of these clauses. <vendor> enters into approximately over 200,000 quotes/contracts per year with thousands of federal, state and local government entities globally, under a wide variety of terms and conditions. <Vendor> does not have systems that provide the ability for a finite comparison. However, the prices offered in this bid are substantially similar to those offered to similar customers with similar volume, terms, and conditions; and <vendor> would be willing to make that representation.	OGS declines to make the requested changes.
48	17 Pricing	17f Best Pricing Offer & 17g Specific Price Decreases	<Vendor> is unable to agree to the best pricing offer provisions contained in Sections 17(f) and 17(g)(iii).	OGS declines to remove or modify Appendix B, Section 17. Contractors will be required to comply with the terms of Appendix B § 17.

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49	17 Pricing	17g Specific Price Decreases	Paragraph "g", "ii" the words "price decreases shall take effect automatically during the contract term" is modified as follows: "price decreases shall take effect after 30 days lead time during the contract term". Reason: <vendor> is limited on our resources.	OGS declines to make the requested changes.
50	17 Pricing	17g Specific Price Decreases	Paragraph "g", "iii", the words "such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion" is deleted. The option to make purchases via Special open market commercial sales promotions is available to NYS Authorized Users as they are all commercial customers. Such commercial promotions, special pricing, and trade-ins are offered as tools to help us meet the Authorized User's needs and, shall not influence or change contract pricing.	OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 17.
51	17 Pricing	17g Specific Price Decreases	(ii) - Commercial Price List Reductions. Please delete this section in its entirety.	OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 17.
52	17 Pricing	17g Specific Price Decreases	Can taking exception to this term cause our offer to be rejected?	Pursuant to Solicitation § 1.6, Inquiries and Proposed Solicitation Deviations, "Bid deviations or extraneous terms shall only be submitted during the first inquiry period." As such, "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." Further, Solicitation § 3.6, Deviations/Extraneous Terms, provides that "Any extraneous terms submitted with the Bid shall not be considered part of the Bid or resulting OGS Centralized Contract, and shall be disregarded." Contractors will be required to comply with the terms of Appendix B § 17.
53	21 Samples	21b Bidder Supplied Samples	Please note Contractor may provide samples where applicable.	This does not appear to be a question or deviation. Contractors will be required to comply with the terms of Appendix B § 21.
54	32 Purchase Orders		Please note that all Purchase Orders shall be placed in accordance with the terms and conditions of the Contract and no other terms and conditions will be applicable. Please remove sentence 5 in second paragraph of this clause in its entirety.	OGS declines to make the requested change. Pursuant to Appendix B § 32, "Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five (5) business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User , or fulfill the Purchase Order." (emphasis added)

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55	33 Product Delivery		Second sentence, "Delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and the Contractor" is modified as follows: "Delivery shall be made in accordance with estimated delivery lead time quoted by <vendor> to the Authorized User."	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 33.
56	33 Product Delivery		Sixth Sentence, "Failure to meet such delivery time schedule may be grounds for cancellation of the order on the Commissioner's discretion, the contract" is deleted. Estimated Delivery Lead Times are <vendor>s best estimate as to when the product will ship and deliver and <vendor> will not be held liable for any perceived consequential damages caused by any delay of delivery and, shall not be grounds for cancellation of the contract.	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 33. Also, see Appendix B § 63(c), which expressly excludes consequential damages.
57	35 Shipping/Receipt of Product	35c Receipt of Product	Paragraph "C" Receipt of Product, "The Contractor shall be solely responsible for assuring that deliveries made to personnel authorized to accept delivery on behalf of the Authorized User. Any losses resulting from the Contactor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor" is deleted. All claims for damage or loss of insured shipments shall be immediately communicated by telephone or telex when possible to <vendor><address>, Attn: Insurance Department, for adjustment. Authorized User shall immediately notify delivering carrier of loss or damage to the shipment and shall cooperate with <vendor> in the adjustment of all claims. Authorized User agrees to permit <vendor> or <vendor>'s representative to inspect damaged goods. <vendor>'s obligation to effect shipment of the products purchased by Authorized User shall be fully discharged, and beneficial ownership, legal title, and all risk of loss or damage shall pass to Authorized User when the products are delivered to the named place of destination. Upon arrival Authorized User shall be entitled to conduct a reasonable investigation of the products purchased by it, but all claims for losses due to loss or damage to products while in transit shall be waived unless made immediately in writing by Authorized User, but not more than thirty (30) days after arrival. If	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 35.

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			<p>Authorized User shall fail or refuse to accept delivery of any of the products for unverifiable claims for loss or damage to products occurring while in transit, all sums paid on deposit shall be retained by <vendor> as liquidated damages; provided, however that <vendor> may recover in full its actual damage from Authorized User in the event that actual damages exceed the amount retained as liquidated damages. The Authorized User is responsible for making sure personnel authorized to receive in delivered product are on site and available during the hours of which deliveries are accepted.</p>	
58	35 Shipping/Receipt of Product	35c Receipt of Product	<p>Please delete this clause in its entirety and replace as follows: "The Contractor shall be solely responsible for assuring that deliveries are made to the respective delivery site narrated in the Purchase Order."</p>	<p>OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 35.</p>
59	36 Title and Risk of Loss		<p>Please delete the first two sentences in their entirety and replace them as follows: "Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been delivered to the address stated on the purchase order. The receiving entity shall have five (5) business days from the day the Products are received by the receiving entity to inspect the Products for any obvious damage or defect, or shortage in delivery. If the receiving entity does not contact Contractor within this five-day period, the products will be deemed accepted, however the receiving entity will not lose any warranty rights. Custom Products that Contractor makes in accordance with Authorized User's specifications can only be returned if the custom Products do not conform to the given specifications. In that case, Contractor will, in its sole discretion, either replace the custom Products or issue a refund to Authorized User equivalent to the price the Authorized User paid for the custom Products."</p>	<p>OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 36.</p>
60	36 Title and Risk of Loss		<p>Can taking exception to this term by defining the acceptance period as a maximum of ten (10) business days after the date of delivery to Authorized User cause our offer to be rejected?</p>	<p>Pursuant to Solicitation § 1.6, Inquiries and Proposed Solicitation Deviations, "Bid deviations or extraneous terms shall only be submitted during the first inquiry period." As such, "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." Further,</p>

