



Solicitation (Revised July 13, 2018)

**BIDS SHALL BE SENT TO THE ADDRESS LISTED IN SECTION 3.12 ONLY
(E-Mail or Facsimile Bid Submissions Are NOT Acceptable)**

BID OPENING DATE: Tuesday, August 14, 2018 TIME: 11:00 A.M. ET		TITLE: GROUP 20915 – Furniture, All Types (except Hospital Room and Patient Handling) (Statewide) Classification Code 56:		
SOLICITATION NUMBER: 23109		SPECIFICATION REFERENCE: As Incorporated Herein		
CONTRACT PERIOD: To Be Determined				
DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law§ 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.				
Primary Designated Contacts				
Matthew Jones Contract Management Specialist 1 Telephone No. (518) 474-4163 E-mail address: matthew.jones@ogs.ny.gov		Cheri McCullough Contract Management Specialist 2 Telephone No. (518) 402-5552 E-mail address: cheri.mccullough@ogs.ny.gov		
For MWBE Questions Only		For SDVOB Questions Only		
Email Address: MWBE@ogs.ny.gov		Email Address: VeteransDevelopment@ogs.ny.gov		
Lori Brodhead Phone: (518) 486-9866	Tryphina Ramsey Phone: (518) 486-9284	Anthony Tomaselli Phone No. (518) 474-2015		
For INSURANCE Questions Only				
Email Address: ogs.sm.insrev@ogs.ny.gov				
Leighann Brown		Telephone No. (518) 457-6595		
Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>		NYS Vendor Identification Number: <i>(See New York State Vendor File Registration Clause)</i>		
Legal Business Name of Company Bidding:				
D/B/A – Doing Business As (if applicable):				
Street	City	State	County	Zip Code
E-mail Address:		Company Web Site:		

If applicable, place an "x" in the appropriate box(es) <i>(check all that apply)</i>			
<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service-Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE NOT BIDDING AT THIS TIME BECAUSE:			

FOR PROCUREMENT SERVICES USE ONLY

LITERATURE <input type="checkbox"/>	LETTER <input type="checkbox"/>	FLASH DRIVE <input type="checkbox"/>	OTHER <input type="checkbox"/>	# of Binders/Packages: _____
PURC. MEMO <input type="checkbox"/>	CD/DVD <input type="checkbox"/>	SDHC CARD <input type="checkbox"/>	_____	Documented by: _____

RETURN THIS PAGE AS PART OF BID

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 180 days from the date of submission to the New York State (“NYS”) Office of General Services (“OGS”), or for such longer period as is set forth in the Solicitation.
2. The Bidder can and will provide and make available, at a minimum, the products, deliverables and/or services as described in the Solicitation.
3. The Bidder has read and understands the provisions of the Solicitation, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS’s procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at https://ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Bidder referenced above and that he or she signed this Bidder Certification as the legally binding act of the Bidder.

Print Full Bidder Entity Name

By: _____
Signature of Person Authorized to
Legally Bind the Bidder

Print Name of Signatory

Print Title of Signatory

Date

RETURN THIS PAGE AS PART OF BID

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SECTION I INTRODUCTION

1.1 Overview

This Solicitation is being issued by the New York State Office of General Services – Procurement Services (OGS) for certain furniture products. OGS is a New York State Agency authorized by law to establish Centralized Contracts for use by NYS Agencies and other Authorized Users, as that term is defined by State Finance Law Section 163(1)(k). The purpose of this Solicitation is to award multiple Contracts for furniture to responsive and responsible Bidders that are able to meet the terms and conditions of this Solicitation and the requirements detailed in *Section 2 – Bidder Qualifications and Service Requirements*, and whose product offerings meet the scope of this Solicitation, as detailed in *Section 1.2 – Scope*. The Contract(s) awarded as a result of this Solicitation will be for use by New York State Agencies and other Authorized Users (see Section 5.20 – *Non-State Agencies Participation in Centralized Contracts*) Statewide. Accordingly, references to the State and its Agencies as Authorized Users under this Solicitation and the ensuing Contract(s) shall encompass all such entities within the definition of “Authorized User” set forth in Appendix B – *General Specifications*.

Contract awards will be made to all responsive and responsible Bidders who meet qualifications as detailed in *Section 2 - Bidder Qualifications and Service Requirements*. The prices proposed by Bidders in response to this Solicitation are to be based upon discounts from Manufacturer List Prices.

This Solicitation outlines the terms and conditions, and all applicable information required for submitting Bids for the commodities described herein. Bidders should pay strict attention to the Bid submission date and time, as noted in *Section 1.4 – Key Events/Dates*, to prevent disqualification. To ensure compliance with Bid requirements and prevent possible disqualification, Bidders must follow the format and instructions described in *Section 3.10 – Format and Content of Bid Submission*.

