

Q#	RFP Document Name	Document Section (Name or number)	Bidder Questions	OGS Responses
1	RFP Main Document	1.2.2 and 1.2.3 – Out of Scope	If OGS desires to add additional Microsoft Online Services, how will pricing be established?	As stated in the RFP document section 4.3.1, pricing will remain consistent with the Reference Pricing discount set forth in Attachment 5 for the category to which the Online Service applies.
2	RFP Main Document	1.2.3	If there are material changes in the terms of resale of the licenses or contract holder's responsibilities than those in the resultant contract, will the contract holder be given the opportunity in the amendment process to address questions or resolve inconsistencies for the new offerings?	OGS is assuming the reference to "contract holder" means the Reseller that will be selected from this RFP process. The resulting contract will set forth a process for amendments.
3	RFP Main Document	1.5 RFP Order of Precedence; 2.3 Appendix B Modifications, Conflict of Terms and Conditions	In both of these sections, respectively (i) the RFP Main Body and Appendix B, General Specifications, and (ii) the resulting NYS Contract and Appendix B, General Specifications, take precedence over conflicting terms in Appendix, D Microsoft MBA. In the current NYS Microsoft Reseller Agreement, the NYS Microsoft Agreement and CLA take precedence over these documents. Bidder would expect that the new Reseller Agreement would be the same. With the order of precedence as currently written in the RFP, the resulting contract could potentially put NYS and/or the contract holder in breach of either the Reseller Agreement or the MBA incorporated therein. Would OGS consider modifying these clauses to be consistent with the current contract and prevent any complications in performance by either NYS or the Reseller under the resulting contract?	OGS declines the requested change. The current order of precedence will remain as it is stated in the current RFP 22709. Section 1.5 sets forth the order of precedence regarding the RFP, while section 2.3 sets forth the order of precedence for the resulting contract. This order of precedence is consistent with the order of precedence set forth in the MBA (see page 1 of the Microsoft MBA set forth in Appendix D).
	RFP Main Document	1.5 RFP Order of Precedence and 2.5 Appendix D	Appendix D is listed as a document in the order of precedence section. We have no issues with this listed as a reference, but we would like to be clear that the terms between us and the State cannot alter the terms between Microsoft and the State, and vice versa. Would we be able to add some disclaimer language stating such?	The contract between the State and the Reseller cannot amend the contract between the State and Microsoft. There are different parties to the contracts. Further, section 4.26 of the MBA expressly provides that the reseller and other third parties do not have the authority to bind or impose any obligation or liability on Microsoft.
5	RFP Main Document	2.18 Warranty	Can we change "The Contractor shall pass through all product warranties..." to "honor all warranties?" The warranties are being provided directly by Microsoft to you; they would not need to pass through us. We will honor those warranties as the reseller.	OGS will amend section 2.18 of the RFP to state "The Contractor shall honor all product warranties..."
6	RFP Main Document	3.1	How do I show proof of being a Large Account Reseller?	Proof of Status can be obtained from your Microsoft Partner Account Manager (PAM), by using Attachment 4.

