
Attachment 11 A, Part 1 – How to Use the Manufacturer Umbrella Contract

Authorized Users must follow these How to Use the Manufacturer Umbrella Contract procedures, and must adhere to the terms and conditions of the Contract when procuring Products from Award 22802.

This document provides Authorized Users with instructions on how to use the Manufacturer Umbrella Contract (“Contract”). These instructions assume Authorized Users have a working knowledge of procurement methodology. Authorized Users must adhere to the terms and conditions of the Contract when procuring Products from the Contract.

Authorized Users must refer to the Attachment 11 B – How to Use the Manufacturer Umbrella Contract– Cloud Solution Supplement for specific information regarding Clouds Solutions in Lot 3.

Additional general procurement information is available at the New York State Procurement website.
(<https://nyspro.ogs.ny.gov/content/buying-101>)

Authorized Users may contact the OGS Contract Manager
<https://ogs.ny.gov/purchase/snt/awardnotes/7360022802can.pdf> with any questions, concerns, or clarifications.

An excel spreadsheet of the List of Vendors can be downloaded from
<https://www.ogs.ny.gov/purchase/snt/awardnotes/7360022802ContractorPage.pdf> by clicking on the link labeled “Listing of Contractors and Resellers.”

The Office of the State Comptroller retains the right to post-audit any procurement, including those executed from this Contract. Authorized Users are reminded to maintain a complete procurement record.

Section 1. GENERAL INFORMATION

1.1 CONTRACT SCOPE

The intent of this Contract is to streamline the procurement of Information Technology (IT) needs for Authorized Users. This Contract provides for the procurement of Software, Hardware, Cloud Solutions and related Implementation services from Manufacturers or their Resellers.

1.2 LOTS

Authorized User Agreements may include one or more of the following four lots:

Lot Number	Description
1	Software
2	Hardware
3	Cloud
4	Implementation of Products sold under Lots 1, 2 or 3

1.3 RFQ PROCESS OVERVIEW

A competitive Request for Quote (RFQ) process is required for all Authorized User transactions (except as provided for in Appendix B, Section 27(e)). The Contract sets forth base terms and conditions. The RFQ process requires the Authorized User to solicit the Manufacturers and their authorized Resellers. The following is an overview of the sequence of events that will typically occur during the RFQ Process.

1. Develop your RFQ
2. Release your RFQ
3. Conduct a Question and Answer Period (optional)
4. Collect RFQ Responses
5. Evaluate RFQ Responses
6. Make a final determination
7. Notify all Contractors/Resellers who responded

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8. Develop your Authorized User Agreement
9. Finalize your Authorized User Agreement

1.4 PROHIBITED USES

Utilizing this Contract in the below noted ways is **prohibited**:

- Submitting a Purchase Order directly to a Contractor without first utilizing the RFQ process (except as provided for in Appendix B, Section 27(e)).
- Comparing prices between Contractors, then submitting a Purchase Order to the Contractor with the lowest price.
- Calling Contractors for pricing, then submitting a Purchase Order to the Contractor that quotes the lowest price.
- Purchasing products not on Contract on the same Purchase Order as Contract products.

1.5 BASIS FOR AWARD

Based on the Authorized User’s business need, one of the following bases for award financial/technical weighting options must be utilized when developing the RFQ:

Basis for Award	Minimum Requirement
Lowest Price Meeting Specified Technical Requirements	→ The Product/Services must meet the stated specifications.
Lowest Price Meeting Specified Technical Requirements and Mandatory Pass/Fail Requirements	→ The Product/Services must meet the stated specifications Mandatory pass/fail requirements must be met
Best Value with Technical and Financial Score	→ The Product/Services must meet the stated specifications There may be mandatory pass/fail requirements There is technical score and a financial score Technical weighting may <u>not exceed</u> 70% including consideration whether to use the quantitative factor set forth in State Finance Law section 163(1)(j), for small or MWBE businesses.

1.6 TEMPLATES TO BE USED WHEN CONDUCTING AN RFQ

The Authorized User shall develop an RFQ using the RFQ Templates or their own document. If the Authorized User chooses to use their own RFQ document, it must reference Group 73600, Award 22802, Information Technology Umbrella Contracts – Manufacturer Based (Statewide) and conform to the requirements of Section 2.5 below.

