

New York State Office of General Services
New York State Procurement
Corning Tower Building
Empire State Plaza
Albany, New York 12242
<http://nyspro.ogs.ny.gov>

PURCHASING MEMORANDUM

CENTRALIZED CONTRACTS FOR THE ACQUISITION OF LIGHT DUTY VEHICLES

BID SOLICITATION INFORMATION

PR NUMBER: 22878

DATE: July 21, 2014

GROUP: 40451 – Light Duty Vehicles

PLEASE ADDRESS INQUIRIES TO:

Wendy Reitzel
(518) 473-5280
SST_auto@ogs.ny.gov

Matthew Jones
(518) 474-4163
SST_auto@ogs.ny.gov

BID OPENING: August 11, 2014, 11:00 AM EST

SUBJECT: CONTRACT INFORMATION, REQUIREMENTS FOR ELIGIBILITY AND
BID SUBMISSION INFORMATION

**Click here to download solicitation 22878 Light Duty Vehicle
Contract Template and additional bid documents**

1. TO PROSPECTIVE BIDDERS:

The Office of General Services is establishing new centralized contracts for the acquisition (purchase) of Light Duty Vehicles and related Options and Aftermarket Components as defined in Contract Scope. The resultant contracts shall be backdrop Contracts for the Vehicle Manufacturer's Product Line(s) with the minimum NYS Discount(s) set forth by the Bidder in Attachment 2: *Bid Documents (Electronic)*, Section C: *Vehicle Discounts*,

This is a continuous recruitment contract open to Light Duty Vehicle Dealers only. The first proposals for Backdrop Contracts received under this solicitation will be reviewed beginning **August 11, 2014**. Vendors that miss this initial bid opening date may submit bids at any time prior to March 1, 2017; however, such bids will only be reviewed after bids received by **August 11, 2014 at 11:00 AM ET** have been processed.

Bidders must complete and submit the bid documents, which are available at the link below. Further information about Contract Scope, Solicitation Questions and Clarifications, Requirements for Contract Eligibility, and Bid Information and Requirements is included on page 2 through 4 of this memo. A Contract Template containing the contract terms and conditions is also provided.

2. CONTRACT PERIOD AND RENEWALS

The term of these contracts shall be three (3) years commencing on the first contract's date of approval by OGS. All Light Duty Vehicle Contracts awarded under solicitation 22878 will terminate simultaneously three (3) years from the date of OGS approval of the first contract awarded. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to two (2) additional years. The Contract renewal may be

exercised on a month to month basis such as an additional three month, six month, twelve month, or 24 month period. OGS anticipates that contracts resulting from this bid will be awarded in September 2014.

2.1 SHORT TERM EXTENSION

In the event that a replacement Contract has not been issued, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one month upon notice to the Contractor with the same terms and conditions as the original Contract. With the concurrence of the Contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should a replacement contract be issued in the interim.

3. AUTO MARKETPLACE MINI-BID

Vehicle acquisition from the Backdrop Contracts resulting from this solicitation shall be on an as-needed basis by NYS Authorized Users via a competitive Mini-Bid process executed via an Auto Marketplace established by NYSPRO (see Contract Template Section II.12 *Procurement Method*).

The first Mini-Bid conducted in the Auto Marketplace shall be posted by the "OGS posting of first Mini-Bid in the Auto Marketplace (estimated)" date indicated below in Section 4 *Key Events/Dates*. In order to participate in this Mini-Bid, a Bidder must have submitted all required bid documents, in the manner described below in Section 12.2 *Bid Format and Content*, by the "Deadline for responsive bid document submission for solicitation 22878 for participation in first Mini-Bid" indicated below in Section 4 *Key Events/Dates*, and have been awarded a Contract by the "Contract Award Notification (estimated)" date indicated below in Section 4 *Key Events/Dates*.