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				Solicitation § 3.6, Deviations/Extraneous Terms, provides that "Any extraneous terms submitted with the Bid shall not be considered part of the Bid or resulting OGS Centralized Contract, and shall be disregarded." Contractors will be required to comply with the terms of Appendix B § 36.
61	38 Product Substitution		Please remove the first sentence in its entirety and replace with the following: "In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Saving/Force Majeure Clause), the Authorized User may procure products that are deemed in writing by the Commissioner to be equal to or better than the specified Product, at the then valid published list price from the Contractor."	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 38. See Solicitation Section 5.2, Contract Price List Modifications, regarding Product additions to and deletions from the Contract Price Pages.
62	39 Rejected Product		"When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar-day period" is deleted in its entirety. Upon arrival Authorized User shall be entitled to conduct a reasonable investigation of the products purchased by it, but all claims for losses due to loss or damage to product while in transit shall be waived unless made immediately in writing by the Authorized User, but not more than thirty (30) days after arrival. Authorized User agrees to permit <vendor> or <vendor>'s representative to inspect damaged goods. If Authorized User shall fail or refuse to accept delivery of any of the products for unverifiable claims for loss or damage to products occurring while in transit, all sums paid on deposit shall be retained by <vendor> as liquidated	OGS declines to make the requested change. However, see amended Solicitation Section 6.5.1, Contractor Errors, and Solicitation Section 6.17, Conflict of Terms and Conditions.

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			damages; provided, however, that <vendor> may recover in full its actual damage from Authorized User in the event that actual damages exceed the amount retained as liquidated damages.	
63	39 Rejected Product		Please remove the second sentence in its entirety.	OGS declines to make the requested change. However, see amended Solicitation Section 6.5.1, Contractor Errors, and Solicitation Section 6.17, Conflict of Terms and Conditions.
64	39 Rejected Product		<Vendor> is willing to remove rejected products within a reasonable time mutually agreed to by the Authorized User and <vendor>, but is unable to agree to a removal period of ten calendar days.	OGS declines to make the requested change. However, see amended Solicitation Section 6.5.1, Contractor Errors, and Solicitation Section 6.17, Conflict of Terms and Conditions.
65	39 Rejected Product		We respectfully ask that this clause be replaced in its entirety with this wording. "When Product is rejected, Authorized User shall notify Contractor of such rejection and state the reasons for such rejection. Upon receipt of such notice, Contractor shall have ten (10) business days to cure any defects in the Product. If Contractor fails to cure such defects within ten (10) business days, the Product may be returned to Contractor, at Contractor's expense. Contractor shall either repair or replace the Product, in accordance with its warranty obligations to Authorized User, or Contractor shall refund to Authorized User the amount that Authorized User paid to Contractor for such defective Product." Can taking exception to this clause cause our offer to be rejected.	OGS declines to make the requested change. However, see amended Solicitation Section 6.5.1, Contractor Errors, and Solicitation Section 6.17, Conflict of Terms and Conditions.
66	40 Installation		First sentence, the words "for placing and" are deleted. <vendor> Service Engineers do not place product in the install location and upon delivery the product will not be put in place unless the Authorized End User has purchased "Inside Delivery/ White Glove" services from <vendor>.	OGS declines to make the requested change. However, see amended Solicitation Section 6.19.1, Appendix B Amendments.
67	40 Installation		Please delete the first sentence in its entirety and replace with the following: "Where installation is required, it is the Authorized User's responsibility to make sure that the workplace where the instrument is to be located is safe. It is also the Authorized User's responsibility to move the instrument (uncrated) to the place of installation and onto any tabletop, where it will be installed, to avoid any additional manual handling. Contractor does not install or	OGS declines to make the requested change. However, see amended Solicitation Section 6.19.1, Appendix B Amendments.

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			service instruments in biosafety level-3 laboratories, unless Contractor agrees otherwise in writing in advance. Contractor does not install or service instruments in biosafety level-4 laboratories.”	
68	40 Installation		Third sentence, "Installation includes the furnishing of any equipment rigging and materials required to install or place the Product in the proper location" is deleted. <Vendor> does not provide the equipment for any required rigging or other tools needed for placing the product in place. The placing of product into the Authorized User's lab and in place is the responsibility of the Authorized User prior to installation and setup.	OGS declines to make the requested change. However, see amended Solicitation Section 6.19.1, Appendix B Amendments.
69	40 Installation		Fifth Sentence, "If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site" is deleted. <Vendor> will not affect or perform any dismantling or excavation or alteration to the Authorized Users' site or lab. Any such activity will be performed by the Authorized User. Any restoration will also be performed by the Authorized User.	OGS declines to make the requested change. However, see amended Solicitation Section 6.19.1, Appendix B Amendments.
70	40 Installation		Eighth sentence, "The Contractor shall clean up and remove all debris and rubbish from its work as required or directed" is deleted. <Vendor> Service Engineers do not perform cleanup of the area or disposal of any debris or other materials. The Authorized User is responsible for all clean up and disposal of debris and other such materials.	OGS declines to make the requested change. However, see amended Solicitation Section 6.19.1, Appendix B Amendments.
71	41 Repaired or Replaced Product/Components		"Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including Warranties as set forth in the Warranties Clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 41.

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			original manufacturers installed parts or components must be approved by the Authorized User. The part or component shall be equal to or better quality than the original part or component being replaced" is modified as follows": Add the following sentence to the bottom of the above paragraph. "For instruments not under Service Agreement or warranty coverage the warranty on replacement parts is ninety (90) days and the labor is covered for thirty (30) days."	
72	46 Suspension of Work		Please amend the 4th sentence in the first paragraph to read as follows: "Upon issuance of such notice, the Authorized Users shall be solely responsible for complying with the suspension order."	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 46.
73	48 Savings/Force Majeure	48b	Please delete the first sentence of part (b) in its entirety. Contractor is unable to agree to allow Authorized Users to have any priority regarding access to products since Contractor is unable to anticipate what types of products Authorized Users are going to be looking for as there are no spending forecasts made. Products will be offered on first come first serve basis.	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 48.
74	48 Savings/Force Majeure	48b	Paragraph B, third paragraph, the words "terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or relative part thereof" is deleted Paragraph B, Fourth paragraph, first sentence, "In addition, the Commissioner reserves the right, in his/ her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or availability of supply" is deleted. Estimated Delivery Lead Times are <vendor>'s best estimate as to when the product will ship and deliver and <vendor> will not be held liable for any perceived consequential damages caused by any delay of delivery. In addition, delayed or late delivery of product if and when it occurs shall not be grounds for canceling this Agreement as this is an Agreement for pricing and not an Agreement for scheduled deliveries of product. Secondly, any adjustment to contract terms and/or pricing and	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 48. Further, Contractors are reminded that the resultant Contracts are not solely agreements for pricing, and Contractors will be required to comply with all delivery terms under the Contract.