1.2 Scope

It is the intent of this Solicitation and subsequent Award to establish a comprehensive multiple manufacturer’s product line Contract for new, unused and in current production commercial and institutional quality furniture in the following categories listed below. **Products, including fabrics and finishes, must have an established identifying number, such as a model number, stockkeeping unit (SKU), etc., and a defined List Price. Customized furniture and/or solutions without a defined identifying number (model number, SKU, etc.), and List Price will not be allowed.** It is the State’s intent to award multiple Contracts to responsive and responsible Bidders that are able to meet the terms and conditions of this Solicitation and the requirements detailed in *Section 2 – Bidder Qualifications and Service Requirements*, and whose product offerings meet the scope of this Solicitation as described herein. Contracts will be available for use by all New York State Authorized Users (Statewide).

For the purposes of this Solicitation, furniture is described within ten (10) Furniture Product Categories, defined as follows:

1. Conference Furniture (seating and tables), includes, but is not limited to:
 - a. stacking chairs and all other seating to go with conference tables;
 - b. tables of various styles and materials suitable for conference rooms or areas from basic to executive levels; and
 - c. meeting room tables.
2. Dormitory Furniture, includes, but is not limited to:
 - a. bedroom, lounge, dining hall, in room storage and desks; and
 - b. furniture suitable for school dormitory (generally more durable and versatile than household).
3. General Purpose Tables, includes, but is not limited to:
 - a. work tables,
 - b. occasional tables; and
 - c. folding tables.
4. High Density Filing, includes, but is not limited to:
 - a. manual or powered shelving designed to take as little space as possible; and
 - b. retrieval systems.
5. Household Furniture, includes, but is not limited to:
 - a. living room, dining room and bedroom furniture suitable for community residence programs (upholstered seating and cross over to dormitory or office lounge).
6. Library Furniture, includes but is not limited to:
 - a. bookcases, display cases, tables, chairs, lounge, seating, carts and circulation desks.
7. Office Furniture, includes, but is not limited to:

- a. bookcases, casegoods, lounge, seating and tables, includes: desks, file credenzas, and storage for use in office environments made of metal and/or wood. Bookcases for office and library application furniture include case goods, filing, storage and seating for upper level Executive offices, also usable for courtrooms. This category includes upholstered seating (chairs, loveseats and sofas) and occasional tables as would be found in a waiting area and includes ergonomic task, managerial chairs and side chairs.
8. School Furniture includes, but is not limited to:
- a. student desks, tables and seating found in classrooms for elementary schools through college; and
 - b. cafeteria tables.
9. Specialty Seating includes, but is not limited to:
- a. big and tall seating, bariatric, gang seating (such as that found in public transportation terminals) and laboratory stools.
10. Systems Furniture, includes, but is not limited to:
- a. products and parts to build cubicles and modular office space.

Bidder shall indicate the Furniture Product Categories offered within its Bid by marking an ‘X’ in each Furniture Product Category Bid within Attachment 13 - *Category Matrix* and submit with its Bid, as per Section 3 - *Bid Submission*.

NOTE TO BIDDERS - EXCLUSIONS:

1. Direct patient care medical furniture (for example, exam tables, wheel chairs, geriatric chairs, over bed tables, etc.), and remanufactured or refurbished furniture products, are excluded from the scope of this Solicitation.
2. Installation is excluded from the scope of this Solicitation. Installation of products such as systems furniture, high density filing systems, etc. shall be handled by the ordering entity separately from this Solicitation and resultant Contract(s) according to the Purchasing Guidelines and discretionary limits, and shall comply with wage and labor rates, and all state and local codes and public works guidelines, if applicable.

1.3 Estimated Quantities

The Contract(s) resulting from this Solicitation will be Indefinite Delivery, Indefinite Quantity (IDIQ) Contracts. All quantities or dollar values listed within this Solicitation are estimates. The dollar value of furniture sales, as tracked previously in the Statewide Financial System, was approximately \$90,000,000 during a four-year period. For purposes of this Solicitation, the estimated dollar value for Statewide participation over the five (5) year term is \$135,000,000.

Numerous factors could cause the actual value of the Contracts resulting from this Solicitation to vary substantially from the historical value. Such factors include, but are not limited to, the following:

- Such Contracts will be nonexclusive Contracts;
- There is no guarantee of quantities 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 purchased during the contract period; and,
- 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.

Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this Solicitation.