4. KEY EVENTS/DATES

<u>EVENT</u>	<u>DATE</u>	<u>TIME</u>
Solicitation release	July 21, 2014	
Closing date for vendor inquiries	July 29, 2014	5:00 PM
Pre-bid Conference registration due	July 29, 2014	5:00 PM
Discretionary pre-bid conference	July 31, 2014	10:00 AM
Closing date for post pre-bid conference vendor inquiries	August 4, 2014	5:00 PM
OGS response to vendor inquiries (estimated)	August 6, 2014	5:00 PM
Submission of bid and bid opening	August 11, 2014	11:00 AM
OGS posting of first Mini-Bid in the Auto Marketplace (estimated)	August 11, 2014	
Deadline for responsive bid document submission for solicitation 22878 for participation in first Mini-Bid	August 14, 2014	5:00 PM
Bid submission deadline for first Mini-Bid	August 18, 2014	5:00 PM
Contract Award Notification (estimated)	August 18, 2014	
Award of first Mini-Bid (estimated)	August 25, 2014	

5. CONTRACT SCOPE:

The resultant contracts shall include the following:

- A. **Light Duty Vehicles.** Light Duty Vehicles shall mean a mobile machine that is primarily used to transport passengers and cargo (e.g., cars, vans, SUVs, pickup trucks), with a GVWR less than or equal to 10,000 pounds, (i.e., Class 1 through Class 2 Vehicles, as designated by the U.S. Department of Transportation).
- B. **Options.** Options shall refer to an accessory, equipment, or feature that are available from the OEM and that can be added to, or deleted from, a Vehicle.
- C. **Aftermarket Components.** Aftermarket Components shall mean any accessory, equipment, or feature that is manufactured by an OEM other than the Vehicle OEM, and is not included in the OEM Product Line, and that may be installed on the Vehicle by the Contractor, or third-party.

6. ESTIMATED QUANTITIES

This Contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value contracts awarded under this solicitation, based on historical and anticipated needs, is approximately \$40,000,000.00 annually. The individual value of each Contract is indeterminate. See Appendix B §30 *Estimated/Specific Quantity Contracts* and §27 *Participation in Centralized Contracts*.

Numerous factors could cause the actual volume of Product purchased under the Contract to vary substantially. Such factors include, but are not limited to, the following:

- Such Contracts will be nonexclusive Contracts;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of the Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the contract period;
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In NYSPro's experience, depending on the price of a particular Product, the actual volume of purchases for that Product could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contract could vary substantially.

7. METHOD OF AWARD OF CONTRACT

Award shall be made to the responsive and responsible Bidder(s) who meet the minimum requirements listed below. Because of the nature of the Products involved, and recognizing that no one Bidder will be able to supply all of the Products required by Authorized Users, award shall be made to more than one Bidder.

8. SOLICITATION INQUIRIES / DESIGNATED CONTACTS

All inquiries concerning this solicitation shall be addressed to the following NYSPro Designated Contact(s):

Primary Contact: Wendy Reitzel, Team Leader Telephone No. (518) 473-5280 E-mail: SST_auto@ogs.ny.gov	Secondary Contact: Matthew Jones, Contract Management Specialist Telephone No. (518) 474-4163 E-mail: SST_auto@ogs.ny.gov
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All questions must be submitted in writing using Attachment 3: *Inquiries Form*, citing the applicable solicitation document name and document section. The completed Attachment 3: *Inquiries Form* must be emailed to SST_auto@ogs.ny.gov by the "Closing date for vendor Inquiries" indicated in Section 4 *Key Events/Dates* for consideration prior to the pre-bid conference. A vendor may also submit additional questions by the "Closing Date for post pre-bid conference vendor inquiries" indicated in Section 4 *Key Events/Dates*. A Bidder is strongly encouraged to submit questions at the earliest convenience.

You must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications about this solicitation. Navigate to the "I want to find contracts to Bid on" page to register for your free account. Answers to all questions of a substantive nature will be provided to all registered vendors in the form of a question and answer document which will be posted and released through the New York State Contract Reporter site. Notifications about this solicitation will no longer be issued through OGS's Bidder Notification System (BNS) as of September 30, 2014.