7	RFP Main Document	3.1	What documentation do you require that we provide, in order to show proof that we are a Large Account Reseller?	Proof of Status can be obtained from your Microsoft Partner Account Manager (PAM), by using Attachment 4.
8	RFP Main Document	6.4.4	If NYS-OGS can please provide the exact weight % for each of the Microsoft Product Categories mentioned in the section.	OGS declines to provide the weights and has provided the relative importance of each category in Section 6.4.4.
9	RFP Main Document	6.4.4	Is the weight assigned to the Microsoft Product Categories mentioned in Section "6.4.4 Cost Scoring" proportionate to the Historic Spend mentioned in Attachment 5 ?	No, the weight assigned is not proportionate to the Historic Spend. The relative importance of the product categories, however, is proportionate to the Historic Spend.
10	RFP Main Document	6.4.4	It's mentioned in Section 6.4.4 that Microsoft Product Categories 3 and 4 will be given the same weight but the Historic Spend of Category 3 is \$12.7 million and Category 4 is \$3.8 million. Did NYS-OGS intend to state that Microsoft Product Categories 2 and 3 will be given the same weight ?	No, the information in the RFP is correct.
11	RFP Main Document	Section 9. Insurance; 9.1 General Conditions; A. Conditions Applicable to Insurance	The insurance company does not provide a written endorsement on the policy regarding cancellation. Notice comes from us, not the insurer. Can we remove the requirement to have cancellation as a provision on the policy?	OGS declines to make this change.
12	RFP Main Document	Section 9. Insurance; 9.1 General Conditions; A. Conditions Applicable to Insurance	We can only provide a waiver of subrogation is permissible by law - NJ does not allow such waiver. Can we waive this requirement?	OGS will allow this waiver of subrogation if not permissible by law. However, in accordance with the RFP, the company issuing the insurance should be licensed or authorized to do business in NY and the coverage should comply with NY law so a waiver of subrogation can be provided. Bidder should provide alternate proposed language with the Administrative Proposal Form Attachment #3, tab entitled "Bid Deviations".
13	RFP Main Document	Section 9. Insurance; 9.1 General Conditions; A. Conditions Applicable to Insurance; 4. Primary Coverage	Our insurance is always primary but can only be noncontributory for losses resulting from our negligence. Can we add language to that effect?	OGS will allow this waiver. Bidder should provide alternate proposed language with the Administrative Proposal Form Attachment #3, tab entitled "Bid Deviations".
14	RFP Main Document	Section 9. Insurance; 9.1 General Conditions; A. Conditions Applicable to Insurance; 5. Policy Renewal/ Expiration	We cannot provide 30 days prior notice of our renewal. We can send over the new certificate as soon as it is received by our insurer. Can we waive the 30 day requirement?	OGS will waive the 30 day prior notice of renewal requirement. Bidder should provide alternate proposed language with the Administrative Proposal Form Attachment #3, tab entitled "Bid Deviations".
15	RFP Main Document	Section 9. Insurance; 9.1 General Conditions; B. Insurance Requirements; d) Crime Insurance	We cannot name the State of New York as a loss payee on this policy. Can we remove this requirement?	OGS declines to make this change.
16	RFP Main Document	General	The State did not include an administrative or other type of fee requirement to be paid back to the State under this RFP. Can the State confirm there is no administrative fee required for this RFP?	There are no administrative fees required for this RFP or the resultant contract.

17	RFP Main Document	General	Does the State manage any large EA's on behalf of other entities or does each entity purchase and manage their own EA?	Yes, the State of New York does manage an Enterprise Agreement on behalf of multiple state agencies. Through the resulting Centralized Contract , other authorized users may establish and manage their own Enterprise Agreements.
18	RFP Main Document		Can we provide a supplementary proposal in addition to the spreadsheets provided?	OGS declines to make the change to accept supplemental proposals.
19	Appendix B – General Specifications	27. Procurement Card	Will the State accept a dollar limit on orders placed by a procurement card?	Yes. Please see revised Attachment 2 for questions regarding Procurement Card transactions.
20	Appendix B – General Specifications	27. Procurement Card	The State does not specify in the bid who will be responsible for credit card transaction fees on purchases made by procurement card. Will the State accept responsibility for payment of any fees imposed by the credit card companies on these purchases?	No, credit card fees are the responsibility of the reseller.
21	Appendix B – General Specifications	32	What are the payment terms for this agreement?	<p>The payment terms for the resulting contract are set forth in Appendix B, §64, Interest on Late Payment. Payments by State agencies are governed by State Finance Law §179-d et seq. In general terms, upon acceptance, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by a state agency may be made in accordance with State Finance Law §§179-d et. seq. and the implementing regulations (2 NYCRR §18.1 et seq.).</p> <p>Payments by a non-state agency are not governed by State Finance Law. Upon acceptance, Contractor may invoice for payment. The required payment date shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Generally, the required payment date is thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice.</p>

