



Contract Award Notification

Title	:	Group 75525 – Office Equipment (Workgroup Printers and Multifunction Printers (MFPs)) Classification Code(s): 43 and 44
Award Number	:	22418-E* (Replaces Awards Under Groups 75525 & 22424)
Contract Period	:	February 27, 2013 – February 26, 2018
Bid Opening Date	:	November 1, 2012
Date of Issue	:	February 27, 2013 (Revised August 03, 2016) Changes are noted in red.
Specification Reference	:	As Incorporated In The Contract
Contractor Information	:	Appears on Page 2 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
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**Procurement Services values your input.
Complete and return "Contract Performance Report" at end of document.**

Description

This award will provide State Agencies and Authorized Users with the opportunity to purchase Office Equipment; such as Workgroup Printers and Multifunction Printers (MFPs).

This Contract Award Notification contains MWBE goals of 15% MBE and 15% WBE.

PR # 22418

<u>CONTRACT #</u>	<u>CONTRACTOR & ADDRESS</u>	<u>FED. IDENT. # / NYS VENDOR #</u>
PT65959	Oki Data Americas, Inc.	223630684 1000044520
Lot 1 – Primary Contractor		
PT65960	Lexmark International, Inc.	061308215 1000005372
Lot 1 – Secondary Contractor		

For complete Contractor and Reseller contact information, Contract Terms and Conditions, and Pricelists for this award, please see the Contractor Information pages located on the OGS website at: <http://www.ogs.ny.gov/purchase/snt/awardnotes/7552522418Can.htm>.

Cash Discount, If Shown, Should be Given Special Attention.
INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
(See "Contract Payments" and "Electronic Payments" in this document.)

AGENCIES SHOULD NOTIFY THE NEW YORK STATE PROCUREMENT PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES.

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

REQUEST FOR CHANGE:

Any request by the agency or contractor regarding changes in any part of the contract must be made in writing to the Office of General Services, Procurement Services Group prior to effectuation.

NOTE TO CONTRACTOR:

This Contract Award Notification is not an order. Do not take any action under this contract except on the basis of purchase order(s) from the agency or agencies

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY:

Contractor is encouraged to maintain up-to-date Questionnaire during the life of the contract and is also required to ensure this Questionnaire reflects any substantive issues that may have occurred from the time the Contract was initially awarded.

DEBRIEFING:

Contractors and bidders are accorded fair and equal treatment with respect to the opportunity for debriefing. OGS shall, upon request, provide a debriefing to any bidder or awarded contractor that responded to the RFP regarding the reason that the proposal or bid submitted by the unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder or awarded contractor within thirty days of posting of the contract award on the OGS website.

DISPUTE RESOLUTION POLICY:

It is the policy of OGS PS to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to PSG bid solicitations or Contract awards. PS encourages vendors to seek resolution of disputes through consultation with PS staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of PS' Dispute Resolution Procedures for vendors may be obtained by contacting the person shown on the front of this Request for Proposal or through the OGS

website: <http://nyspro.ogs.ny.gov/sites/default/files/uploaded/Dispute%20Resolution%20Policy%20%289-2015%29.pdf>.

PROCUREMENT INSTRUCTIONS:

1. The resultant Contracts are tiered with respect to the Lots. New York State Agencies that are part of the Executive Branch are required to purchase from the Primary Contractor, unless written justification for purchasing from the Secondary Contractor is approved by the NYS Office of Information Technology Services (ITS) through the Plan to Procure (PTP) process. It is the intent of the State to direct all volume through the Primary Contractor. PTP approval will be required for all Contract purchases regardless of dollar amount and whether the purchase will be made from either the Primary or Secondary Contractor. New York State Agencies that elect to purchase from the Primary Contractor for a given Office Equipment Product Category within a Lot can advance with the process summarized herein, but should not issue a purchase order until ITS has approved their PTP. For additional information about ITS' PTP process, please visit their website at: <http://www.its.ny.gov/ptp>.

These Contracts are part of Governor Cuomo's Procurement Transformation effort, which focuses on implementing leading procurement practices. The Contracts were established using a competitive Total Cost of Ownership (TCO) methodology and are expected to yield significant savings for New York State. Authorized Users, other than New York State Agencies, are encouraged to purchase from the Primary Contractor. Awarded Contractors' Contracts and Pricelists will be posted to the OGS website.

2. Before proceeding with their purchase, affected Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law §162 which requires that agencies afford first priority to the commodities/services of preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled, when such commodities/services meet the form, function and utility of the Authorized User.
3. Authorized Users should carefully review Contractor Warranty offerings to identify service coverage that best meets their needs. State Agencies are reminded of their obligation under DOB Budget Bulletin H-1030 - Equipment Maintenance Program – Expansion and Enhancements. <http://www.budget.ny.gov/guide/bprm/bulletins/h-1030.html>.
4. Authorized users will issue purchase order(s) directly to the Contractor(s), or the Contractors' authorized Reseller(s), as specifically stated by the Contractor in their respective Contract, specifying shipping/delivery requirements and referencing statements of work (as applicable) for services.
5. Upon Authorized User acceptance of products and/or services itemized on the purchase order, Contractor(s) will invoice Authorized User for any portion of products and services accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all products and services.