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			discounts will be mutually agreed upon in writing between the parties.	
75	50 Default - Authorized User	50d Insufficient Basis	Please delete the word "insufficient" from line 2 and replace with "in bad faith".	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 50.
76	52 Remedies for Breach	52a Cover/Substitute Performance	Paragraph "a" Cover/Substitute Performance has been modified as follows": In the event of Contractor's material, uncured breach "after thirty (30) days written notice from the Commissioner," the Commissioner may, with or without formally bidding: (i) Purchase from other sources; or (ii) If the Commissioner is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable service or acquire replacement Product of equal or comparable quality, the Commissioner may acquire acceptable replacement service or Product of lesser or greater quality. Such purchases may be deducted from the Contract quantity without penalty or liability to the State "as mutually agreed upon by the parties." The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during a period where Contractor is making good faith efforts to cure a material breach.	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 52.
77	52 Remedies for Breach	52a Cover/Substitute Performance	Please delete the first sentence of the second paragraph from subsection (a) in its entirety. Authorized User may procure from other sources, since this is a non-exclusive contract, however Contractor will not be liable for any price difference in such procurement.	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 52.
78	52 Remedies for Breach	52b Withhold Payment	Paragraph "b" Withhold Payment is modified as follows: In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part "as mutually agreed upon by the parties". Should Contractor and the Commissioner fail to agree upon the question of "materiality" in an instance of non-performance, such failure to agree shall be a dispute under the Disputes clause.	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 52.

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
79	52 Remedies for Breach	52b Withhold Payment & 52d Reimbursement of Costs Incurred	<Vendor> is unable to agree to the remedies for breach provisions set forth in Section 52(b) and Section 52 (d).	OGS declines to remove or modify Appendix B, § 52. Contractors will be required to comply with the terms of Appendix B § 52.
80	52 Remedies for Breach	52c Bankruptcy	Paragraph "c" Bankruptcy is deleted in its entirety. If either party assigns this Agreement for the benefit of Creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for a receiver or trustee, commences any proceeding under any reorganization, arrangement, readjustment of debt, or similar law or statute of any jurisdiction, whether now or hereafter in effect, or if such a proceeding is commenced against a party to this Agreement, the proceeding remains undismissed, unstayed (or if stayed, the stay remains set aside), or unvacated for a period of sixty (60) days, the other party shall have the right to terminate this Agreement effective upon written notice to the bankrupt or insolvent party.	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 52.
81	52 Remedies for Breach	52d Reimbursement of Costs Incurred	Paragraph "d" Reimbursement of Costs Incurred is modified as follows: The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product "as mutually agreed upon by the parties - Between the parts, the breach of contract remedies are available as defined in this Agreement." Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may obtain substitute Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State "as mutually agreed upon by the parties."	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 52.
82	52 Remedies for Breach	52d Reimbursement of Costs Incurred	We respectfully request that Appendix B §52(d), Reimbursement of Costs Incurred be modified, in its entirety, as follows: "The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 52. In addition, "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." Solicitation § 3.6, Deviations/Extraneous Terms, provides that "Any extraneous terms submitted with the Bid shall not be considered

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			<p>cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney's fees awarded by a court of competent jurisdiction, shall be paid by Contractor. Where the Contractor fails to timely deliver Products pursuant to the guaranteed delivery terms of the Contract, if the Products have not been delivered to the ordering Authorized User, the ordering Authorized User may deduct the Products affected by such late delivery from the Contract quantity and Authorized User may procure replacement products at its own expense, without penalty or liability to the State." Can taking exception to this clause cause our offer to be rejected.</p> <p>Since our Company has offered competitive pricing under this Solicitation, based upon the following Limited Warranty, we ask that the following Limited Warranty apply to this offer in lieu of the requirements stated in Appendix B §§59(a-h), Warranty: LIMITED WARRANTY For Goods: Contractor warrants that all Goods delivered under Ordering Authorized User's Order shall be free from defects in material and workmanship, and conform to Contractor's specifications for a period equal to (a) twelve (12) months from the date of original shipment for instruments, and (b) ninety (90) days from the date of original shipment for consumables, spare parts, and accessories. This warranty does not apply to any Goods that, upon examination by Contractor, are found to have been (a) mishandled, misused, abused, or damaged by Ordering Authorized User or Ordering Authorized User's customer, (b) altered from their original state, (c) repaired without Contractor's prior written approval, or (d) improperly stored, installed, operated, or maintained in a manner inconsistent with Contractor's instructions. This warranty does not apply to defects attributed to normal wear and tear. Contractor, at its sole option, shall either repair or replace defective Goods, or issue Ordering</p>	<p>part of the Bid or resulting OGS Centralized Contract, and shall be disregarded."</p>

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			<p>Authorized User a credit for the original price of the defective Goods. Such repair, replacement, or credit by Contractor shall be Ordering Authorized User’s sole remedy for defective Goods. Under no circumstances is Contractor liable for recall, retrieval, removal, dismantling, re-installation, redeployment, or re-commissioning of any defective Goods or any costs associated therewith. Consumables obtained from third parties shall bear the warranty of their manufacturer. The warranty period for repaired or replaced Goods or re-performed Services shall be the unexpired portion of the original warranty period.</p> <p>For Services: Contractor agrees to perform repair Services and standard preventative maintenance of the equipment specified on the face of Ordering Authorized User’s Order. Contractor shall perform the Services (a) in a professional and workmanlike manner, (b) in accordance with applicable professional and industry standards, and (c) in compliance with all applicable laws. Unless agreed otherwise by Contractor and specified on the face of Ordering Authorized User’s Order, parts, on-site Service, freight, and travel expenses are not included in the Service fee. Parts supplied under Ordering Authorized User’s Order shall be new or reconditioned and shall meet Contractor’s specifications for the equipment. Parts that are replaced by Contractor become the property of Contractor. The determination as to whether to repair or replace equipment or related parts shall be at the sole discretion of Contractor. Contractor warrants all Services for ninety (90) days after completion unless otherwise mutually agreed by the Parties under a separate Service contract. In the case of defective Services, Contractor shall re-perform such Services and such re-performance by Contractor shall be Ordering Authorized User’s sole remedy for defective Services.</p> <p>THESE EXPRESS WARRANTIES, INCLUDING THE REMEDIES SET FORTH HEREIN, ARE EXCLUSIVE AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A</p>	