9. PRE-BID CONFERENCE

Attendance at the pre-bid conference is not mandatory but it is **strongly recommended** that all Bidders attend the pre-bid conference. A Bidder must register for the pre-bid conference by sending an email to this effect to SST_auto@ogs.ny.gov on or before the "Pre-bid conference registration due" date indicated in Section 4 *Key Events/Dates*. The email should indicate the Bidder's legal business name and the name and title of pre-bid conference attendees. With respect to attendance of the Pre-Bid at the Empire State Plaza each interested Bidder is limited to three (3) representatives.

The pre-bid conference will be in the form of a webinar, held at the time and date indicated in Section 4 *Key Events/Dates*. Instructions for participation will be sent prior to the webinar to all registered Vendors. Vendors may also attend in person at Empire State Plaza, Albany, New York, or via conference call. The room location and conference call number will be provided to registered vendors prior to the conference.

Questions will be permitted and may be answered verbally at the pre-bid conference. However, answers may be deferred and included in the written OGS response to vendor inquiries, which will include answers to all submitted questions, (see Section 8 *Solicitation Inquiries / Designated Contacts*). Only those answers provided in writing are effective and binding.

10. SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OGS and an Offerer/Bidder during the procurement process. An Offerer/ Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/Bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period the Offerer/Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

11. REQUIREMENTS FOR CONTRACT ELIGIBILITY:

This contract area is open to **LIGHT DUTY VEHICLE DEALERS** who meet the following minimum qualifications:

- A. Are registered with the NYS Department of State as an entity authorized to conduct business in New York State (registration may be confirmed at http://www.dos.ny.gov/corps/bus_entity_search.html).
- B. Offer at least one Vehicle Manufacturer's Product Line, with a minimum discount from MSRP for the base Vehicle and Options;
- C. Are an authorized dealer of the manufacturer, and the manufacturer must agree to supply the dealer with the quantities of Vehicles to fulfill its obligations under the resultant contract with the State, (See Attachment 1: *Bid Documents (Paper)*, Section D: *Manufacturer's Certificate*);
- D. Agrees to offer the complete Product Line of the Original Equipment Manufacturer(s) that they are an Authorized Dealer for.
- E. Agree to, and are able to meet, the terms and conditions set forth in the Contract (see Contract Template);
- F. Provide proof of insurance coverage requirements, as described in Contract Template Appendix C: *Light Duty Vehicles Documents*, Number 3: *Insurance Requirements*, with their Bid and throughout the Contract term, as requested by NYSPRO.

If your company is a Light Duty Vehicle Dealer and meets the qualifications listed above, and you want to be considered for a Light Duty Vehicle Contract, you may obtain a copy of the Contract Template, and additional bid documents by clicking on the link on Page One.

12. BID SUBMISSION INFORMATION

This section sets forth bid submittal information and instructions for this solicitation.

12.1 IMPORTANT NOTICE TO POTENTIAL BIDDERS

A Bidder should take note of the following:

- A. Receipt of these Bid documents does not indicate that OGS NYSPRO has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the Bid opening and will be based on evaluation of Bid submissions compared to the specific requirements and qualifications contained in these Bid documents.
- B. To be considered responsive, a Bidder must submit a Bid that satisfies and addresses all requirements stated in this solicitation. **EXCEPT AS OTHERWISE PROVIDED IN THIS SOLICITATION, A BID THAT FAILS TO CONFORM TO THE REQUIREMENTS OF THE SOLICITATION MAY BE CONSIDERED NON-RESPONSIVE AND MAY BE REJECTED.**
- C. The Commissioner of OGS will receive Bids pursuant to the provisions of Article XI of the State Finance Law. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.
- D. If a Bidder wishes to make more than one Bid, such Bid(s) are to be submitted separately and are to be listed as "alternate" Bids. "Alternate" Bids must satisfy and address all requirements stated in this RFP, and will be evaluated as separate Bids.
- E. Portions of the successful Bidder's bid shall be incorporated into a final Contract, executed by the Contractor and OGS. Therefore, the bid must be signed by a partner, corporate officer, or other person authorized to commit its firm to all provisions of this solicitation and its bid as submitted. Once the Contract resulting from this solicitation is executed and approved, it will be posted on the OGS website.