1.4 Key Events/Dates

Event	Date	Time
Solicitation Release Date	Tuesday, May 1, 2018	N/A
Deadline for Submission of Intent to Bid Form	Friday, May 11, 2018	11:00 A.M. ET
Closing Date for Submitting Questions to OGS	Tuesday, May 15, 2018	5:00 P.M. ET
OGS Response to Vendor Questions	Tuesday, May 29, 2018 (approximate)	N/A

Bid Submission Deadline and Bid Opening	Tuesday, August 14, 2018	11:00 A.M. ET
Tentative Award Date	Friday, November 30, 2018	N/A

1.5 Bidder Questions

All inquiries concerning this Solicitation **must** be addressed to the following Procurement Services Designated Contact(s) and issuing office:

PRIMARY CONTACT	SECONDARY CONTACT
Matthew Jones, Contract Management Specialist 1	Cheri McCullough, Contract Management Specialist 2
NYS Office of General Services	NYS Office of General Services
Corning Tower - 38th Floor	Corning Tower - 38th Floor
Empire State Plaza	Empire State Plaza
Albany, New York 12242	Albany, New York 12242
E-Mail: matthew.jones@ogs.ny.gov	E-Mail: cheri.mccullough@ogs.ny.gov

All questions regarding this Solicitation should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be submitted, via e-mail, to:

OGS.sm.PS_CM_FoodFurnitureHardware@ogs.ny.gov by the date and time indicated in Section 1.4 - *Key Events/Dates*. Questions submitted after the deadline indicated may not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document, which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter. Your company/Bidder must select the “opt-in” option within the Contract Reporter ad to receive notification updates of this Solicitation.

If Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the *Bidder Questions* period so that they may be given due consideration prior to the submission of Bids. See Section 3.5 - *Bid Deviations* for additional information.

Bidders are advised that OGS will not entertain any deviations to Appendix A. Deviations to Appendix B are strongly discouraged. OGS will also not entertain any exceptions to the Solicitation that are of a material or substantive nature.

1.6 MWBE and SDVOB Interest in Participating with Bidders

If a New York State certified MWBE or SDVOB would like to indicate its interest in working with participating Bidders, please send an e-mail entitled “Solicitation 23109 MWBE or SDVOB INTEREST_COMPANY_NAME” to OGS.sm.PS_CM_FoodFurnitureHardware@ogs.ny.gov on or before Friday, May 11, 2018, 5PM ET. The e-mail content should include:

1. Company Name;
2. Contact Name and Contact Information, including Phone Number, Mailing Address and E-Mail Address;
3. Brief description of the company and the products and/or services that the company offers that are related to this Solicitation (for example “Company ABC manufactures pencils”);
4. The NYS Certification Type (Minority and/or Women-Owned or SDVOB); and
5. Include the locations in NYS the company provides the commodities and/or services in.

A list of the NYS certified MWBE and SDVOB vendors who have expressed interest in this Solicitation through the timely submission of such e-mail, will be made available to prospective Bidders through the publishing of a Bid Solicitation Update Memorandum posted through the New York State Contract Reporter.

1.7 Intent to Bid

Bidders are encouraged, though not required, to submit a completed Attachment 9 - *Intent to Bid form* to OGS.sm.PS_CM_FoodFurnitureHardware@ogs.ny.gov by the due date listed in Section 1.4 - *Key Events/Dates*. Submission of the form allows OGS to complete a Vendor Responsibility review in advance of receipt of Bids. It also assists with providing a listing of potential Bidders interested in participating in this Solicitation. Submission of the Intent to Bid form is not a requirement in order to submit a Bid, nor does it disqualify a potential Bidder from submitting a Bid if they did not provide one.

1.8 New York State Contract Reporter

Bidders must register with the New York State Contract Reporter (“NYSCR”) 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. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must “bookmark the ad” on the upper right hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select “send me notification updates” option listed to the right of the ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR.

If you do not opt-in to receive notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents.

Be advised that submission of Bid responses to the Solicitation that do not reflect and take into account updated information may result in the Bid being deemed non-responsive to the Solicitation.

1.9 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 a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting, on a governmental entity’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter 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, are identified on the first page of the Solicitation and in the MWBE Designated Contacts, SDVOB Designated Contacts and Insurance Designated Contacts sections. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the 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 Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website: <https://www.ogs.ny.gov/acpl/>

1.10 Glossary

Capitalized terms used in this Solicitation shall be defined in accordance with Appendix B – *Definitions*, or as below:

“**Bid Deviation**” shall refer to any variance submitted or proposed by a Bidder, which deviates from, adds extraneous terms to, conflicts with or offers an alternative to any term, condition, specification or requirement of the Solicitation.

“**Business Day**” shall refer to Monday through Friday from 8:00 A.M. – 5:00 P.M. ET, excluding NYS Holidays and federal holidays.

“**Electronically Searchable Price List (Price List)**” shall mean text and numeric digits can be searched for and found electronically within the document by using the software’s ‘find’ function within the document.

“**MWBE**” shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-Owned Business Enterprise.

“**NYS Holidays**” refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

“**NYS Vendor ID**” shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

“**Preferred Source Products**” shall refer to those Products that have been approved in accordance with State Finance Law §162.

“**Preferred Source Program**” shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the

“form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to state agencies, political subdivisions and public benefit corporations (including most public authorities).