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			PARTICULAR PURPOSE IS INTENDED OR GIVEN. IN THE CASE OF GOODS OTHER THAN THOSE OF CONTRACTOR'S OWN MANUFACTURE, CONTRACTOR MAKES NO WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED. Can taking exception to this clause cause our offer to be rejected?	
83	52 Remedies for Breach	52d Reimbursement of Costs Incurred & 52e Deduction/Credit	Please delete these sections in their entirety.	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 52.
84	52 Remedies for Breach	52e Deduction/Credit	Paragraph "e" Deduction/ Credit is deleted in its entirety Intentionally Left Blank.	OGS declines to make the requested change. Contractors will be required to comply with the terms of Appendix B § 52.
85	54 Toxic Substances		Please note all Material Safety Data Sheets are available online. Contractor will provide one copy.	OGS accepts this deviation. See amended Solicitation Section 6.19.1, Appendix B Amendments.
86	59 Warranties	59a Product Performance	Please remove "or for a minimum of one (1) year from the date of acceptance, whichever is longer" from paragraph 3. Some of Contractor's consumable products may have shorter warranty period than 1 year.	OGS accepts this deviation FOR LOT 2 ONLY. See amended Solicitation Section 6.19.1, Appendix B Amendments.
87	59 Warranties	59a Product Performance & 59b Title and Ownership	With the changes set forth below, <vendor> is willing to agree to the warranty set forth in Section 59: Please revise the warranty period in Section 59(a) as follows: <vendor> can agree to a one year warranty from the date of acceptance for Products that are instruments. <vendor>'s standard commercial warranty for all other Products, including, without limitation, reagents, consumables, service, and replacement parts, is ninety (90) days from the date of shipment. Please replace the indemnity contained in the last sentence of Section 59(b) with the following: As an Authorized User's sole and exclusive remedy under any warranty contained in Section 59, <vendor> shall either repair or replace, at <vendor>'s option, any part or parts of the Products, which under proper and normal conditions of use prove to be defective within the applicable warranty period. Alternatively, <vendor> may in its sole discretion, elect to discharge its warranty obligation hereunder by accepting the return of the defective Product and refunding the purchase price paid by the Authorized User. Please insert	OGS declines to make the requested change. However, see amended Solicitation Section 6.19.1, Appendix B Amendments.

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			<p>the following language in at the end of Section 59: <vendor> MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AD FITNESS FOR A PARTICULAR PURPOSE.</p>	
88	59 Warranties	59c Product Warranty for Deliverables	<p>Please delete in its entirety and replace as follows: “Limited Warranties for consumables. Unless a different written warranty is included with product literature, Contractor warrants that each consumable will meet its specifications stated in Contractor’s published catalogs and associated supplementary terms. This warranty lasts from the time Contractor delivers the consumable until either the consumable’s expiry or “use by” date or its specified number of uses. If Contractor does not specify the expiry date or number of uses, the warranty will last for 12 months from the date Contractor delivers the consumable. Limited Warranties for instruments. Unless a different written warranty is included with product literature, Contractor warrants that instruments will be free of defects in materials and workmanship for 12 months (90 days for instrument upgrades) after they are installed, provided however, regardless of installation date, this warranty will not last longer than 15 months from the date of shipment. Contractor also warrants that instruments will perform in accordance with Contractor’s published specifications when they are delivered. Contractor warrants that spare parts purchased from Contractor and that Contractor installs, or are installed by a company Contractor has certified as an authorized installer, will be free of defects in materials and workmanship for three (3) months from the date Contractor delivers them, or, if longer, the original warranty period of the instrument in which the part is installed. Contractor does not warrant parts that Authorized User does not purchase from Contractor or Contractor does not install. These parts are sold “as is.”</p>	<p>OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 59, as amended herein.</p>

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
89	59 Warranties	59d Replacement Parts Warranty	Please add the following language to the end of this clause: "Contractor will repair or replace any parts of the instrument on the basis of which approach will provide the Authorized User with the best service. Contractor may use new, used, or reconditioned parts. Contractor may retain any replaced part as its property."	OGS declines to make the requested change.
90	59 Warranties	59e Virus Warranty	Please note this warranty would only apply to software purchased from Contractor.	OGS agrees with this statement. See amended Solicitation Section 6.19.1, Appendix B Amendments.
91	59 Warranties	59e Virus Warranty & 59f Date/Time Warranty	Page 13, Paragraph "e" Virus Warranty and Paragraph "f" Date/Time are deleted in their entirety. <Vendor> does not warrant any third party software or third party data processing onboard computation features which are not of its manufacture.	OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 59, as amended herein.
92	59 Warranties	59f Date/Time Warranty	Please remove this clause in its entirety as not applicable	OGS declines to make the requested change. Appendix B § 59(f) will only operate where it is applicable.
93	59 Warranties	59h Miscellaneous	Please add the following language: Exclusions. Contractor's warranties do not apply to defects or failures caused by (a) external sources such as short circuits or incorrect voltages or hackers; (b) normal wear and tear; (c) instruments sold to Authorized User as a 'used' product; (d) contact with improperly used or unapproved chemicals or samples; (e) parts that are excluded from warranty in the instrument's supplementary terms; (f) repair, modification, alteration, installation, de-installation, or transport by anyone other than Contractor or a person authorized by Contractor; (g) removal, or use, maintenance, storage, or handling in an improper, inadequate, or unapproved manner, such as failure to follow Contractor's instructions or operating guidelines, or protocols, operation outside of stated environmental or use specifications, or operation with unapproved software, materials or other products; (h) manufacture in accordance with specifications Authorized User gave Contractor; (i) installation of software or interfacing, or use of the instrument in combination with software or products Contractor has not approved; (j) neglect, accident, or acts of nature. Contractor may void Authorized User's warranty if Authorized User ships Contractor's products outside of the United	OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 59, as amended herein.