1.6.1 Request for Quote Templates

There are three separate RFQ templates that may be used to procure from this Contract, depending on the complexity of the procurement. For procurements that include Cloud Solutions from Lot 3, please refer to Attachment 11 B – How to Use the Manufacturer Umbrella Contract – Cloud Solution Supplement. For all other procurements please refer to the following:

- The **“Basic Request for Quote”** should be used when the RFQ is basic and does not require additional information such as a Statement of Work or Question Period.
- The **“Complex Request for Quote”** should be used when the RFQ is complex and requires additional information such as a Statement of Work, Question Period, or basis of award is other than lowest price.

1.6.2 RFQ Financial Response Templates

There are three separate RFQ Financial Response templates that may be used to procure from this Contract, depending on the complexity of the procurement. For procurements that include Cloud Solutions from Lot 3, please refer to Attachment 11 B – How to Use the Manufacturer Umbrella Contract – Cloud Solution Supplement. For all other procurements please refer to the following:

- The **“Basic RFQ Financial Response”** (Excel)
- The **“Complex RFQ Financial Response”** (Excel) – should be used when the RFQ requires a fixed-price deliverable-based solution.

Section 2. RFQ DEVELOPMENT

Authorized Users should review:

- The Terms and Conditions of the Contract;
- The List of Manufacturers to determine if the Manufacturers that they are interested in are on the Contract; and
- Those Manufacturers' price lists to see if the type of Product and service they need are listed.
 - If yes, proceed to the relevant procurement steps below.
 - If not, contact the Manufacturer to have the Product and service added to the price list, and then proceed with the relevant procurement steps below.

An Authorized User RFQ should include, as applicable, such factors as:

- Contract SKUs;
- Delivery requirements, including:
 - Product delivery date,
 - Delivery to an inside location, and
 - Any other unique delivery requirements;
- Necessary qualifications including:
 - Training,
 - Licenses, and
 - Permits;
- Hardware and Software environment;
- Installation date;
- Systems to integrate with;
- Fiscal year budget/legislative deadlines; and
- Quote due date.

2.1 POLLING DOCUMENT

Prior to releasing an RFQ, the Authorized User may utilize the Attachment 14 - Polling Document in order to determine Contractor's ability to meet the proposed specifications and interest in providing the proposed Products. By using this document, the Authorized User can determine which Contractors are interested in participating in the RFQ. The Authorized User will specify within the Polling Document whether or not the Contractors and Resellers have to respond in order to receive the resulting RFQ or any further Documentation.

2.2 RFQ COMPETITION REQUIREMENTS

The Authorized User transaction shall be competitive, unless migrating from a prior Purchase Order (per Appendix B Section 27(e)). Once the Authorized User has developed an RFQ, the Authorized User will then identify the corresponding Lots involved and distribute the RFQ in the following manner:

- (1) to all Contractors and all of their approved Resellers in each Lot, **OR**
- (2) if the Authorized User is interested in a specific Contractor, the RFQ may be issued to that specific Contractor and all of its approved Resellers in the applicable Lot.

However, this second option is only available if the Contractor has at least five (5) approved Resellers in the applicable Lot. The Authorized User will document the basis for selection of the Contractor/Reseller as well as justification for Basis of Award in its procurement record.

2.3 CHOOSING A PROCUREMENT SCENARIO

Before developing an RFQ, the Authorized User will decide on the procurement scenario (best value, low price, etc.) that best fits its procurement need. Example Procurement Scenarios are described in Attachment 11 A, Part 2 – Examples of Procurement Scenarios.

2.4 STATEMENT OF WORK

In addition to the RFQ Scope / Mandatory Requirements, more complex RFQs may include a Statement of Work (SOW). An SOW may include, but need not be limited to, the following requirements:

- Project Plan,

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- Milestones/timeframes,
- Dependencies,
- Roles and responsibilities,
- Knowledge Transfer, and/or
- Other decision points;
- Project Timeline, (e.g. site visits, question and answer period);
- Language to retain discounts for Product/Service purchases within the scope of the RFQ;
- Background checks;
- Deliverables/payment points and retainage;
- Key personnel interviews;
- Location where work will be performed;
- Risk projections and mitigation strategies based on the presented RFQ;
- Uptime;
- Delivery and installation of heavy equipment to an inside location that may require a separate site visit;
- Response time;
- Security conditions;
- Disaster Recovery/Business Continuity;
- Data Transfer Services; and/or
- Chargebacks, liquidated damages and/or penalties for not meeting service levels.