“**Procurement Services**” shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSPPro”) and Procurement Services Group (“PSG”).

“**Retail Price (List Price/MSRP)**” shall mean the price at which a Manufacturer or Distributor recommends their Products be sold commercially, either nationally or regionally. This applies even if the Manufacturer or Distributor names this recommended pricing differently.

“**SDVOB**” shall refer to a NYS-certified Service-Disabled Veteran Owned Business.

1.11 Appendix A

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this Solicitation as if set forth at length herein. **Please retain this document for future reference and do not return to OGS as part of the Bid submission.**

1.12 Appendix B

Appendix B, *General Specifications*, dated April 2016, attached hereto, is hereby expressly made a part of this Solicitation as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. **Please retain this document for future reference and do not return to OGS as part of the Bid submission.**

1.13 Appendix C

Appendix C, Contract Modification Procedures, attached hereto, is hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

1.14 Attachments

Attachments 1-13, listed on page 5, attached hereto, are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

1.15 Conflict of Terms and Conditions

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

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Solicitation;
3. Appendix B, General Specifications;
4. All other appendices and attachments to the Solicitation;
5. **The Bidder’s Bid.**

SECTION 2 BIDDER QUALIFICATIONS AND SERVICE REQUIREMENTS

2.1 Qualifications

Bidder is advised that the State’s intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Any Bid not meeting these requirements may be deemed non-responsive and denied further consideration for award. Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required. Procurement Services retains the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work. A Bidder shall meet the following qualifications:

2.1.1 Bidder Qualifications:

- A. A Bidder must be either:
 1. An established Manufacturer of the products bid, or
 2. An Authorized Representative of an established Manufacturer of the products bid.

- B. Any Authorized Representative hereby guarantees that:
 1. It is an Authorized Representative of the Manufacturer;

2. The Manufacturer has agreed to supply such Authorized Representative with all quantities of products required to fulfill its obligations under any resultant Contract with the State, and
 3. The Authorized Representative will provide a **completed and signed Attachment 14 - Manufacturer's Certificate**, acknowledging this level of support, with the Bid. If such Manufacturer's Certificate is not submitted with the Bid, Bidder must provide within three (3) business days of request by OGS, (via e-mail is acceptable).
- C. A Bidder must have maintained an organization capable of performing the work described in this Solicitation, in continuous operation, for a minimum of three (3) years immediately prior to the Bid Opening date in Section 1.4 - *Key Events/Dates*. By the Bid Opening date, such organization has adequate inventories of the products offered, and is capable of processing and shipping large numbers of orders to various destinations Statewide.
- D. A Bidder must currently hold at least one Government Entity contract (GSA contract, State contract, Local Governmental Entity contract, BOCES contract, Governmental Cooperative contract, etc.) for Furniture products included in Section 1.2 *Scope*, by the Bid Opening date in Section 1.4 - *Key Events/Dates*.
1. Proof shall be provided in the form of a current active contract, to include: contract number and description, contract term dates, copy of current contract price list, including, at a minimum, the Item Number, Item Description, List Price, Discount Percentage and Net Price; contact name, telephone number and e-mail address of the contracting entities' contract administrator.
 2. Bidder shall submit such proof of currently held Government Entity contract with the Bid. If proof is not submitted with the Bid, Bidder must provide within three (3) business days of request by OGS, (via e-mail is acceptable).
- E. A Bidder must have past sales revenue for Furniture products included in Section 1.2 - *Scope*, in excess of \$400,000.00 annually, for a minimum of three (3) consecutive years immediately prior to the Bid Opening Date, to one or more Government Entities (GSA, State, Local, BOCES, Governmental Cooperative, etc.) and/or those Authorized Users as defined herein who are eligible to use State contracts (Political Subdivisions, Schools, Not for Profits, etc.).
1. Required proof of past sales revenue will be in the form of a summary (Proof of Past Sales Revenue – in Excel format) of the annual total sales reported under a current or previous Government Entity contract(s) (GSA contract(s), State contract, Local Governmental Entity contract(s), BOCES contract(s), Governmental Cooperative contract(s), etc.) and contain, at a minimum, the Contract Number the sale(s) were made under, the Government Entity name, product item number and description, date of sale, List Price, discount percentage, and net sale amount. Bidders may use past sales revenue for the Furniture Product Categories Bid (see Attachment 13 – *Category Matrix*).

Proof of past sales revenue may include, but are not limited to:

- a. sales made under successful bids to Government Entities, for example, (GSA contract(s), State contract, Local Governmental Entity contract(s), BOCES contract(s), Governmental Cooperative contract(s), etc.); and
- b. past sales revenue for Furniture products included within Section 1.2 – *Scope*.

NOTE TO BIDDERS: OGS reserves the right to waive any or all of the requirements pertaining to Past Sales, if deemed to be in the best interest of the State.