22	Appendix B – General Specifications	1.1 Main; Appendix B, General Specs 72.b, 78, 80, 81	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 of the various documents as requested above?	No, Bidders cannot assume that the licensing clauses and performance obligations set forth in Appendix B do not apply. The requirements of Appendix B apply to the resulting contract between the awarded reseller and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or on-line services. To the extent that reseller's performance under the resulting contract may involve its provision of software (such as through an order system), then the terms of Appendix B sections 72 and 78 would be applicable. Appendix B section 80 sets forth an independent audit right for the reseller. OGS has amended the RFP to delete Appendix B section 81 to expressly preclude the development of any customized product by the reseller.
23	Appendix B – General Specifications	2.18 Main - Warranty; 72. Additional Warranties; 78.D Product Technical Support & Maintenance	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 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 of the various documents as requested above?	No, Bidders cannot assume that the warranty and maintenance clauses set forth in Appendix B do not apply. The requirements of Appendix B apply to the resulting contract between the awarded reseller and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or on-line services. To the extent that reseller's performance under the resulting contract may involve its provision of software (such as through an order system), then the terms of Appendix B sections 72 and 78 would be applicable.
24	Appendix B – General Specifications	72. Additional Warranties; d. Product Warranty	We are a reseller of the licenses, and therefore cannot make any additional warranties other than what the State is receiving directly from Microsoft. Is the State's intent of this clause to override what they receive from Microsoft or is it understood that the Microsoft warranty is the only product warranty granted under this RFP?	Please see section 2.18 of the RFP which states that the Contractor shall pass through all product warranties, performance guarantees or other warranties set forth in the MBA. The requirements of Appendix B apply to the resulting contract between the awarded reseller and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or on-line services. To the extent that reseller's performance under the resulting contract may involve its provision of software (such as through an order system), then the terms of Appendix B section 72 would be applicable.
25	Appendix B – General Specifications	72. Additional Warranties; f. Virus Warranty	We are not the licensor or publisher and not responsible for the software's development. We cannot knowingly make this warranty. Can we add language to the effect of "to the best of Contractor's knowledge"?	OGS declines to make this change. The requirements of Appendix B apply to the resulting contract between the awarded reseller and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or on-line services. To the extent that reseller's performance under the resulting contract may involve its provision of software (such as through an order system), then the terms of Appendix B section 72 would be applicable.

26	Appendix B – General Specifications	72. Additional Warranties; g. Date/Time Warranty	We are not the licensor or publisher and not responsible for the software's development. We cannot knowingly make this warranty. Can we add language to the effect of "to the best of Contractor's knowledge"?	OGS declines to make this change. The requirements of Appendix B apply to the resulting contract between the awarded reseller and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or on-line services. To the extent that reseller's performance under the resulting contract may involve its provision of software (such as through an order system), then the terms of Appendix B section 72 would be applicable.
27	Appendix B – General Specifications	75. Indemnification Relating to Third Party Rights	We are not the licensor or publisher and not responsible for the software's development. We cannot therefore indemnify the State in the event of its infringement. Can we add some language specifying this indemnification if our intellectual property infringes a third party patent/copyright?	The requirements of Appendix B apply to the resulting contract between the awarded reseller and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or on-line services. To the extent that reseller's performance under the resulting contract may involve its provision of software (such as through an order system), then the terms of Appendix B section 72 would be applicable. Bidder can submit proposed bid deviation language using Attachment 3, tab entitled Bid Deviations.
28	Appendix B – General Specifications	75	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/CLA, 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/CLA clearly takes precedence over these conflicting terms in the RFP.	The requirements of Appendix B apply to the resulting contract between the awarded reseller and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or on-line services. To the extent that reseller's performance under the resulting contract may involve its provision of software (such as through an order system), then the terms of Appendix B section 75 would be applicable.
29	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 requirements of Appendix B apply to the resulting contract between the awarded reseller and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or on-line services. To the extent that reseller's performance under the resulting contract may involve its provision of software (such as through an order system), then the terms of Appendix B section 78 would be applicable.
30	Appendix B – General Specifications	79. Product Acceptance	We can only offer an acceptance period if Microsoft offers one. Can we add some language to the effect of "in accordance with the Microsoft acceptance period granted to the State"?	OGS declines this change. It was Microsoft's position that any acceptance period would be provided via the Reseller Agreement.
31	Appendix B – General Specifications	81. Ownership to Project Deliverables	We would like to specify that all software provided to the State under this contract is commercial software from Microsoft. Can we have some verbiage that the State is not retaining ownership?	Section 1.2.1 expressly provides that development and customization work is out of scope for this contract. Only those items included in the Microsoft Product List for the MBA and authorized by the reseller contract may be acquired.
32	Appendix B – General Specifications	82. Proof of License	Can we receive an example of what license proof the State is looking for?	Appendix B section 82 provides a series of options by which a contractor can establish the necessary proof of license and anticipates that the contractor will provide a proposed proof of license to OGS for approval.

