



# Bid Solicitation Information

## Subject: Contract Requirements and Bid Information

DATE: July 7, 2015

IFB/RFP: 22935                      BID OPENING DATE | TIME: August 13, 2015                      | 11:00AM ET

GROUP | TITLE: 72007 | Heavy Equipment Rental (Statewide)

### OGS DESIGNATED CONTACTS:

Matthew Jones	CMS 1	518-474-4163	SSTIndustrial@ogs.ny.gov
Wendy Reitzel	CMS 3	518-473-5280	SSTIndustrial@ogs.ny.gov

### 1. TO PROSPECTIVE BIDDERS:

The Office of General Services is establishing new centralized contracts for the rental of Heavy Equipment.

- A. The resultant contracts shall be for the Product Line and associated Ceiling Prices set forth in Appendix C: *Heavy Equipment Rental Contract Documents*, Number 5: *Contract Price List*.
- B. Heavy Equipment Rental shall be on an as-needed basis by Authorized Users via a competitive Rental Quote process (see Contract Template Section II.10 *Procurement Method*), with Rental provided, at a minimum, to Authorized User locations in the counties set forth in Appendix C: *Heavy Equipment Rental Contract Documents*, Number 1: *Contractor Information*.
- C. Purchase of Heavy Equipment shall not be permitted under the Contracts. This solicitation is intended for short term Rental (i.e., Daily, Weekly or Monthly). Long term leasing (e.g., six month or more Rental Period), shall not be permitted under the Contracts.
- D. This is a periodic recruitment solicitation. The initial recruitment period begins on the "Bid Opening / Begin date for periodic recruitment" date and ends on the "Closing date for periodic recruitment period" date indicated in Section 3 *Key Events/Dates*. Bids received during this initial recruitment period shall be reviewed and processed in accordance with Section 6 *Method of Award of Contract*.

After this initial recruitment period, additional bid submissions shall not be accepted by OGS until the next periodic recruitment period is advertised by OGS. It is anticipated that the next periodic recruitment period shall begin one (1) calendar year from the "Closing date for periodic recruitment period" date indicated in Section 3 *Key Events/Dates*. OGS reserves the right to not advertise any additional periodic recruitment periods, to advertise a periodic recruitment that begins sooner than one (1) year from the "Closing date for periodic recruitment period" date indicated in Section 3 *Key Events/Dates*, and to offer additional periodic recruitment periods only to vendors that provide Heavy Equipment Rental to specific geographic area(s).

- E. In order to be eligible for contract award on the "Contract term begin for contracts (estimated)" date indicated in Section 3 *Key Events/Dates*, a Bidder must submit all required bid documents in accordance with Section 11 *Bid Submission Information*. The bid documents are available on the OGS website at <http://nyspro.ogs.ny.gov/content/finding-bid-opportunities>. Further information about

Contract Scope, Solicitation Inquiries, Requirements for Contract Eligibility, and Bid Information and Requirements are included in this memo.

A Contract Template containing the contract terms and conditions is also provided on the OGS website at <http://nyspro.ogs.ny.gov/content/finding-bid-opportunities>. The Contract Template consists of the following documents:

1. Base Agreement;
2. Appendix A: *Standard Clauses for New York State Contracts (January 2014)*
3. Appendix B: *General Specifications (May 2015)*
4. Appendix C: *Heavy Equipment Rental Contract Documents:*
  - a) Number 1: *Contractor Information*
  - b) Number 2: *Report of Contract Usage*
  - c) Number 3: *Insurance Requirements*
  - d) Number 4: *Contract Modification Procedure*
  - e) Number 5: *Contract Price List*
  - f) Number 6: *Rental Quote Forms*

## **2. CONTRACT PERIOD AND RENEWALS**

All Contracts awarded under solicitation 22935, including those executed during any subsequent periodic recruitment period, shall 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.

