

#	RFP Document Name	Document Section (Name or Number)	Page Number	Comment / Question / Bid Deviation	Draft Response
1	RFP Main Document	1.6 Definitions	8	Would OGS please clarify the definition of Dealer Cost? It is our understanding that Dealer cost is the pricing that is invoiced to the reseller.	The RFP definition has been revised to read: Dealer Cost shall mean the price Reseller pays Microsoft for the Product within the applicable Microsoft Reference price Level. The price charged to the Authorized User by the Reseller for a Product will be calculated as Dealer Cost multiplied by the Cost Plus or Cost Minus quoted by Reseller in its Cost proposal.
2	RFP Main Document	Attachment 10 Crosswalk Document		Would OGS please upload or reload Attachment 10 - Crosswalk Document to the bid posting website? Currently, this attachment is not able to be downloaded.	OGS has resolved the issue with Attachment 10- Microsoft Product Crosswalk. Please refer to Bid Solicitation Update #2 dated October 12, 2016.
3	RFP Main Document	1.6 Definitions	8	Definition of Dealer Cost: Rebate incentives from Microsoft to a reseller depend on several factors that are not necessarily tied back to a specific transaction. They depend on factors such as overall volume of reseller purchases, the reseller's facilitation of on-time renewals, timely payments and multiple other factors. In addition, the timing of the rebate incentive payout from Microsoft is often not in the same time period as a particular transaction and cannot be calculated at time of transaction. As such, the inclusion of rebate incentives in the definition of dealer costs is not fully auditable or able to be estimated up front. Therefore, would OGS agree to define Dealer Cost as the invoice value from MSFT as this definite and fully auditable?	The RFP definition has been revised to read: Dealer Cost shall mean the price Reseller pays Microsoft for the Product within the applicable Microsoft Reference price Level. The price charged to the Authorized User by the Reseller for a Product will be calculated as Dealer Cost multiplied by the Cost Plus or Cost Minus quoted by Reseller in its Cost proposal.
4	RFP Main Document	4.3.1 Third Paragraph (Best Pricing)	24	Since competition already ensures fair and reasonable pricing, would OGS agree to remove this clause?	The reference to Best Pricing in RFP Section 4.3.1 NYS Cost has been revised to read as follows: Best Pricing: During the resulting Contract term, if substantially the same or a smaller quantity of a 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 governmental entity, the price under this Contract, after consultation with the Contractor, shall be reduced to the lower price. The remainder of Section 4.3.1 NYS Cost remains unchanged.
5	RFP Main Document	4.3.1 Third Paragraph (Best Pricing)	24	It appears that there are numerous Umbrella Software Publisher contracts with OGS that do not contain this provision. Would OGS be willing to remove this clause?	The reference to Best Pricing in RFP Section 4.3.1 NYS Cost has been revised to read as follows: Best Pricing:

					<p>During the resulting Contract term, if substantially the same or a smaller quantity of a 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 governmental entity, the price under this Contract, after consultation with the Contractor, shall be reduced to the lower price.</p> <p>The remainder of Section 4.3.1 NYS Cost remains unchanged.</p>
6	RFP Main Document & Appendix B – General Specifications	1.1 Main; Appendix B, General Specs 72.b, 78, 80, 81	5	<p>Licensing, Audits -- Section 1.1 in the Main body states that the MBA establishes the overall licensing framework and applicable terms and conditions for use of the products, and OGS will use this Reseller RFP (and resulting contract) to establish order fulfillment. There are a number of provisions, some cited here, that provide for the contractor to provide license terms, rights and remedies that go beyond or are different than (i) what Bidder would anticipate Microsoft is providing to NYS in the MBA, and (ii) what Microsoft allows LARs to resell/pass through. A LAR is not a direct licensor of Microsoft product and is not therefore able to establish license terms with the customer. In the current NYS Microsoft Reseller Agreement, the NYS Microsoft Agreement and CLA take precedence over any conflicting terms in the General Specifications and/or RFP. Can Bidders assume that all Licensing clauses do not apply to this Reseller RFP and the Contract Holder's performance under and resulting contract? Can OGS issue an update that clarifies this issue and/or modifies the order of precedence?</p>	<p>The Appendix B section references associated with the question appear to be based on a former version of Appendix B. Accordingly, it is presumed that the intent of the question is to refer to the following sections of Appendix B to the RFP: §54(b), Title and Ownership Warranty; §60, Software License Grant; §62, Audit of Licensed Product Usage; and §64, Ownership/Title to Project Deliverables. As to the applicability of the provisions of Appendix B to the RFP, please refer to the following language from section 1.1:</p> <p>“The requirements of Appendix B apply to the resulting Contract between the awarded Microsoft Reseller and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or on-line services provided for in the MBA. To the extent that the Microsoft Reseller's performance under the resulting contract may involve its provision of software (such as through an order system), then (for example) the terms of Appendix B, Section 54 would be applicable.”</p> <p>It is also noted that the question refers to “LARs”. Please refer to RFP section 3.1 MICROSOFT CERTIFICATION, which states in part that “Bids will be accepted only from Bidders certified by Microsoft as both a Licensing Solutions Partner (LSP) and as an Authorized Educational Reseller (AER).”</p> <p>Please also note the amendment to RFP section 2.2.1</p>
7	RFP Main Document and Appendix B – General Specifications	2.18 Main – Warranty; 72. Additional Warranties; 78.D Product		<p>Warranties, Maintenance, Support Section 2.18 states that the Contractor shall pass through all product warranties, performance guarantees or other warranties set forth in the MBA. There are a number of provisions, some cited here, that provide for the contractor to provide direct warranties, rights and remedies for the products that go beyond or are different than what Microsoft</p>	<p>It is presumed that the intent of the question is to reference RFP section 2.22, Warranty (rather than RFP section 2.18). In addition, The Appendix B section references associated with the question appear to be based on a former version of Appendix B. Accordingly, it is presumed that the intent of the question is to refer to the following sections of Appendix B to</p>

		Technical Support and Maintenance	would provide in the MBA (and/or to LARs under their contracts with Microsoft). In some cases, the LAR is expressly prohibited by Microsoft from making any statements/warranties about products, and the LAR would not even have access to the software in a form necessary to provide the requested remedy. In addition, Bidder would expect that warranty and support is addressed directly in the MBA with the State. Can Bidders assume that these clauses do not apply to this Reseller RFP and the Contract Holder's performance under and resulting contract? Can OGS issue an update that clarifies this issue and/or modifies the order of precedence?	the RFP: §54, Warranties; and §60(d), Product Technical Support & Maintenance. As to the applicability of the provisions of Appendix B to the RFP, please refer to the following language from section 1.1: "The requirements of Appendix B apply to the resulting Contract between the awarded Microsoft Reseller and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or on-line services provided for in the MBA. To the extent that the Microsoft Reseller's performance under the resulting contract may involve its provision of software (such as through an order system), then (for example) the terms of Appendix B, Section 54 would be applicable." Please also note the amendment to RFP section 2.2.1
8	Appendix B – General Specifications	75. Indemnification Relating to Third Party Rights	This Section puts the responsibility on the Reseller for indemnifying end users for third party intellectual property claims. Microsoft does not provide Resellers with protection that extends to the end users. In addition, Reseller does not have access to the source code for the software, or any other rights to modify or provide alternative remedies for the software. In the current NYS Reseller Agreement, Microsoft provides indemnification protection directly to the end users in the NYS Microsoft Agreement, and it is understood that the Reseller does not provide such protection to the end users. Can Bidders assume that this clause does not apply to the resale of the Microsoft products under this Reseller RFP and resulting contract? Can OGS issue an update that clarifies this issue and/or modifies the order of precedence of the various documents as requested above? This would clarify that the NYS Microsoft Agreement clearly takes precedence over these conflicting terms in the RFP.	The Appendix B section reference associated with the question appears to be based on a former version of Appendix B. Accordingly, it is presumed that the intent of the question is to refer to the section 57 of Appendix B to the RFP, Indemnification Relating to Infringement. As to the applicability of the provisions of Appendix B to the RFP, please refer to the following language from section 1.1: "The requirements of Appendix B apply to the resulting Contract between the awarded Microsoft Reseller and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or on-line services provided for in the MBA. To the extent that the Microsoft Reseller's performance under the resulting contract may involve its provision of software (such as through an order system), then (for example) the terms of Appendix B, Section 54 would be applicable." Please also note the amendment to RFP section 2.2.1
9	Appendix B – General Specifications	78. Software License Grant	We are not the licensor or publisher and cannot legally grant license to third party software. The license is granted to the State directly by Microsoft. Can this clause be waived/removed?	The Appendix B section reference associated with the question appears to be based on a former version of Appendix B. Accordingly, it is presumed that the intent of the question is to refer to the section 60 of Appendix B to the RFP, Indemnification Relating to Infringement.