2.5 AUTHORIZED USER TERMS AND CONDITIONS

The Authorized User Agreement shall specify the respective responsibilities of the Authorized User and the Contractor/Reseller.

An Authorized User may include additional terms and conditions within the RFQ and resulting Authorized User Agreement if the additional terms and conditions are more favorable to the Authorized User and do not conflict with or supersede Appendix B Section 28(c). Examples of additional terms and conditions include:

- Inclusion of the NYS Department of Labor Prevailing Rate Schedule when utilizing an Engineer to install Products;
- Expedited delivery timeframe;
- Unique delivery requirements like delivery to an inside location or delivery of heavy equipment to an inside location;
- Additional Vendor incentives, such as discount for expedited payment/Procurement Card use; and
- Any additional requirements imposed by the funding source.

Pursuant to Appendix B Section 28, a Contractor can propose additional or alternative terms and conditions when responding to an RFQ, and an Authorized User may incorporate those additional or alternative terms and conditions if certain conditions are met. Authorized Users are strongly encouraged to read Appendix B Section 28.

2.6 PROJECTED SPEND AND SECURING FUTURE DISCOUNTS

OGS recommends that you include language that allows you to hold pricing for products that you intend to re-purchase within in the next 6 to 12 months. Authorized Users should refrain from overstating their volume needs and make accurate predictions as to realistic purchase estimates. Sample Language: *“Agency will purchase some, all or more of the quantities of the products and services detailed in the Financial Response (see Excel spreadsheet) over a twelve (12) month period from date of award, but not necessarily at one time. The Agency requires that the prices be held for twelve (12) months from the date of award.”*

OGS recommends for long term projects you include a fixed discount off list price to cover future purchases of products and services. If you are including a fixed price discount you need to notify Vendors in your RFQ of your estimated future need and include that need within your fiscal weighting and evaluation. Authorized Users should refrain from overstating their volume needs and make accurate predictions as to realistic purchase estimates. Sample Language: *“Agency is seeking fixed discounts from list prices. Agency will purchase some, all or more of the quantities of the products and services detailed in the Financial Response (see Excel spreadsheet) over a twenty-four (24) month period from date of award, but not necessarily at one time. The Agency requires that the discount from the list price be held for twenty-four (24) months from the date of award.”*

In addition, the following language may be useful. Sample Language: *“For unforeseen future needs or technological developments, the Agency requests the ability to apply the discount from the list price for all other products or services*

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3.2.3 Reserved Right - Unanticipated Enhancements

When the right is reserved in the RFQ, unanticipated enhancements to the services procured not exceeding a cumulative twenty (20) percent of the Implementation Service cost may be agreed to by the Authorized User. Such inclusion must be included in the Total Cost Evaluation. Such unanticipated enhancements will require a written Authorized User Agreement revision, which for NYS Agency Authorized Users will include an amended Purchase Order. Any changes that will result in exceeding this twenty (20) percent will require a new competitive RFQ. Contractor shall notify the Authorized User in writing when a requested scope change will exceed the cumulative twenty (20) percent total value of the Implementation Services.

3.2.4 Kick-Off Meeting/Project Plan Discussion

The Authorized User may require a kick-off meeting with the selected Contractor to discuss the project plan. The Authorized User may require numerous tasks by the Contractor, including timeline and cost.

3.2.5 Maximum 60 Month Time Period

Time periods will vary based on the complexity of the Authorized User's requirements. Under no circumstances will the project time period, including approved enhancement requests, exceed a maximum 60-month time period.

3.2.6 Additional Requirements

The Authorized User should refer to Contract Sections titled Lot Overview, Lot 4 – Implementation Services and Lot 4 – Implementation Specific Terms and Conditions for additional requirements that may be included in an RFQ.