12.2 BID FORMAT AND CONTENT

This section sets forth bid format and content information for this solicitation.

- A. The bid consists of the following documents:
 1. Standard Vendor Responsibility Questionnaire (SVRQ). A **paper** version print-out of the online certification page (if completed and certified online), OR a **paper** version of the SVRQ, completed and with original ink signature and notarized (see Section 19 *New York State Vendor Responsibility Questionnaire for Profit Business Entity*). Forms are available on the OSC website here: http://www.osc.state.ny.us/vendrep/vendor_index.htm;
 2. NY State Taxation and Finance forms ST-220-CA and ST-220-TD. A **paper** version of form ST-220-CA, completed and with original ink signature, and notarized. *Note: Form ST-220-TD, completed and with original ink signature, and notarized, must be submitted directly to the NYS Tax Department (see Section 20 Tax Law §5-A)*. Forms are available on the Tax Department website here: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf and http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf;
 3. Form EEO-100. A **paper** version of form EEO-100 (Equal Employment Opportunity Staffing Plan), completed and with original ink signature (See Section 22 *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*). The form is available on the OGS website here: <http://www.ogs.ny.gov/MWBE/Docs/EEO100.docx>;

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4. Proof of Insurance (General and Automobile Liability). A **paper** version of proof of compliance with general and automobile liability insurance requirements, as specified in Contract Template Appendix C-3: *Insurance Requirements*. Please review the documents prior to submittal to ensure that the documents conform to all requirements set forth in Appendix C-3, including:
 - a) ACORD Certificate of Liability Insurance that includes:
 - 1) The full legal company name of the Bidder in the "Insured" box;
 - 2) The company name and NAIC number of the insurer(s) affording coverage;
 - 3) Policy expiration dates that are current; and
 - 4) The Office of General Services listed as the Certificate Holder.
 - b) Additional requirements applicable to all insurance:
 - 1) A provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to OGS (listed in "Additional Remarks" section of ACORD, or a separate endorsement).
 - 2) Waiver of Subrogation (blanket policy language or a separate endorsement); and
 - 3) "The People of the State of New York, its officers, agents, and employees" named as additional insured (a separate endorsement);
 5. Proof of Insurance (Workers' Comp). A **paper** version of proof of compliance (e.g. NYS form C-105-2 or U-26.3) with NYS Workers Compensation insurance requirements, as specified in Contract Template Appendix C-3: *Insurance Requirements*. Forms are available on the Workers' Compensation Board website here: <http://www.wcb.ny.gov/>;
 6. Proof of Insurance (Disability). A **paper** version of proof of compliance (e.g. NYS form DB-120.1) with NYS Disability insurance requirements, as specified in Contract Template Appendix C-3: *Insurance Requirements*. Forms are available on the Workers' Compensation Board website here: <http://www.wcb.ny.gov/>;
 7. Attachment 1: Bid Documents (Paper), Section A. A **paper** version of Attachment 1: *Bid Documents (Paper)*, Section A: *Cover Sheet and Acknowledgements*, completed and with original ink signature, and notarized.
 8. Attachment 1: Bid Documents (Paper), Section B. A **paper** version of Attachment 1: *Bid Documents (Paper)*, Section B: *New York State Required Certifications*, completed and with original ink signature;
 9. Attachment 1: Bid Documents (Paper), Section C. A **paper** version of Attachment 1: *Bid Documents (Paper)*, Section C: *Encouraging Use of New York State Businesses*, completed, and with a list of NYS Businesses to be used in the performance of this Contract, if applicable;
 10. Attachment 1: Bid Documents (Paper), Section D. A **paper** version of Attachment 1: *Bid Documents (Paper)*, Section C: *Manufacturer's Certificate*, completed and with original ink signature;
 11. Attachment 2: Bid Documents (Electronic), Section A. An **electronic (on CD)** version of Attachment 2: *Bid Documents (Electronic)*, Section A: *Bid Submittal Checklist*, completed;
 12. Attachment 2: Bid Documents (Electronic), Section B. Does the bid include an **electronic (on CD)** version of Attachment 2: *Bid Documents (Electronic)*, Section B: *General Questions*, completed; and
 13. Attachment 2: Bid Documents (Electronic), Section C. Does the bid include an **electronic (on CD)** version of Attachment 2: *Bid Documents (Electronic)*, Section C: *Vehicle Discounts*, completed.
- B. Bidders are required to submit the documents in Paragraph A above, in the manner provided (i.e., **paper** or **electronic (on CD)**), by "Submission of bid and bid opening" time and date specified in Section 4 *Key Events/Dates*. If Bidder does not submit any of these documents by "Submission of bid and bid opening" time and date specified in Section 4 *Key Events/Dates*, Bidder is required to submit any document not submitted by