					<p>As to the applicability of the provisions of Appendix B to the RFP, please refer to the following language from section 1.1:</p> <p>“The requirements of Appendix B apply to the resulting Contract between the awarded Microsoft Reseller and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or on-line services provided for in the MBA. To the extent that the Microsoft Reseller’s performance under the resulting contract may involve its provision of software (such as through an order system), then (for example) the terms of Appendix B, Section 54 would be applicable.”</p> <p>Please also note the amendment to RFP section 2.2.1</p>
10	RFP Main Document			The link for Attachment 10, “Microsoft Product Crosswalk,” does not open. Since it is not possible to determine without reviewing this attachment if there will be any questions regarding what is required, will there be a chance for additional questions after the link is fixed?	OGS has resolved the issue with Attachment 10- Microsoft Product Crosswalk. Please refer to Bid Solicitation Update #2 dated October 14, 2016.
11	RFP Main Document	Main RFP document, Section 4.2, Technical Proposal Requirements	22	Incentives that we receive from Microsoft change on a regular basis and will likely change at some point during the contract that results from this RFP. Can the state confirm that any information we provide in this section will not be applied to pricing considerations that last throughout the life of the contract?	This information is requested for technical scoring purposes only and will not impact pricing.
12	RFP Main Document	Main RFP document, section 4.2, Technical Proposal Requirements	22	Our agreement with Microsoft states that certain incentives we receive cannot be disclosed to any other parties. Can the state waive the requirement that we share this information, and if not, would our inability to share that information disqualify our bid response?	OGS will not waive the requirement. However, Bidders may redact incentive information which is contractually barred from disclosure. Bidders’ inability to share incentive information may impact technical scoring but will not result in bid disqualification.
13	RFP Main Document	Main RFP document, section 4.2, Technical Proposal Requirements	22	It states that a draft “How to Use” document should reflect the current MBA and resulting reseller agreement. The MBA is included with the RFP, but the reseller agreement is generally between Microsoft and the currently named reseller, so it is not something we have access to. Can the state waive that guideline for this section?	See amended RFP section 4.2 Technical Proposal Requirements, paragraph 3. Bidder’s draft should also reflect the current MBA and the Contractor’s business processes, consistent with this RFP.
14	RFP Main Document	Main RFP document, section 4.2,	22	Is the current MBA between Microsoft and NY State being renegotiated, or will the current terms be in place for the full life of the contract that results from this RFP?	The MBA supplied with this RFP will be in place until June 30, 2018, subject to amendment.

		Technical Proposal Requirements			
15	RFP Main Document	Main RFP document, section 4.3.1, Cost Proposal Requirements	23	The “Best Pricing” clause indicates that the Commissioner can lower any price that we bid for this response to a level of any other government Microsoft contract we hold. As a reseller, we cannot always offer this since it is often influenced by uncontrollable factors such as price negotiated between a customer and publisher; facilitating pass through orders; volume pricing and other incentives made available by the publisher to the specific customer. If we do not agree to this term, will our bid response still be considered?	<p>The reference to Best Pricing in RFP Section 4.3.1 NYS Cost has been revised to read as follows:</p> <p>Best Pricing: During the resulting Contract term, if substantially the same or a smaller quantity of a 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 governmental entity, the price under this Contract, after consultation with the Contractor, shall be reduced to the lower price.</p> <p>The remainder of Section 4.3.1 NYS Cost remains unchanged.</p>
16	RFP Main Document	Attachment 10 Crosswalk Document		During the process of downloading all of the required solicitation documents from the State’s website, we received an error message when we tried to download Attachment 10 – Microsoft Product Crosswalk. Would you be able to provide guidance on the best way to retrieve a copy of this document?	OGS has resolved the issue with Attachment 10- Microsoft Product Crosswalk. Please refer to Bid Solicitation Update #2 dated October 14, 2016.