2.2 Service Requirements

2.2.1 Delivery:

- A. All Bidders will be required to offer inside delivery, which may be at an additional cost represented by a percentage above the net price charged, and may be charged at a different percentage rate for Downstate and Upstate. For this Solicitation, Downstate is defined as the Metropolitan NYC area, which includes the following nine (9) counties: Rockland, Westchester, Nassau, Suffolk, Queens, Kings, New York, Bronx and Richmond. Upstate is defined as the rest of New York State.
- B. Inside delivery is intended for essentially free standing furniture when the Authorized User is unable to bring it from the dock to the point of use. It shall consist of removal from truck, bringing to point of use, uncrating, minor assembly (for example: attach hutch to desk or credenza, attach a return, set shelves in bookcase and leveling), removal of debris and leaving ready for use. Inside delivery cannot be applied to installation, such as systems furniture and high density filing, which is not included in the scope of this Solicitation.

The inside delivery fee may not be used to assemble furniture shipped KD (“Knocked Down”). (See Section 2.2.9 - *Delivery Condition*).

The inside delivery fee shall be based on the following conditions:

1. Delivery location has a loading dock or off street loading area;
 2. The delivery will be to the same floor as the loading dock or there is a freight elevator available;
 3. The delivery may be completed during regular working hours;
 4. Delivery fee must be agreed to by the Authorized User and Contractor prior to delivery; and
 5. Deviations from the above shall require a separate non-contract negotiation by the Authorized User at the time of order.
- C. Delivery shall be expressed in number of calendar days required to make delivery after receipt of a Purchase Order. Product is required as soon as possible and guaranteed delivery may be considered in making award. Delivery shall be made in accordance with instructions from the Authorized User included on the Purchase Order. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor’s obligation to seek clarification from the Authorized User and, if applicable, from OGS Procurement Services.
- D. Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State, as designated by the ordering agency including dock delivery and tailgating of load, which means bringing the truck to the loading dock or loading area and bringing the load to the tailgate of the truck for agency personnel to remove the load without entering the truck. In addition, upon agreement, delivery locations may be expanded per the "Extension of Use" clause.
- E. The Bidder may allow multiple delivery points from the same Authorized User, at their discretion, at the time the order is placed, and/or prior to delivery.

2.2.2 Authorized Resellers:

OGS agrees to permit Bidders to utilize approved Authorized Resellers to participate as alternate distribution sources pertaining to this Solicitation. Authorized Resellers may be added quarterly during the Contract term, or extension, provided that the Awarded Bidder complies with all of the Reseller Requirements set forth below. There are no set minimum or maximum number of Authorized Resellers who may be used; however, such participation is subject to the following conditions:

Authorized Reseller Requirements:

- A. Designation of Authorized Reseller(s): Bidder/Contractor shall specify within Attachment 12- *Authorized Reseller List*, whether orders must be placed directly with Bidder/Contractor, or may be placed directly with Authorized Reseller(s). If Authorized Reseller(s) are designated to fulfill orders under this Contract, issue invoices and receive payment, and do not possess a New York State Vendor ID number, the Bidder/Contractor must provide OGS, in advance, with an Office of the State Comptroller (OSC) Substitute W-9 form https://ogs.ny.gov/BU/RE/Retail/2017/18316_18317/Substitute2017.pdf, which should be completed by each of the Authorized Reseller(s), and submitted to the Office of General Services. OGS will initiate the vendor registration process for all Bidders recommended for Contract Award and their Authorized Reseller(s). Once the process is initiated, such registrants will receive an e-mail from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application. **All Authorized Reseller(s) must be approved in advance by OGS.**
- B. If the Bidder/Contractor allows Authorized Reseller(s) to participate in the Contract, requests to add or delete Authorized Reseller(s) or to modify their information must be submitted by the Contractor for prior approval of OGS. Submissions for the addition and/or deletion of Authorized Reseller(s) will be accepted quarterly, during January, April, August and December, each during a two-week period only, which will be determined solely by OGS; for example, between April 1st through April 15th, and December 15th through December 31st. Contractors will be notified, via email, by the OGS Contract Management Specialist, in advance of the allowable timeframe for submissions, and provided with the current information and template(s) for the update. Contractors must utilize Attachment 12 – *Authorized Reseller List* for each submission. OGS reserves the right to give first consideration to substantially complete submissions, as well as to deny revisions to a Contractor’s Authorized Reseller List whereas the Contractor is delinquent regarding administrative requirements, including, but not limited to, the submission of Attachment 8 - *Report of Contract Usage*, and/or proof of Insurance requirements. In addition, OGS reserves the right to deny revisions to a Contractor’s Authorized Reseller list during the last six (6) months of the Contract term.