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			<p>States.Submitting Warranty Claims and Remedies. If a product does not meet Contractor’s warranty, Authorized User must notify Contractor’s Customer Services in writing during the warranty period and as soon as reasonably practicable after Authorized User discovers the failure. For valid Product claims timely made, Contractor will replace or repair the product, or provide Authorized User with a credit for the price Authorized User paid, at Contractor’s option, after Authorized User returns the product to Contractor in accordance with the instructions received from Customer Services. If Authorized User wishes to make a claim for a breach of Contractor’s instrument related service warranty, Authorized User must do so within 90 days after Contractor completes the service. For valid service claims timely made, Contractor will re-perform the services or refund Authorized User the price charged to Authorized User for the services, at Contractor’s option. Limitations. CONTRACTOR’S WARRANTIES EXTEND ONLY TO AUTHORIZED USER, THE ORIGINAL PURCHASER, AND AUTHORIZED USER CANNOT TRANSFER THEM. IN NO EVENT WILL CONTRACTOR’S TOTAL LIABILITY FOR BREACH OF WARRANTY EXCEED THE PURCHASE PRICE OF THE PRODUCT OR SERVICE. THE ABOVE WARRANTIES ARE EXCLUSIVE, AND CONTRACTOR MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OF NON-INFRINGEMENT, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT OR SERVICE, WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.”Contractor has specific warranties that are offered with each of the Products. The cost of these warranties has been built into the price and therefore Contractor would like to request that these warranties are accepted.</p>	

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
94	59 Warranties		<p>Since our Company has offered competitive pricing under this Solicitation, based upon the following Limited Warranty, we ask that the following Limited Warranty apply to this offer in lieu of the requirements stated in Appendix B §§59(a-h), Warranty: LIMITED WARRANTY For Goods: Contractor warrants that all Goods delivered under Ordering Authorized User's Order shall be free from defects in material and workmanship, and conform to Contractor's specifications for a period equal to (a) twelve (12) months from the date of original shipment for instruments, and (b) ninety (90) days from the date of original shipment for consumables, spare parts, and accessories. This warranty does not apply to any Goods that, upon examination by Contractor, are found to have been (a) mishandled, misused, abused, or damaged by Ordering Authorized User or Ordering Authorized User's customer, (b) altered from their original state, (c) repaired without Contractor's prior written approval, or (d) improperly stored, installed, operated, or maintained in a manner inconsistent with Contractor's instructions. This warranty does not apply to defects attributed to normal wear and tear. Contractor, at its sole option, shall either repair or replace defective Goods, or issue Ordering Authorized User a credit for the original price of the defective Goods. Such repair, replacement, or credit by Contractor shall be Ordering Authorized User's sole remedy for defective Goods. Under no circumstances is Contractor liable for recall, retrieval, removal, dismantling, re-installation, redeployment, or re-commissioning of any defective Goods or any costs associated therewith. Consumables obtained from third parties shall bear the warranty of their manufacturer. The warranty period for repaired or replaced Goods or re-performed Services shall be the unexpired portion of the original warranty period. For Services: Contractor agrees to perform repair Services and standard preventative maintenance of the equipment specified on the face of Ordering Authorized User's Order. Contractor shall perform the Services (a) in a professional and</p>	<p>OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 59, as amended herein. In addition, "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." Solicitation § 3.6, Deviations/Extraneous Terms, provides that "Any extraneous terms submitted with the Bid shall not be considered part of the Bid or resulting OGS Centralized Contract, and shall be disregarded."</p>

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			<p>workmanlike manner, (b) in accordance with applicable professional and industry standards, and (c) in compliance with all applicable laws. Unless agreed otherwise by Contractor and specified on the face of Ordering Authorized User’s Order, parts, on-site Service, freight, and travel expenses are not included in the Service fee. Parts supplied under Ordering Authorized User’s Order shall be new or reconditioned and shall meet Contractor’s specifications for the equipment. Parts that are replaced by Contractor become the property of Contractor. The determination as to whether to repair or replace equipment or related parts shall be at the sole discretion of Contractor. Contractor warrants all Services for ninety (90) days after completion unless otherwise mutually agreed by the Parties under a separate Service contract. In the case of defective Services, Contractor shall re-perform such Services and such re-performance by Contractor shall be Ordering Authorized User’s sole remedy for defective Services.THESE EXPRESS WARRANTIES, INCLUDING THE REMEDIES SET FORTH HEREIN, ARE EXCLUSIVE AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS INTENDED OR GIVEN. IN THE CASE OF GOODS OTHER THAN THOSE OF CONTRACTOR’S OWN MANUFACTURE, CONTRACTOR MAKES NO WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED. Can taking exception to this clause cause our offer to be rejected?</p>	
95	61 Indemnification		<p>Please amend the first paragraph as follows: - Please add “to the extent” in line six (6) after the word “property”; - Please remove “intentional act or” from line six (6); - Please add “or willful misconduct” after the word “negligence” in line six (6); - Please remove “or indirectly” from line eight (8).</p> <p>Please amend the third paragraph as follows: - Please remove “intentional or” from line four (4);</p>	<p>OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 61.</p>

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			<ul style="list-style-type: none"> - Please add "misconduct" after the word "willful" in line four(4) and delete the word "act"; - Please remove the wording "or indirectly"; - Please add "manufacture of the" before the word "Products" in line seven (7) 	
96	61 Indemnification		<p><Vendor> is willing to provide the indemnity set forth in Section 61, provided that it is limited to third party claims. <vendor> requests that (i) the words "third party" be inserted into the first sentence of Section 61 between the words "from" and "suits", (ii) the words "without limitation" be deleted from the first paragraph, and (iii) the word "solely" be deleted from the last sentence of the first paragraph.</p>	OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 61.
97	61 Indemnification		<p>Deviation: To ensure that <vendor> is not penalized for misconduct or negligence of others that contributes to any claim for damages, <vendor> respectfully seeks the following revision to this section: In Section 61 please remove the word "solely" from the third last line of the first paragraph and add the word "is".</p>	OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 61.
98	61 Indemnification		<p>We respectfully request that Appendix B §61, Indemnification be modified, in its entirety, as follows: Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users. Can taking exception to this clause cause our offer to be rejected?</p>	OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 61. In addition, "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." Solicitation § 3.6, Deviations/Extraneous Terms, provides that "Any extraneous terms submitted with the Bid shall not be considered part of the Bid or resulting OGS Centralized Contract, and shall be disregarded."