the time and date specified in Section 4 *Key Events/Dates*, within five (5) business days of NYSPro's written request for such document(s). Failure to submit a document within five (5) business days of NYSPro's written request for such document(s) will delay award of the resultant Contract, and may render the bid non-responsive and result in the disqualification of the Bid.

- D. Each bid shall include separately bound original paper documents, and a CD containing electronic files of the required documents specified above in Paragraph A. Documents must be submitted in one (1) sealed package and be received by the time and date specified in Section 4 *Key Events/Dates*.
1. Paper documents shall include original signatures and notary, where applicable. Documents should be submitted bound in a binder or by some other method (e.g., through the use of a three-hole report cover). Spiral binding is not desired by the State.
 2. Electronic media files shall be submitted on CD-ROM in Windows Vista format or later versions. Where the term "CD" or "CD-ROM" is used, it shall be understood that any of the following electronic media may be used: CD-ROM, DVD or flash drive. Each CD-ROM must be labeled on the outside with: (1) Full legal business name of Bidder and (2) The solicitation PR Number, as indicated on page one (1) of this solicitation document. Flash Drives may have identification information attached as opposed to being 'labeled'. It is the Bidder's responsibility to ensure that the documents submitted on CD are readable; Bidder is advised to verify that all submitted documents can be opened and viewed from the CD. If documents submitted on the CD are not readable, the Bid may be deemed non-responsive and be disqualified. *Note: in the event that the requested items require more space than one (1) CD, it is acceptable to submit two or more CDs.*
- E. In the case of discrepancies between the hard copy and the electronic media submission the electronic media submission shall take precedence over the hard copy submission.
- F. Bidder is responsible for ensuring that the most recently updated version of all required documents has been submitted. Any updated versions released after the initial bid release date will be posted at <http://www.ogs.ny.gov/purchase/biddocument/22878crBID.ASP> and announced via the OGS Bidder Notification Service (BNS).

12.3 BID DEVIATIONS

If your bid differs from the specifications explain such deviation(s) or qualification(s); and if necessary, attach a separate sheet. See Appendix B, §8 *Extraneous Terms*.

12.4 BID DELIVERY

Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to OGS prior to the date of the bid opening. LATE BIDS for the backdrop Contracts for award 22878 will only be reviewed after bids received by **August 11, 2014 at 11:00 AM ET** have been processed. E-mail bid submissions for items required at the time of bid opening are not acceptable and shall not be considered.

Bid Envelopes and Packages

An envelope and/or package containing a bid shall be clearly marked "**BID ENCLOSED**" and must state the **Bid Number, Bid Opening Date, and Time**. Failure to complete all information on the bid envelope and/or packages may necessitate the premature opening of the bid and may compromise confidentiality. Bids shall be delivered to:

**State of New York Executive Department
Office of General Services
New York State Procurement
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242**

FAX Transmittals

Facsimile transmittals are NOT acceptable for this solicitation.

Hand Deliveries

Bidders must allow extra time to comply with the building access procedures in effect at the Empire State Plaza when hand delivering bids or using deliveries by independent courier services. Bidders assume all risks for timely, properly submitted deliveries.