3.3 APPENDIX D REQUIRMENTS

Appendix D - Primary Security and Privacy Mandates provides Authorized Users with an overview of federal and state laws, regulations, policies, standards, and guidelines that may apply to Authorized Users' data. Authorized Users must include all applicable federal and state laws, regulations, policies, standards, and guidelines in their RFQ and resulting Authorized User Agreement.

Section 4. AUTHORIZED USER RESPONSIBILITIES

4.1 EVALUATION OF QUOTES

The RFQ must be evaluated based on the Authorized User's pre-defined methodology. This evaluation must include a review for acceptability of any additional Terms and Conditions the Vendor may have submitted with its Quote. Evaluation tools cannot be altered after Quotes are received.

4.2 LESS THAN THREE RESPONSIVE PROPOSALS RECEIVED

If less than three (3) responsive proposals are received, an Authorized User must canvass all the no-bid responses and no-replies to determine the reasons for non-participation. The canvass, any feedback to the canvass, and no-replies to the canvass must be documented in the Procurement Record. Per the canvass feedback, an Authorized User will need to determine whether the RFQ specifications were drawn too narrowly, so as to exclude potential responsive bidders, and whether modification and reissuance of the RFQ would result in a larger pool of qualified bidders and better value to the Authorized User. The feedback may also serve to support the Authorized User's decision to proceed with making an award based on the RFQ as issued.

4.3 NOTIFICATION OF QUOTE RESULTS AND DEBRIEFINGS

The Authorized User shall notify the non-awardees of RFQ results in a timely manner after notifying the awardee. Authorized Users subject to Article 11 of the State Finance Law shall provide the opportunity for debriefings in accordance with Section 163 (9)(c). All other Authorized Users are strongly encouraged to provide an opportunity for debriefing.

4.4 NEGOTIATION WITH TENTATIVE AWARDEE

Once the tentative award has been made based on Lowest Price or Best Value, the Authorized User may enter into negotiations to obtain the best price possible, or to obtain additional savings based on the released RFQ. Negotiations shall not include factors that would have altered the evaluation of the RFQ response.

4.5 BID PROTESTS AND DISPUTES UNDER AN AUTHORIZED USER AGREEMENT

Should a protest be submitted by a Contractor regarding an RFQ, the protest will be considered and decided by the Authorized User. Disputes under an Authorized User Agreement will also be handled by the Authorized User.

4.6 AT-RISK WORK PROHIBITED

Authorized Users are cautioned that at-risk work is strictly prohibited. No work is to be undertaken by the Contractor prior to receipt of the executed Authorized User Agreement (e.g. Purchase Order).

4.7 PROCUREMENT RECORD AND NEW YORK STATE PROCUREMENT COUNCIL GUIDELINES

An Authorized User is reminded that it must adhere to the procedures of this Contract, its own internal procurement policies and procedures and all federal, State and/or local statutes, when applicable.

The following link to the New York State Procurement Council Guidelines provides additional procurement information and examples of documentation that should be created and maintained by the Authorized User as part of a procurement record:

<http://nyspro.ogs.ny.gov/sites/default/files/uploaded/NYS%20Procurement%20Guidelines.pdf>

4.8 OFFICE OF THE STATE COMPTROLLER

For purchases available from this Contract, the Authorized User may issue a purchase order/Authorized User Agreement directly to the Contractor without prior approval by the Office of the State Comptroller (OSC).

However, Authorized Users are reminded, the Office of the State Comptroller retains the right to post-audit any procurement, including those executed from this Contract. Authorized Users are reminded to follow all procurement guidelines.

Section 5. AUTHORIZED USER REFERENCE GUIDE FOR TERMS AND CONDITIONS

The below table highlights Terms and Conditions within the Contract that apply to an Authorized User conducting an RFQ. An Authorized User should be familiar with these sections.

CONTRACT SECTION TITLE	NEW YORK STATE LAW LOCATION
OGS CENTRALIZED CONTRACT TERMS AND CONDITIONS	
SUMMARY OF POLICY AND PROHIBITION ON PROCUREMENT LOBBYING	SFL §§ 139-j & 139-k
PREFERRED SOURCE PRODUCTS	SFL § 162
DOWNSTREAM PROHIBITION	SFL §§ 163(2) & 163-a
NEW YORK STATE OFFICE OF INFORMATION TECHNOLOGY SERVICES (ITS) POLICIES	