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
99	62 Indemnification Relating to Third Party Rights		<p>Please amend the first paragraph as follows:</p> <ul style="list-style-type: none"> - Please add “finally awarded” after the wording “liabilities and costs” in line five (5); - Please add “Contractor’s manufacture and sale of the” after the wording “solely out of the” in line seven (7); - Please add the following to the end of the first paragraph: “This indemnity does not apply to claims that arose based on (i) Authorized User’s failure to comply with the Contract, (ii) Authorized User’s failure to acquire any applicable additional rights, (iii) Products that Contractor made, assembled or labeled in reliance upon Authorized User’s instructions, specifications, or other directions, or (iv) Authorized User’s use or resale of Products. This indemnity does not apply to products originating from third parties. THIS INDEMNITY IS CONTRACTOR’S ONLY LIABILITY TO AUTHORIZED USER, AND AUTHORIZED USER’S ONLY REMEDY, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS BY OR IN CONNECTION WITH ANY PRODUCT.” <p>Please remove the wording “At Authorized User’s option” from line one (1) of paragraph two (2) and replace with “In so far as allowed by applicable laws”. In addition please replace the word “may” with “shall”.</p> <p>Please add “for infringing Products” in the last line after the word “paid” in third paragraph. Please also add: “In the case of instruments, Contractor will deduct a reasonable amount for the instrument’s use, damage and obsolescence.”</p> <p>Please delete the last paragraph of this clause in its entirety due to the fact that <vendor> is unable to indemnify use of its products. To ensure that products are used in a way that they do not infringe any patents, copyrights, trademarks, trade secrets or proprietary rights is the responsibility of the Authorized User.</p>	<p>OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 62.</p>

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			Please add the following as the last paragraph in this clause: "To the extent permitted by applicable laws, if a third party makes a claim against Contractor for infringement of its intellectual property rights based on (i) Contractor's manufacture or sale of a product Contractor makes under Authorized User's instructions, specifications, or other directions, (ii) Authorized User's failure to comply with the Contract, (iii) Authorized User's failure to acquire any applicable additional rights, (iv) Contractor's use of materials Authorized User provides to Contractor, or (v) Authorized User's modification, use or resale of a product, then Authorized User will indemnify and hold Contractor harmless from and against any and all claims, losses, damages, liabilities and expenses (including reasonable attorneys' fees and other costs of defending and/or settling any action) that Contractor may have to pay as a result of the claim."	
100	62 Indemnification Relating to Third Party Rights		<vendor> is willing to provide the indemnity set forth in Section 62, provided that such indemnity applies solely to claims resulting from an Authorized Users use of a Product sold under this Agreement for its intended purposes. <Vendor> requests that the words "resulting from an Authorized Users use of a Product sold under this Agreement for its intended purposes" be inserted into the first sentence of Section 62 following the words "other proprietary right."	OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 62.
101	62 Indemnification Relating to Third Party Rights		Deviation: To ensure that <vendor> is not penalized for misconduct or negligence of others that contributes to any claims for damages, <vendor> respectfully seeks the following revision to this section: In Section 62 please remove the word "solely" from the second last line of the third paragraph.	OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 62.
102	65-73 Technology & Negotiated Contracts		Please note none of these clauses are applicable to this contract and should be removed.	OGS disagrees with your conclusion that these sections are not applicable. See Solicitation § 1.1, specifically Lot 3, which includes software.
103	65-73 Technology & Negotiated Contracts	65 Software License Grant	Paragraphs a, b, c, d, e, f, g, h, and I are deleted in their entirety. Software shall at all times be and remain the sole and exclusive property of <vendor>. <vendor> grants	OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 65.

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			to Authorized User(s) and Authorized User(s) accepts a limited, nonexclusive license to use the software only in conjunction with its operation of the system and only in accordance with <vendor>'s current operation and use instructions for the system. Authorized User's shall not copy or permit others to copy the software or any portion of it. Authorized User shall return the software to <vendor> on receipt from <vendor> or any third party of any improved, enhanced or replacement software. In the event of a breach of this license and upon <vendor>'s demand and in addition to any and all other legal remedies, Authorized User(s) shall immediately cease using the software and to the extent possible return any and all copies of the software to <vendor>. The license granted for the software expires upon Authorized User(s) breach of the license or when Authorized User(s) ceases to use the system in accordance with <vendor>'s current operation and use instructions for the system.	
104	65-73 Technology & Negotiated Contracts	65 Software License Grant & 66 Product Acceptance	Pursuant to this Section, <vendor> is required to provide perpetual license rights. <Vendor> can agree to this provision as long as the Authorized User maintains a service contact for <vendor> products.	OGS declines to make the requested changes.
105	65-73 Technology & Negotiated Contracts	66 Product Acceptance	<Vendor> is unable to agree to the acceptance periods set forth in Section 66. <Vendor> can agree to an acceptance period for all Products of 10 days from the date of delivery. If notice is not provided by the Authorized user within such timeframe the Products will be deemed accepted.	OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 66.
106	65-73 Technology & Negotiated Contracts	68 Ownership/Title to Project Deliverables	Paragraph "b" Title to Project Deliverables, Item 2 Software, second sentence, and the words "reproduce, adapt, and distribute Existing Licensed Product and including the financing assignment rights set forth in paragraph (c) and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution are deleted. Software shall at all times be and remain the sole and exclusive property of <vendor>. <vendor> grants to Authorized User(s) and Authorized User(s) accepts a	OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 68.

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			limited, nonexclusive license to use the software only in conjunction with its operation of the system and only in accordance with <vendor>'s current operation and use instructions for the system. Authorized User(s) shall not copy or permit others to copy the software or any portion of it. Authorized User(s) shall return the software to <vendor> on receipt from <vendor> or any third part of any improved, enhanced or replacement software. In the event of a breach of this license and upon <vendor>'s demand in addition to any and all other legal remedies, Authorized User(s) shall immediately cease using the software and to the extent possible return any and all copies of the software to <vendor>. The license granted for the software expires upon Authorized User(s) breach of the license or when Authorized User(s) ceases to use the system in accordance with <vendor>'s current operation and use instructions for the system.	
107	65-73 Technology & Negotiated Contracts	68 Ownership/Title to Project Deliverables	Paragraph b, Item 2, Software, third sentence "Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense" is deleted in its entirety. Software shall at all times be and remain the sole exclusive property of <vendor>. <vendor> grants to Authorized User(s) and Authorized User(s) accepts a limited, nonexclusive license to use the software only in conjunction with its operation of the system and only in accordance with <vendor>'s current operation and use instructions for the system.	OGS declines to make the requested changes. Contractors will be required to comply with the terms of Appendix B § 68.
108	65-73 Technology & Negotiated Contracts	68 Ownership/Title to Project Deliverables	(ii) Custom Products entire paragraph is deleted in its entirety. As this is for a pricing agreement and not for development of product this language is not applicable.	OGS declines to make the requested change. Appendix B § 68 will only operate where it is applicable.
109	65-73 Technology & Negotiated Contracts	68 Ownership/Title to Project Deliverables	Paragraph "c" Transfers or Assignments to a Third Party Financing Agent entire paragraph is deleted in its entirety. As this is for a pricing agreement and not for development of product this language is not applicable.	OGS declines to make the requested change. Appendix B § 68 will only operate where it is applicable.
CONTRACT TERMS				