Note: Contractor must disclose any forms, or other order information, that Contractor will attach to orders or require completion of when Authorized User makes a purchase. Documents which contain additional terms and conditions must receive pre-approval by OGS for use under the Contract. Additional terms and conditions that were not pre-approved by OGS are void. Additional terms and conditions which conflict with the Contract shall be removed at the discretion of the State.

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

I. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction. OGS reasonably believes the value of this Contract Extension Agreement is in excess of \$25,000.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include contracting opportunities for New York State Certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- D. Failure to comply with all of the requirements herein may result in a finding of non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section 4, clause VII of this Contract Extension Agreement or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs) during the term of this Contract Extension Agreement. The total Contract Extension Agreement goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under this Contract Extension Agreement.
- B. For purposes of providing meaningful participation by MWBEs during the extended term of this Contract, and achieving the goals established for this Contract Extension in Section 4(II-A) hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Questions regarding compliance with MWBE participation goals should be directed to the OGS Office of Minority- and Women Owned Businesses and Community Relations. Additionally, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract Extension Agreement (see clause V below).

III. MWBE Utilization Plan

- A. Contractor certifies that it has submitted a completed MWBE Utilization Plan on Form MWBE 100 with the signed Contract Extension Agreement, and will follow such Plan for the performance of MWBEs on the Contract Extension Agreement pursuant to the prescribed MWBE goals set forth in clause II-A of this Section. The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the extended portion of the State Contract, a description of the Contract scope of work the Contractor intends the MWBE

to perform to meet the goals on the extended State Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE and performance dates of each component of the extended State Contract that the Contractor intends to be performed by a MWBE. Any modifications or changes to the agreed participation by MWBEs after the Contract Extension is approved and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

- B. Contractor understands that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future Bids, and/or withholding of payments.
- C. OGS will review the submitted MWBE Utilization Plan and advise the Contractor of OGS' acceptance or issue a notice of deficiency within twenty (20) days of receipt.
- D. If a notice of deficiency is issued, Contractor agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Contractor and direct the Contractor to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for denial of the Contract Extension.
- E. OGS may disqualify a Contractor from a Contract Extension on the grounds of being non-responsive under the following circumstances:
 - 1. If a Contractor fails to submit a MWBE Utilization Plan;
 - 2. If a Contractor fails to submit a written remedy to a notice of deficiency;
 - 3. If a Contractor fails to submit a request for waiver; or
- F. If OGS determines that the Contractor has failed to document good faith efforts. Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract Extension Agreement. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

IV. Request for Waiver

- A. If the Contractor, after making good faith efforts, as set forth in clause V below, is unable to comply with MWBE goals, the Contractor may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation, at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses III(C)-(E) above will apply.
- B. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract Extension Agreement. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract Extension Agreement to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract Extension Agreement.
- C. Prior to submission of a request for a partial or total waiver, Contractor shall speak to the OGS Office of Minority- and Women-Owned Businesses and Community Relations for guidance.

V. Required Good Faith Efforts

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

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

- B. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract Extension Agreement. Provide proof of dates or copies of the Solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- C. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
- D. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract Extension Agreement.
- E. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract Extension Agreement.
- F. Other information deemed relevant to the request.

VI. Monthly MWBE Contractor Compliance Report

- A. Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract Extension Agreement for the preceding month's activity, documenting progress made towards achievement of the Contract Extension Agreement MWBE goals. OGS requests that all Contractors use the New York State Contract System (NYSCS) to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/> . This is a New York State-based system that all State Agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State Agency Authorized User following a purchase from an OGS Procurement Services contract, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an e-mail or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System for Vendors**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>.
- D. As soon as possible after the Contract extension is approved, Contractors should visit <https://ny.newnycontracts.com> and click on "**Account Lookup**" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "**Change Info.**" It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "**Request New User.**" When identifying the person responsible, please add "**- MWBE Contact**" after their last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "Contact Us & Support" then "Technical Support" on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract Extension Agreement, for the preceding month's activity to: OGS

MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in Section VII below.

VII. Breach of Contract and Liquidated Damages

- A. In accordance with Executive Law Section 316-a and 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract Extension Agreement, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
1. All sums identified for payment to MWBEs had the Contractor achieved the Contract Extension Agreement MWBE goals; and
 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract Extension Agreement.
- C. In the event a determination has been made, after Contractor has been afforded the process that it is due, which requires the payment of liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if the Director renders a decision in favor of OGS.

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

**State of New York
Office of General Services
PROCUREMENT SERVICES
Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product’s end user.**

Contract No.: _____ **Contractor:** _____

Describe Product* Provided (Include Item No., if available): _____

***Note:** “**Product**” is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term “Product” includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments: _____

_____ (over)

Agency: _____ Prepared by: _____

Address: _____ Title: _____

Date: _____

Phone: _____

E-mail: _____

Please detach or photocopy this form & return by mail to:

OGS PROCUREMENT SERVICES
Customer Services, 38th Floor
Corning 2nd Tower - Empire State Plaza
Albany, New York 12242