### **2.1 SHORT TERM EXTENSION**

In the event a replacement Contract has not been issued, the Contracts may be extended unilaterally by the State for an additional period of up to one (1) 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 (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

## **3. KEY EVENTS/DATES**

<b><u>EVENT</u></b>	<b><u>DATE</u></b>	<b><u>TIME</u></b>
Solicitation release	July 7, 2015	
Closing date for vendor inquiries	July 21, 2015	5:00 PM ET
Pre-bid conference registration due	July 24, 2015	5:00 PM ET
Discretionary pre-bid Conference	July 30, 2015	10:00 AM ET
Closing Date for post pre-bid conference vendor inquiries	August 3, 2015	5:00 PM ET
OGS response to vendor inquiries (estimated)	August 6, 2015	5:00 PM ET
Bid Opening / Begin date for periodic recruitment period	August 13, 2015	11:00 AM ET
Contract term begin for contracts (estimated)	October 1, 2015	
End date for periodic recruitment period	November 1, 2015	5:00 PM ET

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#### **4. CONTRACT SCOPE:**

The resultant backdrop contracts shall be for the Contractor's complete Product Line that meets the Contract definition of Heavy Equipment.

- A. Product Line shall mean a group of related Heavy Equipment offered for Rental by a single company in their usual course of business.
- B. Heavy Equipment shall refer to equipment which is intended for heavy work such as earthmoving, construction, lifting containers or materials, drilling holes in earth or rock, concrete or paving application or street sweeping (e.g., aerial lifts, large towable air compressors, generators and light towers, concrete saws, earth compactors and rollers, backhoes, motor graders, skid-steer loaders, bulldozers, wheel loaders, trenchers, utility tractors, excavators, forklifts, sweepers and utility vehicles), and other related attachments and equipment.

#### **5. ESTIMATED QUANTITIES**

The resulting Contract(s) are Indefinite Delivery, Indefinite Quantity (IDIQ) Contracts. 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 \$2,300,000.00 annually. The individual value of each Contract is indeterminate. See Appendix B §29 *Estimated/Specific Quantity Contracts* and §26 *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 each 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 Procurement Services' 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 from the estimates provided in this solicitation.

#### **6. METHOD OF AWARD OF CONTRACT**

Award shall be made to the responsive and responsible Bidder(s) who meet the minimum requirements listed in Section 10 *Requirements for Contract Eligibility*, 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.

OGS intends to award contracts simultaneously to all responsive and responsible Bidders that submitted bids by the "Bid Opening / Begin date for periodic recruitment period" date indicated in Section 3 *Key*

*Events/Dates* on the “Contract term begin for contracts (estimated)” date indicated in Section 3 *Key Events/Dates*. A Bidder responding to this solicitation is advised that each bid will undergo an initial administrative review for completeness. In order for a bid to be evaluated, it must include all required documents for a complete bid (see Section 11.2 *Bid Format and Content*). Upon completion of the administrative review, OGS will request any missing documentation from the Bidder, and will review all documents for completeness upon receipt of the missing documents. All required documents for a complete bid, as set forth in Section 11.2 *Bid Format and Content*, must be submitted and be completed to the satisfaction of OGS in order for the bid to be deemed responsive and eligible for Contract award on the “Contract term begin for contracts (estimated)” date indicated in Section 3 *Key Events/Dates*.

Vendors that miss the “Bid Opening / Begin date for periodic recruitment period” date indicated in Section 3 *Key Events/Dates*, and Bidders that have not submitted all required documents for a complete bid, completed to the satisfaction of OGS, by the “Contract term begin for contracts (estimated)” date indicated in Section 3 *Key Events/Dates*, may submit the required documents at any time prior to the “End Date for periodic Recruitment Period” indicated in Section 3 *Key Events/Dates*. Such submissions will be reviewed in the order in which they were received after submissions received by the “Bid Opening / Begin date for periodic recruitment period” date indicated in Section 3 *Key Events/Dates* have been processed, and will be awarded upon completion of the contract process, provided that all required documents have been submitted and are completed to the satisfaction of OGS by the “End Date for periodic Recruitment Period” indicated in Section 3 *Key Events/Dates*.