12.5 IMPORTANT BUILDING ACCESS PROCEDURES

To access the Corning Tower, all visitors must check in by presenting photo identification at the Information Desk.

A Bidder who elects to deliver its proposal is encouraged to pre-register for building access by contacting the NYSPRO receptionist at 518-474-6262 at least 24 hours prior to the bid submission date.

Visitors who are registered can check in directly with the Information Desk. Visitors who are not pre-registered will be directed to a designated phone to call the NYSPRO Receptionist. The Receptionist will register the visitor at that time but delays may occur. Bidders who intend to deliver bids or conduct NYSPRO business should allow extra time to comply with these procedures. Building Access procedures may change or be modified at any time. Note: Bids not received within NYSPRO, or the OGS Mailroom, by the time and date shown on the front page of the bid document will be considered late.

12.6 ELECTRONIC BID OPENING RESULTS

New York State Procurement (NYSPRO) posts bid results on the OGS/NYSPRO web page. The web page makes available bids (i.e.: photocopies of the bid cover page) received by NYSPRO for scheduled bid openings. Previously only available through Freedom of Information, such information is anticipated to be available online within two business days after the bid opening.

The Bid Opening Results Page is available at: <http://www.ogs.ny.gov/purchase/bidresults/bidresults.asp>

13. NOTIFICATION OF AWARD

The successful Bidder shall be advised by OGS in accordance with Appendix B §26 *Contract Creation/Execution*. OGS also distributes email notification to registered Authorized Users announcing the resultant contract award(s). The email includes a hyperlink to the posted award on the OGS website and is sent via the OGS Purchaser Notification Service (PNS) to registered Authorized Users. Authorized Users may register for the PNS at the following URL address: <http://ogs.ny.gov/PNS/default.asp> under Classification Code 25 and 46. All subsequent contract updates are also sent out via the PNS. Authorized Users of the contract submit Purchase Orders or other such order documents directly to the Contractor. See Appendix B §32 *Purchase Orders*.

14. DEBRIEFING

Unsuccessful Bidders shall be notified upon Notification of Award to the winning Contractor(s). A Bidder shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Requests for debriefings may be made both prior to and after Contracts are awarded. For debriefings prior to Contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that Bidder's proposal or bid. After Contract award, OGS shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to the solicitation, regarding the reason that the proposal or bid submitted by such Bidder was not selected for a Contract award. Requests for debriefings by unsuccessful Bidders must be addressed to OGS in writing. The post-award debriefing should be requested in writing within 30 calendar days of posting of the Contract award on the OGS website.

15. EXTENSION OF USE

Any Contract resulting from this solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also

participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

15.1 EXTENSION OF USE COMMITMENT

The Contractor agrees to honor all orders from State Agencies, political subdivisions and others authorized by law (see Section 13 *Extension of Use*) which are in compliance with the pricing, terms, and conditions set forth in the resulting Contract document.

Any unilateral limitations/restrictions imposed by the Contractor on eligible Authorized Users will be grounds for rejection of the Bid or cancellation of the Contract.

16. OVERLAPPING CONTRACT ITEMS

Vehicles available in the resultant Contracts under Award 22878 may also be available from other New York State Awards. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

17. PERFORMANCE AND BID BONDS

There are no bonds required for the Contract resulting from this solicitation. In accordance with Appendix B §45 *Performance/Bid Bond*, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the initial term, or any renewal term, for the resulting Contract.

18. NEW YORK STATE VENDOR FILE REGISTRATION

Prior to being awarded a contract pursuant to this Solicitation, the Bidder(s) and any designated authorized resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and Vendor IDs will be assigned to each of your authorized resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage certain vendor information in one central location for all transactions related to the State of New York.

If Bidder is already registered in the Vendor File, Bidder must enter its ten-digit Vendor ID on the first page of the solicitation. Authorized resellers already registered should list the ten-digit Vendor ID along with authorized reseller information.