- C. Bidders should submit with their Bid a listing of Authorized Reseller(s) chosen to fulfill orders, and/or payments under this Solicitation and subsequent Award, within Attachment 12 – *Authorized Reseller List*, and note whether the Authorized Reseller is a Minority or Women Owned Business Enterprise (MWBE), a Service-Disabled Veteran Owned Business (SDVOB), or a New York State Small Business (SB). Should the Bidder allow the Authorized Reseller to take orders, ship direct, or accept payments, they must note such within the Attachment. All Authorized Resellers chosen to fulfill orders to include, though not limited to, issuing invoices and receiving payments, must be authorized by OGS.

2.2.3 Catalogs:

Contractor shall be required to furnish, without charge, to Authorized Users that request them, catalog(s) and Price Lists identical to those accepted with their Bid, including any changes (additions, deletions, etc.) pursuant to the Contract. Catalogs and Price Lists provided must reflect all products excluded from the resultant Contract, either through the omission of those portions or by obvious indications, within the catalogs and Price Lists. All offerings within the Catalog must match the Item Numbers, and Product Descriptions of the offerings listed within the Contract, and clearly indicate whether the pricing is List Price, or Net Contract Pricing. List Pricing, or Net Contract Pricing indicated within the Catalog must match that listed under the Contract.

Catalogs and Price Lists may be furnished in either hard-copy or electronic format. If available in both formats, they shall be furnished in the format preferred by the requesting Authorized User. In the case of discrepancies regarding products and/or pricing between the catalog or Price List furnished by the Contractor to the Authorized user, in either electronic or hard copy formats, the products and pricing approved by OGS, in effect and posted on the OGS website, per the Contract, shall always take precedence. Upon request, the Contractor shall assist Authorized Users in the use of catalogs and Price Lists.

2.2.4 Finishes:

All finishes shall be applied in accordance with the highest industry standards to assure the longest possible durability. All materials used must be lead-free and shall meet all OSHA Standards in place at the time of manufacture. Material Safety Data Sheets (MSDS) shall be made available upon request. Colors shall be manufacturer's standard offering and shall be designated at the time of order.

2.2.5 Workmanship:

The assembly and finishing of all component parts shall be of the highest quality workmanship and comply with all applicable industry standards as set forth by, but not limited to, UL, ANSI/BIFMA, ASTM or OSHA.

All upholstery shall be free of loose stitching, raw edges, ripples or sagging. The finished product shall be neat, trim and visually acceptable.

Cushion covers on removable cushions shall be easily removable for replacement and/or cleaning. Complete instructions for cushion and cushion cover removal and cleaning shall be included with, but not attached to, each piece of furniture delivered.

2.2.6 Flammability:

- A. All textiles shall meet the flammability requirements of NFPA 260 latest update at the time of Bid submission when tested in accordance with the methods of that standard.
- B. **For upholstered furniture compliant with TB 117-2013, furniture shall be free of intentionally added flame retardant chemicals, excluding electrical components. Further, all upholstered furniture complying with TB 117-2013 shall be labeled consistent with the manner described in Section 19094 of the California Business and Professions Code as of September 1, 2016 and shall be labeled as not containing flame retardant chemicals.**
- C. Compliance with Cal. 133 shall be available at an extra cost, if necessary.
- D. Certified Laboratory Test Results or Certificate of Compliance with Flammability Requirements on ALL upholstering fabrics and foam shall be submitted to OGS Procurement Services, upon request.

2.2.7 Construction:

Construction shall be Manufacturer's standard design and construction resulting in good durability in high use environments. Whenever possible, cushions on upholstered furniture should be easily removable for cleaning and covers should be easily removable for laundering and replacement.

2.2.8 Decorating Aids, Catalogs, And Price Lists:

Bidder shall provide to Authorized Users, upon request and at no additional charge, the following items:

- A. Quantities of fabric swatches to facilitate the interior decoration of their facilities. The swatches shall be 3" x 3" or larger, per Contractor availability, and be available for all regularly stocked fabrics.
- B. Photographs or drawings of the furniture that clearly show the product size, manufacturer name and model number of

each piece, and finish blocks for all finishes.

C. Price Lists and/or catalogs (as per Section 2.2.3 - *Catalogs*), and/or appropriate excerpts.

OGS must determine that the Bidder meets all the above requirements for the Bidder to be found responsive, as that term is defined in State Finance Law §163(1)(d). OGS reserves the right to verify all information provided by Bidder.

Bidders, if requested, shall provide a minimum of three (3) references within five (5) business days of request. References shall be governmental accounts, and shall demonstrate the ability of the vendor to fulfill contract requirements similar in scope to the size, nature and complexity of the outlined Bid. References shall include: Government/Customer name, address, contact person, telephone number, e-mail address, and number of years Bidder has provided the services to the referenced account.