33	Appendix B – General Specifications	85. No Hardstop/Passive License Monitoring	We are not the licensor or publisher and not responsible for the software development. We cannot knowingly make this warranty and are providing software as requested by the State. Is there a way to waive this requirement or add language that the Authorized User may choose software that is subscription based and may include these mechanisms?	The requirements of Appendix B apply to the resulting contract between the awarded reseller and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or on-line services. To the extent that reseller's performance under the resulting contract may involve its provision of software (such as through an order system), then the terms of Appendix B section 85 would be applicable. Please note that Microsoft has agreed to the inclusion of Appendix B section 85 in the MBA.
34	Appendix D – Microsoft Master Business Agreement (MBA)	1.1 SCOPE; 2.5 APPENDIX D, Microsoft Master Business Agreement (MBA)	These 2 sections state that the RFP is subject to the terms and conditions of the MBA, and that the MBA is expressly made a part of the Bid document as if fully set forth in it. In order to provide a complete response, won't Bidders need a copy of the MBA, Appendix D. When will this be provided to Bidders? If Bidders have questions about the MBA, will Bidders be provided with another opportunity to ask those questions?	Please see pages 59 - 129 of the RFP which sets forth the referenced Appendix D.
35	Attachment 2 - General Questions	Lines 18, 19, 20	With purchases involving software licensing, there is no physical product that is being manufactured or shipped, how does this section apply? Please provide guidance as to how you would like the response to be framed.	The term "manufacture" refers broadly to the creation process. Please answer the questions based on where the software was created.
36	Attachment 4 - Technical Proposal Forms	4a	Can a partner or team member on the Prime's (Bidders) team have the Microsoft certification required?	No, this RFP is only open to Microsoft Large Account Resellers (LARs). Partners or other entities are ineligible for this contract.
37	Attachment 4 - Technical Proposal Forms		I wanted to know if my company would qualify. _____ is an authorized education reseller (AER). We use _____ to fulfill the LAR status. I just wanted to make sure that this is ok before we go ahead with submitting the proposal. I also have a letter of recommendation that I can provide from Microsoft and other vendors.	An Authorized Education Reseller does not qualify for this RFP. This RFP is only open to Microsoft Large Account Resellers.
38	Attachment 4 - Technical Proposal Forms	4a	Can a partner or team member on the Prime's (Bidders) team have the Microsoft certification required?	No, this RFP is only open to Microsoft Large Account Resellers (LARs). Partners or other entities are ineligible for this contract.
39	Attachment 5 - Cost Proposal Form	na	How will the Reference Price discounts be documented for the LAR? Will MS issue an amendment to the agreement noting the discount or will they issue a State Reference Price List (SRPL) noting the NYS MS discount?	The reference price discounts are included in each of the Program Agreements found in the agreement between Microsoft and the State of New York. Please see Appendix D. Bidders may also reach out to Microsoft directly for the reference prices that apply to each of the Program Agreements.
40	RFP Main Document		How will the Reference Price discounts be documented for the LAR?	The reference price discounts are included in each of the Program Agreements found in the agreement between Microsoft and the State of New York. Please see Appendix D. Bidders may also reach out to Microsoft directly for the reference prices that apply to each of the Program Agreements.
41	RFP Main Document		Will MS issue an amendment to the agreement noting the discount or will they issue a State Reference Price List (SRPL) noting the NYS MS discount?	The reference price discounts are included in each of the Program Agreements found in the agreement between Microsoft and the State of New York. Please see Appendix D. Bidders may also reach out to Microsoft directly for the reference prices that apply to each of the Program Agreements.
42	RFP Main Document		Is there anything about advanced level training that is included in this particular RFP? I'm wondering about advanced level server training for 2008 R2, 2012, exchange server, Sharepoint Server etc.	No, advanced level training is not authorized under this RFP or resulting contract. Only those items that are included in the Microsoft Product List for the MBA will be allowed under the resultant contract. New York State reserves the right to amend the Microsoft Product List to exclude the purchase of certain products.

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