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
110	Intellectual Property		<p>“Authorized User acknowledges that all intellectual property rights relating to Contractor’s Products and services, as between Authorized User and Contractor, are solely and exclusively owned by Contractor. Unless otherwise provided in applicable supplementary terms, Contractor’s sale of Products to Authorized User only grants Authorized User a limited, non-transferable right under such intellectual property, for only Authorized User to use the quantity of the Products that Authorized User has bought from Contractor only for your internal research purposes. No right to resell Contractor’s Products or any of their components is conveyed expressly, by implication, or by estoppel. Unless Contractor expressly states otherwise in supplementary terms, Contractor provides no rights to use its Products in commercial applications of any kind, including, without limitation, manufacturing, quality control or commercial services such as reporting the results of Authorized User’s activities for a fee or other form of consideration. If Authorized User needs commercial use rights to Contractor’s Products (including the right to perform fee-for-services), please contact Contractor’s outlicensing department at outlicensing@lifetech.com. To the extent that Authorized User’s use of Contractor’s Product is outside the scope of the Contract, it is solely Authorized User’s responsibility to acquire additional intellectual property rights related to such use (“additional rights”). Nothing in the Contract limits Contractor’s ability to enforce Contractor’s intellectual property rights. In relation to processes, methods or related synthesis of a custom product, or otherwise in connection with the design or manufacture of a custom product, any inventions (patentable or otherwise), discoveries, improvements, data, know-how or other results that are conceived, developed, discovered, reduced to practice, or generated by or for Contractor, or jointly by Contractor and Authorized User, will be and will remain Contractor’s sole and exclusive intellectual property, and Authorized User transfers and assigns all of Authorized User’s right,</p>	<p>OGS declines to add the requested language to the Solicitation or resulting Contract. However, see revised language in Solicitation Section 3.5, Format and Content of Bid Submittal, Subsection 3.5.3, Additional Requirements. A redline version of the Solicitation dated 5/27/2015 has been posted to our website. Contractors will be required to comply with the terms of Appendix B §59, Warranties, §65, Software License Grant, and § 68, Ownership/Title to Project Deliverables. See Appendix B, § 65(h) for confidentiality restrictions.</p>

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			title and interest in and to any such joint intellectual property to Contractor and will assist Contractor, at Contractor’s request and at Contractor’s expense, in securing and recording Contractor’s rights in such intellectual property. Authorized User may not sell, rent, lease, loan, transfer or assign any instrument that contains or requires software for operation or other use unless Authorized User first permanently deletes or uninstalls the software. Licenses to Contractor’s software Products are not transferrable.”	
111	Product Use and Restrictions		“Authorized User must use Contractor’s Products in accordance with Contractor’s instructions. Authorized User is solely responsible for making sure that the way Authorized User uses Contractor’s Products complies with applicable laws, regulations and governmental policies. Authorized User must obtain all necessary approvals and permissions Authorized User may need. It is solely Authorized User’s responsibility to make sure the Products are suitable for Authorized User’s particular use.”	OGS is willing to add the requested language to the resulting Contract, if the word "instructions" is replaced with "Documentation".
112	Custom Products		“When Authorized User requests the Contractor to manufacture a custom product, for example an oligonucleotide kit intended to detect a nucleic acid sequence specified by Authorized User, primer/probe or other product with non-off-the-shelf elements, Contractor may decline the design or manufacture of such custom product, at any stage of the design or manufacture process, if the custom product is unsuitable or commercially impractical to be synthesized in that way. If that is the case, Contractor will notify Authorized User as soon as possible and Authorized User will not be obligated to pay any fees for any expenses incurred by Contractor in connection with a declined product. By submitting an order for a custom product Authorized User represents and agrees that (a) Authorized User has provided Contractor with all information that Authorized User is aware of regarding any biological, radiological and chemical hazards associated with the handling, transport, exposure or other usage of the materials Authorized User	OGS declines to add the requested language to the Solicitation or resulting Contract. This solicitation is not intended for custom products.