2.2.9 Delivery Condition:

All furniture with the exception of systems furniture, high density filing, frame type beds where side rails are attached to head and foot boards without the use of tools and dining room tables shall be delivered fully assembled and ready for use. No “KD” furniture shall be accepted unless contractor’s representative is present to assemble it upon receipt. Other exceptions may be made with prior agreement between the contractor and ordering agency.

IMPORTANT NOTE: Failure to meet any of the above qualifications within Section 2 – *Bidder Qualifications and Service Requirements*, in whole or in part, may result in a rejection of the Bid of that Bidder as non-responsive.

SECTION 3 BID SUBMISSION

3.1 Notice to Potential Bidders

Receipt of Bidder’s Bid by OGS does not indicate that OGS has pre-determined a Bidder’s qualifications to receive a Contract award. Such determination shall be based on the evaluation of a Bid compared to the specific requirements and qualifications contained in this Solicitation.

3.2 Performance and Bid Bonds

There are no bonds for this Contract. 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 Term of the resulting Contract.

3.3 New York State Vendor File Registration

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder(s) and any Authorized Reseller(s) 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, unique New York State Ten-digit vendor identification numbers will be assigned to your company and 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 all vendor information in one central location for all transactions related to the State of New York.

If Bidder is already registered in the New York State Vendor File, the Bidder must enter its Vendor ID on the first page of this Solicitation. Authorized resellers already registered should list the Vendor ID number along with the Authorized Reseller information. (The Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.)

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. Bidder must 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 Bid submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if an Authorized Reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each Authorized Reseller and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and Authorized Resellers. Once the process is initiated, registrants will receive an e-mail identifying their 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

3.4 Vendor Responsibility For Accuracy

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission, as requests for Bid withdrawals of any type may not be granted. All exceptions and deviations must be noted in Bids, otherwise the Bid will be considered in full compliance with

requirements and no adjustments may be made after award is issued. Bidders, in the preparation of their Bids, should maintain complete and accurate calculation worksheets, which clearly support their submissions.

If an incorrect reference, parameter, model, code number, component, product, etc. is stated by OGS or by the Bidders, the correct reference shall prevail, and the proper alternative or corrected reference may be considered. Bidders are advised to raise any issues or questions regarding any such incorrect references during the Bidder Inquiry period so that it may be addressed by OGS prior to the deadline for submission of Bids.

3.5 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Section 1.5 - *Bidder Questions*, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the *Bidder Questions* period so that they may be given due consideration prior to the submission of Bids. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

Bidder is advised that OGS will not entertain any exceptions to Appendix A (Standard Clauses for New York State Contracts). OGS will also not entertain exceptions to the Solicitation or Appendix B (General Specifications) that are of a material and substantive nature.

Extraneous terms submitted on standard, pre-printed forms (including, but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

3.6 Responsiveness

To be considered responsive, a Bidder must submit a Bid that satisfies and addresses all requirements stated in the Solicitation. A Bid that fails to conform to all requirements may be considered non-responsive and may be rejected.

3.7 Incorporation

Portions of the successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. A final Contract will be formalized either through a separate contract document or through a contract award letter incorporating the Bid, each having its own provision governing conflict of terms.

3.8 Bid Liability

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the production of a Bid or for any work performed prior to the formal execution of a Contract.

3.9 Firm Offer

Bids must remain open and valid for at least one-hundred-eighty (180) calendar days from the due date unless the time for awarding the contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 180 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

3.10 Format and Content of Bid Submission

The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid Opening, as per Section 1.4 - *Key Events/Dates*. Late Bids shall be rejected, except as provided by Appendix B, *Late Bids*. Any Bid pricing or portions thereof submitted on CD or flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder.

E-mail or facsimile Bid submissions are not acceptable.

It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up. Only completed files (in the specified format) should be saved to a CD or flash drive.

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to all requirements of the Solicitation may be considered non-responsive and may be rejected.

Bidder shall submit the entire Bid on CD or flash drive (electronic format), and/or in folder format, in accordance with the

instructions below. Bids are to be submitted on both electronic media and hard copy/paper document, where requested. Bids not submitted on electronic media or not formatted properly may be rejected.

Items listed below are required in paper copy with original ink signature, where noted. CDs or flash drives, as well as folders, should be labeled with the name of the Bidder and Solicitation number #23109. A complete Bid consists of ONE (1) copy of each of the following in the format listed (NOTE: all Excel documents shall NOT be locked or password protected by Bidder):