**7. SOLICITATION INQUIRIES / DESIGNATED CONTACTS**

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

<p>Primary Contact:                  Matthew Jones, Contract Management Specialist                  Telephone No. (518) 474-4163                  E-mail: <a href="mailto:SSTIndustrial@ogs.ny.gov">SSTIndustrial@ogs.ny.gov</a></p>	<p>Secondary Contact:                  Wendy Reitzel, Team Leader                  Telephone No. (518) 473-5280                  E-mail: <a href="mailto:SSTIndustrial@ogs.ny.gov">SSTIndustrial@ogs.ny.gov</a></p>
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Submit all questions 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 [SSTIndustrial@ogs.ny.gov](mailto:SSTIndustrial@ogs.ny.gov) by the “Closing date for vendor Inquiries” or “Closing Date for post pre-bid conference vendor inquiries,” as applicable, indicated in Section 3 *Key Events/Dates*. A Bidder is strongly encouraged to submit questions at the earliest convenience.

OGS reserves the right to also consider questions received after the official question and answer period has ended. To the extent that OGS elects to respond to questions submitted after the official question and answer period has ended, OGS shall distribute responses in the same manner as questions submitted by the “Closing Date for post pre-bid conference vendor inquiries” indicated in Section 3 *Key Events/Dates*.

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.

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**8. PRE-BID CONFERENCE**

Attendance at the pre-bid conference is not mandatory. A Bidder that elects to attend must register for the pre-bid conference by sending an email to that effect to [SSTIndustrial@ogs.ny.gov](mailto:SSTIndustrial@ogs.ny.gov) and should do so on or before the "Pre-bid conference registration due" date indicated in Section 3 *Key Events/Dates*. The email should indicate the Bidder's legal business name and the name and title of pre-bid conference attendees. Each interested Bidder is limited to three (3) representatives at the pre-bid conference at the Empire State Plaza.

The pre-bid conference will be held at the time and date indicated in Section 3 *Key Events/Dates*. Vendors may attend in person at Empire State Plaza, Albany, New York, or via conference call. The room location and conference call number shall be provided to registered vendors prior to the conference. On-site registration, while not preferred, shall be permitted.

The purpose of the pre-bid conference is to review bid submittal procedures and to discuss vendor questions related to the solicitation. Questions shall 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 shall include answers to all submitted questions, and be posted on the OGS website in accordance with Section 7 *Solicitation Inquiries / Designated Contacts*. A vendor may submit additional questions by the "Closing Date for post pre-bid conference vendor inquiries" indicated in Section 3 *Key Events/Dates*. Only those answers provided in writing are effective and binding.

**9. 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](http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp).

**10. REQUIREMENTS FOR CONTRACT ELIGIBILITY:**

This contract area is open to vendors that provide Heavy Equipment Rental that meet the following minimum qualifications:

- A. Are either 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](http://www.dos.ny.gov/corps/bus_entity_search.html)), or if not incorporated in New York State, can provide a Certificate of Good Standing from the applicable state where the business was formed or incorporated;
- B. Offer their complete Heavy Equipment Product Line for Rental;
- C. Provide a Contract Pricelist with a Ceiling Price for Heavy Equipment Rental to be offered under the Contract.
  1. "Contract Pricelist" shall refer to the Excel document, set forth in Appendix C: *Heavy Equipment Rental Contract Documents*, Number 5: *Contract Price List* which lists, among other things, a

description of the Heavy Equipment available for Rental, a Ceiling Price for Daily, Weekly and Monthly Rental Periods, and Delivery Charge(s), for the Heavy Equipment available for Rental.

2. "Ceiling Price" shall refer to a maximum price that a Contractor may charge an Authorized User for a service offered under the Contract. OGS reserves the right to reject Product from the Contract Pricelist that is determined, at the sole discretion of OGS, to have an unreasonably high Ceiling Price. Such determination shall be based on available industry Heavy Equipment Rental pricing guide(s) and comparison with Rental Prices offered by competitors in the same geographic area.
- D. Agree to, and are able to meet, the terms and conditions set forth in the Contract (see Contract Template);
- E. Provide proof of insurance coverage requirements, as described in Contract Template, Appendix C: *Heavy Equipment Rental Contract Documents*, Number 3: *Insurance Requirements*, in accordance with Section 11.2 *Bid Format and Content*, and throughout the Contract term, as requested by Procurement Services.