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			supplies to Contractor; and (b) Authorized User has the right to cause the sequences that Authorized User requested Contractor to manufacture to be manufactured.”	
113	Instrument Services Scheduling		“Contractor provides Instrument Services Monday through Friday, 8:00 a.m. to 5:00 p.m. (local time), excluding holidays, and Contractor will work with Authorized Users to schedule Instrument Services at a time that is mutually convenient. Contractor will perform planned maintenance services (“PM”) in accordance with Contractor’s PM procedures and checklist for the instrument or component Contractor is servicing.”	OGS declines to add the requested language to the Solicitation or resulting Contract. However, see revised language in Solicitation Section 3.5, Format and Content of Bid Submittal, Subsection 3.5.3, Additional Requirements. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.
114	Decontamination and Safe Working Environment		“Before Contractor performs any Instrument Services on Authorized User’s instrument, Authorized User will fully decontaminate the instrument or its component of radioactive, biological, toxic or other dangerous materials or substances or any material and, if Contractor requests, Authorized User will submit to Contractor an accurate and completed certificate of decontamination. If Contractor requests, Authorized User agrees to move the instrument to another location that Contractor reasonably deems is safe for its employees to perform Instrument Services.”	OGS declines to add the requested language to the Solicitation or resulting Contract. However, see revised language in Solicitation Section 3.5, Format and Content of Bid Submittal, Subsection 3.5.3, Additional Requirements. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.
115	Training Services		“Contractor will conduct training in accordance with the course agenda indicated in Contractor’s quotation or Contractor’s training documentation. Except as indicated in Contractor’s quotation, Contractor will conduct training at one of its locations and Authorized Users will pay for the travel, accommodation, and other expenses of your employees.”	OGS declines to add the requested language to the Solicitation or resulting Contract. However, see revised language in Solicitation Section 3.5, Format and Content of Bid Submittal, Subsection 3.5.3, Additional Requirements. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.
116	Relocation Services		“Contractor offers relocation services on a time and materials basis. Contractor will de-install and re-install Authorized User’s instruments but Authorized User is responsible for the transport of the instrument to the new location.”	OGS declines to add the requested language to the Solicitation or resulting Contract. However, see revised language in Solicitation Section 3.5, Format and Content of Bid Submittal, Subsection 3.5.3, Additional Requirements. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
117	Service Plan Coverage		<p>“Service Plans cover only Contractor’s instruments and do not include ancillary equipment even if Contractor has supplied them unless Contractor stated otherwise in its quotation. Contractor’s Service Plans do not cover replacement of consumables. In addition, Contractor’s Service Plans do not cover replacement of parts or repairs needed for defects or damage resulting from (i) Authorized User’s neglect, carelessness, or misuse, for example, connecting the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, using incompatible solvents or samples with the instrument, operating the instrument not in conformance with Contractor’s instructions or specifications, or Authorized User’s improper or inadequate maintenance of the instrument; (ii) installation of software or use in combination with software or products that Contractor did not supply or authorize; (iii) modification, repair, service transfer to another location of the instrument that Authorized User or its employees, agents or an unauthorized contractor made; (iv) intrusive activity, including without limitation computer viruses, hackers or other unauthorized interactions with instrument or software that detrimentally affects normal operations; from acts of nature or accident; or (v) any defects or damage that Contractor did not cause.”</p>	<p>OGS declines to add the requested language to the Solicitation or resulting Contract. However, see revised language in Solicitation Section 3.5, Format and Content of Bid Submittal, Subsection 3.5.3, Additional Requirements. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.</p>
118	Service Plan Cancellation		<p>“Contractor or Authorized User may cancel the Service Plan by sending a written notice of cancellation to the other thirty (30) days before the cancellation becomes effective. However, Contractor may immediately terminate a Service Plan if the instrument covered by the Service Plan is transferred to another location without Contractor’s advance written consent. If a Service Plan is cancelled, Contractor will charge Authorized User for the total price of services actually performed and expenses actually and reasonably incurred in servicing the covered equipment under the underlying Service Plan from its effective date until the cancellation date or the prorated</p>	<p>OGS declines to add the requested language to the Solicitation or resulting Contract. However, see revised language in Solicitation Section 3.5, Format and Content of Bid Submittal, Subsection 3.5.3, Additional Requirements. A redline version of the Solicitation dated 5/27/2015 has been posted to our website.</p>

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
			price of the underlying Service Plan from its effective date until the cancellation date, whichever is greater.”	
ATTACHMENT 5 - INSURANCE REQUIREMENTS				
119			Note: Cancellation Notices will be provided by <vendor> and our insurer. Additional Insured Status: is provided by blanket forms but not on CG 20 10 11 85. Waiver of Subrogation: is deleted as our Insurance Carrier cannot comply. Deductibles: <vendor>'s insurance carrier does not display the deductibles on the Certificate of Insurance. Renewal Certificate: <vendor> carrier cannot guarantee that renewal certificate will be available 30 days before expiration.	OGS declines to make the requested change.
120			Please add “in the form of a certificate of insurance” to line one (1) of the second paragraph and delete “in a form acceptable to OGS”	OGS declines to make the requested change.
121			The start of Condition 3 under General Conditions should read as follows: “Contractor shall provide a Certificate or certificates of Insurance and supporting blanket endorsements that Contractor does not consider to be proprietary, upon tentative ...”	OGS declines to make the requested change.
122			Please add “ten (10) days” before the wording “non-payment” in line 3 of the second paragraph and have the rest of the line read “non-payment to the Insured, after which notice shall be provided as required by this Agreement to OGS ...”	See revised language in Attachment 5 - Insurance Requirements. A redline version of Attachment 5 dated 5/27/2015 has been posted to our website.
123			Certificates of Insurance shall be in the form of a standard ACORD form provided by Contractor’s Insurance representative	OGS declines to make the requested change.
124			Please add in paragraph 4, line 4 after “Contractor’s activities” the following: “but only in so far as and to the extent of the Named Insured’s negligence and to the extent it is required by written contract.”	OGS declines to make the requested change.
125			Please remove the word “All” from the start of the second paragraph of section 7 and replace with “Contractor’s Commercial General Liability, Automobile liability and Excess/Umbrella liability”. Please add “Such endorsements may be provided in the form of a blanket endorsement.” after the word “hereunder” in line three (3)	See revised language in Attachment 5 - Insurance Requirements. A redline version of Attachment 5 dated 5/27/2015 has been posted to our website.

#	Section	Subsection	Question, Comment, Deviation , or Extraneous Term	OGS Response
126			Under the bullet point "Independent contractor" on page 3 please add "(CGL and AUTO only as respects to those hired by Contractor)" and please change the term of products/operations coverage from three (3) years to two (2) years.	See revised language in Attachment 5 - Insurance Requirements. A redline version of Attachment 5 dated 5/27/2015 has been posted to our website.
127	B2		Waiver of subrogation to the extent of Contractor's negligence	OGS declines to make the requested change.
128	A (last paragraph) & B1		Additional insured to the extent of Contractor's negligence	OGS declines to make the requested change.
129			We respectfully request that Attachment 5, Insurance Requirements be modified to note the following changes: <vendor> shall provide 30 days' notice of material changes or cancellation of our insurance policies; however our policies shall not be written to include a provision which guarantees that such changes or cancellations will not occur until notice has been provided. <Vendor> agrees to provide renewal certificates as they become available; however, we are unable to provide such certificates 30 days in advance because we may not have concluded our negotiations for such policies that far in advance of the respective renewal dates. <Vendor> agrees to add specific NY State Agencies as additional insureds to our General Liability Insurance; however, we may not add a broad category such as the "People of the State of New York". Can taking exception to this Attachment cause our offer to be rejected?	See revised language in Attachment 5 - Insurance Requirements. A redline version of Attachment 5 dated 5/27/2015 has been posted to our website.