If the Bidder is not currently registered in the Vendor File, Bidder must request assignment of a Vendor ID number from OGS. Complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) and submit the form to OGS in advance of your Bid. Please send this document to the Designated Contact in the solicitation. In addition, if an authorized reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form (http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) should be completed by each designated authorized reseller and submitted to OGS. The OGS will initiate the vendor registration process for all Bidders and their authorized resellers. Once the process is initiated, registrants will receive an email identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the vendor file please visit the following website:

http://www.osc.state.ny.us/vendor_management/.

19. NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY

- A. OGS conducts a review of prospective contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business

integrity, and past performance history. By submitting a bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible and that the State will be relying upon the Bidder's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website, http://www.osc.state.ny.us/vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendrep.htm.

In order to assist the State in determining the responsibility of the Bidder prior to Contract Award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date. A Bidder's Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the bid opening to provide sufficient time to complete the Questionnaire.

B. The Bidder agrees that if it is awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

20. TAX LAW §5-A

Section 5-a of the Tax Law requires certain contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to the NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts

where the total amount of such contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Contractor filed the ST-220-TD with NYS Department of Taxation and Finance (DTF). Note: NYS Department of Taxation and Finance receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. Contractor should complete and return the certification forms within five (5) business days of request (if the forms and not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Contractor certification forms and instructions are provided below. Form No. ST-220-TD must be filed with and returned directly to DTF and can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf.

Vendors may call DTF at 518-485-2889 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF website at: <http://www.tax.ny.gov/>.

21. NEW YORK STATE REQUIRED CERTIFICATIONS

A Bidder is required to submit the signed New York State Required Certifications (Attachment 1: *Administrative Submittal (Paper)*, Section B: *New York State Required Certifications*). Failure to submit this document may result in a Bid being considered non-responsive and may result in a Bid being rejected.

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

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A, OGS recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises and the employment of minority group members and women in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting versus the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establishes goals for maximum feasible participation of New York State

Certified minority and women-owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees to submit with the bid a staffing plan on Form EEO 100 identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to OGS, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Business Participation Opportunities for MWBEs

For purposes of this procurement, OGS has conducted a comprehensive search and has determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to the awarded Contractors. Contractors are, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. To locate MWBEs, the Directory of Certified Businesses can be viewed at: <http://www.esd.ny.gov/MWBE/directorySearch.html>

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

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

23. NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in centralized contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B §27 *Participation in Centralized Contracts*.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS NYSPRO Customer Services at 518-474-6717.

24. NEW YORK STATE PROCUREMENT RIGHTS

New York State hereby reserves the right to:

- A. Reject any or all bids received in response to this solicitation;
- B. Withdraw the solicitation at any time, at the Agency's sole discretion;

- C. Make an award under the solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the solicitation;
- E. Seek clarifications and revisions of bids;
- F. Prior to the Bid opening, amend the solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- G. Prior to the Bid opening, direct Bidders to submit solicitation modifications addressing subsequent solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the bids received;
- L. Adopt all or any part of a Bidder's bid in selecting the optimum configuration.
- M. Negotiate with the Bidder responding to this solicitation within the solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidders' bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's bid and/or to determine a Bidder's compliance with the requirements of the solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or, optionally, in other specified circumstances as detailed in the solicitation requirements;
- P. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of ninety (90) calendar days from the Bid opening; and
- Q. Use bid information obtained through site visits, management interviews, and the state's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the solicitation.
- R. OGS reserves the right to use an on-line process, such as reverse auction, to make acquisitions under the resulting contracts. Bidder agrees that if awarded a Contract, it will participate in the on-line process established by OGS.
- S. The State reserves the right to exclude from award any Light Duty Vehicles that, at the sole discretion of the State, will not be approved for purchase by an Authorized User (e.g., Vehicles which are considered to be "luxury sports cars" or "exotic cars").

25. DISPUTES

Disputes shall be handled in accordance with Contract section II.30 *Disputes*.