## **11. BID SUBMISSION INFORMATION**

This Section, (i.e., 11.1 through 11.6), sets forth bid submittal information and instructions for this solicitation.

### **11.1 IMPORTANT NOTICE TO POTENTIAL BIDDERS**

A Bidder should take note of the following:

- A. Receipt of these bid documents by a vendor does not indicate that OGS Procurement Services 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 by the "End Date for periodic Recruitment Period" indicated in Section 3 *Key Events/Dates*.
- 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 submit 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 solicitation, 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.

### **11.2 BID FORMAT AND CONTENT**

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

- A. The complete bid for the backdrop contract consists of the following documents. All required documents for a complete bid must be submitted in the manner and format set forth below (i.e.,

**paper** or **electronic**) and be completed to the satisfaction of OGS in order for the bid to be deemed responsive and eligible for Contract award. Unless otherwise specified, only one (1) of each document is required for a complete bid submission. Multiple copies are not required.

**Note: A Contract Template is posted with the solicitation documents on the OGS website at <http://nyspro.ogs.ny.gov/content/finding-bid-opportunities>. Do not submit the Contract Template with your bid. The Contract Template is intended to familiarize Bidders with the terms and conditions that will be included in the resultant Contracts from this solicitation. The Contract Template is not the final Contract. Portions of the Contract Template that are blank shall be completed by OGS based on the Bidder's submission and tentative awardees will be provided with a final Contract for execution by the Bidder and OGS.**

1. Standard Vendor Responsibility Questionnaire (SVRQ). See Section 18 *New York State Vendor Responsibility Questionnaire for Profit Business Entity*.
  - a. Online **electronic** completion of the SVRQ on the OSC website, with a Certification Date no more than six (6) months prior to the bid opening date,  
OR
  - b. A **paper** version of the SVRQ, completed and with original ink signature and notarized no more than six (6) months prior to the bid opening date.

Forms are available on the OSC website at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm). Click on "Accessing the VendRep System" to complete the SVRQ online, or "Forms for Vendor Use" to complete the paper version. Questions about the SVRQ should be directed to [ITServiceDesk@osc.state.ny.us](mailto:ITServiceDesk@osc.state.ny.us).

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 19 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](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](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 21 *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>;
4. Form MWBE 100. A **paper** version of form MWBE 100 (Utilization Plan), completed and with original ink signature (See Section 21 *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/MWBE100.docx>.
5. Proof of Insurance (General and Automobile Liability). A **paper or electronic** version of proof of compliance with general and automobile liability insurance requirements, as specified in Contract Template, Appendix C: *Heavy Equipment Rental Contract Documents*, Number 3: *Insurance Requirements*. Please review the documents prior to submittal to ensure that the documents conform to all requirements set forth in Appendix C: *Heavy Equipment Rental Contract Documents*, Number 3: *Insurance Requirements*, including:

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- 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 New York State Office of General Services, Procurement Services, 38th Floor, Corning Tower, Albany, New York 12242 listed as the Certificate Holder.
  - b) Additional required endorsements applicable to all insurance (submit a separate endorsement document):
    - 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.
    - 2) Waiver of Subrogation naming "The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation as an Authorized User and their officers, agents, and employees"; and
    - 3) "The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation as an Authorized User and their officers, agents, and employees" named as an additional insured.
6. Proof of Insurance (Workers' Comp). A **paper or electronic** 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: *Heavy Equipment Rental Contract Documents*, Number 3: *Insurance Requirements*. Instructions on how to obtain the forms are available on the Workers' Compensation Board website at <http://www.wcb.ny.gov/content/onlineforms/obtainC105.jsp> and [http://www.wcb.ny.gov/content/ebiz/wc\\_db\\_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp)
  7. Proof of Insurance (Disability). A **paper or electronic** version of proof of compliance (e.g. NYS form DB-120.1) with NYS Disability insurance requirements, as specified in Contract Template Appendix C: *Heavy Equipment Rental Contract Documents*, Number 3: *Insurance Requirements*. Instructions on how to obtain the forms are available on the Workers' Compensation Board website at <http://www.wcb.ny.gov/content/onlineforms/obtainDB120-1.jsp> and [http://www.wcb.ny.gov/content/ebiz/wc\\_db\\_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp);
  8. Attachment 1: Bid Documents (Paper). A **paper** version of each section in Attachment 1: *Bid Documents (Paper)*, completed and with original ink signature, where applicable. This attachment includes the four (4) sections listed below.
    - a) Section A: *Cover Sheet and Acknowledgements*, completed and with original ink signature, and notarized;
    - b) Section B: *New York State Required Certifications*, completed and with original ink signature; and
    - c) 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;
  9. Attachment 2: Bid Documents (Electronic). An **electronic** version of Attachment 2: *Bid Documents (Electronic)*, completed. This attachment includes the five (5) sections listed below.

**Note: Do not submit a PDF version of this document. Do not split the individual tabs contained in this attachment into a separate Excel document for each section;**

- a) Section A: *Bid Submittal Checklist*;
  - b) Section B: *General Questions*;
  - c) Section C: *Rental Area*;
  - d) Section D: *Equipment Offered*; and
  - e) Section E: *Contract Pricelist*.
- B. Bidder is required to submit any document listed above in Paragraph A that is not submitted with the initial bid submission upon Procurement Services' written request for such document(s). Failure to submit a document upon Procurement Services' 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. Failure to submit all required documents, completed to the satisfaction of OGS by the "End Date for periodic Recruitment Period" indicated in Section 3 *Key Events/Dates*, shall result in the bid being deemed non-responsive and shall result in the disqualification of the bid. See Section 6 *Method of Award of Contract*
- C. Each bid shall include the **paper** and **electronic** documents specified above in Paragraph A.
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, or via email to [SSTIndustrial@ogs.ny.gov](mailto:SSTIndustrial@ogs.ny.gov). 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) business name of Bidder and (2) solicitation number 22935. Each email should reference the business name of the Bidder and solicitation number 22935 in the email subject line.
- D. In the case of discrepancies between the paper and the electronic media submission the electronic media submission shall take precedence over the paper submission.
- E. 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://nyspro.ogs.ny.gov/content/finding-bid-opportunities> and announced through the New York State Contract Reporter site. A Bidder that submits an outdated version of a bid document will be required to resubmit the document using the most recent version.

### **11.3 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 §6 *Extraneous Terms*.

### **11.4 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 22935 will only be reviewed after bids received by the "Bid Opening / Begin date for periodic recruitment period" date indicated in Section 3 *Key Events/Dates* have been processed. Email 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  
Procurement Services  
Corning Tower - 38<sup>th</sup> 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.

**11.5 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 bid is encouraged to pre-register for building access by contacting the Procurement Services 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 Procurement Services Receptionist. The Receptionist will register the visitor at that time but delays may occur. Bidders who intend to deliver bids or conduct Procurement Services 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 Procurement Services, or the OGS Mailroom, by the time and date shown on the front page of the bid document will be considered late.

**11.6 ELECTRONIC BID OPENING RESULTS**

Procurement Services posts bid results on the OGS/Procurement Services web page. The web page shall make available copies of the Attachment 1: Bid Documents (Paper). Section A: *Cover Sheet* received by Procurement Services from each Bidder for this solicitation.. Such information is anticipated to be available online within two (2) business days after the bid opening.

The Bid Opening Results Page is available at: <http://nyspro.ogs.ny.gov/nyspro-bid-openings>.

**12. NOTIFICATION OF AWARD**

Successful Bidder(s) shall be advised by OGS in accordance with Appendix B §24 *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

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may register for the PNS at the following URL address: <http://ogs.ny.gov/PNS/default.asp> under Classification Code 22 and 72. 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 §31 *Purchase Orders*.

### **13. DEBRIEFING**

Unsuccessful Bidders shall be notified upon Notification of Award to the successful 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. The debriefing prior to Contract award should be requested in writing within thirty (30) calendar days of notification that the bid or proposal was disqualified from further consideration or the Bidder was a non-awardee.

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 thirty (30) calendar days of posting of the Contract award on the OGS website.

### **14. 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.

#### **14.1 EXTENSION OF USE COMMITMENT**

The Contractor agrees to honor all orders from State Agencies, political subdivisions and others authorized by law (see Section 14 *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.

### **15. OVERLAPPING CONTRACT ITEMS**

Product available in the resultant Contracts under Award 22935 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.

### **16. PERFORMANCE AND BID BONDS**

There are no bonds required for the Contract resulting from this solicitation. In accordance with Appendix B §44 *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.

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**17. 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](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](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/](http://www.osc.state.ny.us/vendor_management/).

**18. 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](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\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.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.

#### **19. 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](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](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/>.

## **20. 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.

## **21. 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**

### **POLICY STATEMENT**

The New York State Office of General Services ("OGS"), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation 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" (the "Disparity Study"). The Disparity Study 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 establish 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 labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (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 this 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 on Form EEO 101, identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and 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 (including gender expression), 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 NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBEs)

##### **A. MWBE Contract Goals**

For purposes of this procurement, OGS hereby establishes a goal of 5% for Minority-owned Business Enterprises (MBE) participation and 5% for Women-owned Business Enterprises (WBE) participation (collectively referred to as MWBE) for a total Contract MWBE goal of 10%. The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under this Contract. The directory of New York State Certified MWBEs can be viewed at:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.

The MWBE Regulations are located at 5 NYCRR § 140 - 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women-Owned Businesses and Community Relations identified on the front page of the solicitation.

A Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract (see clause D below). Contractor agrees that OGS may withhold payment pending receipt of the required MWBE documentation.

**B. By submitting a bid or proposal, Bidder/Contractor agrees to the following:****1. Breach of Contract and Liquidated Damages**

In accordance with 5 NYCRR § 142.13, Bidder/Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and OGS may withhold payment from the Contractor as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

**2. Utilization Plan**

- a. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid or proposal.
- b. The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the Contract, a description of the Contract scope of work the Contractor intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE, and performance dates of each component of the Contract that the Contractor intends to be performed by a MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- c. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt.
- d. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

**3. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:**

- a. If a Bidder fails to submit a MWBE Utilization Plan;
- b. If a Bidder fails to submit a written remedy to a notice of deficiency;
- c. If a Bidder fails to submit a request for waiver; or
- d. If OGS determines that the Bidder has failed to document good faith efforts.

**C. Request for Waiver**

1. In accordance with 5 NYCRR § 142.7, a Bidder who is able to document good faith efforts to meet the goal requirements, as set forth in clause D below, may submit a request for a partial or

total waiver on Form BDC 333, accompanied by supporting documentation, at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses B(2)(c) & (d) and C(3) will apply.

2. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
3. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office for Minority- and Women-Owned Businesses and Community Relations identified on the front page of the solicitation for guidance.

#### **D. Required Good Faith Efforts**

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

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

#### **E. Monthly MWBE Contractor Compliance Report**

In accordance with 5 NYCRR § 142.10, Contractors are required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State. If a Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS. More information about the NYSCS will be provided if Bidder is awarded a Contract.

**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>

## **22. 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 §26 *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 Procurement Services Customer Services at 518-474-6717.

## **23. 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 bid 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;

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- 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;
  - 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; and
  - 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.

**24. CONFLICT OF TERMS AND CONDITIONS.**

Conflicts among the documents in the Solicitation shall be resolved in the following order of precedence:

- A. Appendix A, *Standard Clauses for New York State Contracts*;
- B. The Bid Solicitation Information Document;
- C. The Contract Template
- D. Appendix B, *General Specifications*; and
- E. Other Appendices and attachments.