1. Electronic (CD or flash drive) containing:

- a) Completed Pages 1 and 2 of the Solicitation (signed and scanned) (PDF);
- b) **Electronically Searchable Price List (such as Attachment 1 – Pricing, a PDF catalog or manufacturers Price List (PDF or Excel);** (see Section 2 below for additional requirements)
- c) Completed Attachment 2 – *NYS Required Certifications* (signed and scanned) (PDF);
- d) Completed Attachment 3 – *Encouraging Use of NYS Businesses* (PDF);
- e) Completed Attachment 4 – *Insurance Requirements* (All necessary proof of insurance as outlined) (PDF);
- f) Completed Attachment 5 – *Bidder Information Questionnaire* (Excel);
- g) **Completed Attachment 6 – Bidder Submission Checklist (Excel);**
- h) Completed Attachment 10 – *Contact Information and Terms and Conditions* (Excel);
- i) Completed Attachment 12 – *Authorized Reseller List*, if applicable (MS Word);
- j) Completed Attachment 13 – *Category Matrix* (Excel);
- k) **Completed Attachment 14 - Manufacturer's Certificate – (PDF);**
- l) **Completed Attachment 15 – EO177 Certification - (signed and scanned) (PDF);**
- m) Completed ST-220-CA – *Contractor Certification* (signed/notarized and scanned) (PDF);
- n) Proof of Past Sales Revenue – (Excel); and
- o) Proof of Current Government Contract – (PDF).

2. Requirements for Pricing:

- a) Price Lists must be electronically searchable. Attachment 1 – Pricing may be used; however, it is not required.
- b) Price Lists must include base models, as well as options and/or upgrades; each must have an identifying number (model number/item number/SKU, etc.), and List Price.
- c) Price Lists should contain only those Categories and items which correspond to the Bidder's submission of Attachment 13 – *Category Matrix* and are within the Scope of the Solicitation.
- d) All Bidder Price List submissions should be provided in a single/combined PDF document, vs. multiple individual PDF documents, where possible.

Requirements for Attachment 1 – Pricing (if used) in Electronic Format ONLY (Microsoft Excel, NOT LOCKED):

Do not change the spreadsheet structure. Any changes may result in rejection of Bid.

3. A folder containing hard copy versions, with original ink signature, of each of the following:

- a) Completed Pages 1 and 2 of the Solicitation (**signed in ink**);
- b) Completed Attachment 2 – *NYS Required Certifications* (**signed in ink**);
- c) **Completed Attachment 15 – EO177 Certification (signed in ink), and;**
- d) Completed ST-220-CA – *Contractor Certification* (**signed/notarized**) (**signed in ink**).

3.10.1 Notes to Bidder:

1. Do not include hard copies of documents within the folder other than what is requested herein.
2. Do not provide Attachment 1 – *Pricing or other searchable Price List* in hard copy.
3. Do not return copies of Appendices A and B with your Bid.
4. Bidder should note that a completed electronic copy of Attachment 1 – *Pricing* or other **Electronically Searchable Price List** is required. Bidders must provide a discount; full List Price will not be accepted. Price List submissions that direct Authorized Users to contact the manufacturer or Authorized Dealer for pricing, and/or do not contain List Pricing **may be rejected**, and the Bidder may be considered non-responsive, with no further consideration for contract award. Failure by a Bidder to submit **Electronically Searchable** pricing may result in automatic rejection of that Bidder's Bid and no further consideration for award. Failure to submit pricing includes missing or incomplete pricing; electronic media that does not allow for review/retrieval of information contained within; failure to complete all tabs and/or columns **within Attachment 1 - Pricing**, as per the Instructions within the Pricing Excel Worksheet/Workbook and/or failure to provide Pricing in unlocked Excel Format.
5. In the case of discrepancies between paper copies and/or electronic media submissions of the documents required in both formats, the electronic (CD or flash drive) copy shall take precedence over the paper copy.
6. **In the case of discrepancies between Electronically Searchable Price Lists, the Price List with the lowest price shall take precedence.**

7. A Bidder should note that any indicators or messages that have been built into the Attachments are informational only and provided solely for the purpose of assisting Bidders in completing the Attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the Attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the Attachments to ensure compliance with the Solicitation requirements.

3.11 Bid Envelopes and Packages

All Bids must have a label on the outside of the box or package itemizing the following information:

1. BID ENCLOSED (preferably bold, large print, all capital letters);
2. Bid Number (Solicitation #23109);
3. Bid Opening Date and Time (as per Section 1.4 – *Key Events/Dates*), Tuesday, **August 14**, 2018 at 11:00 A.M. ET); and
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2).

Failure to complete all information on the Bid envelope and/or package may necessitate the opening of the Bid prior to the scheduled Bid Opening.

3.12 Bid Delivery

Bids shall be delivered to the following address on or before 11:00 A.M. ET, on or before the Bid Opening date listed in the *Key Events/Dates* section:

**State of New York Executive Department
Office of General Services
Procurement Services
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242
Solicitation #23109**

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the clock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid Opening. Late Bids shall be rejected, except as provided in Appendix B, *Late Bids*. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

3.13 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the information desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services receptionist at (518) 474-6262 at least 24 hours prior to the visit. 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. Building access procedures may change or be modified at any time.

3.14 Bid Opening Results

Procurement Services posts Bid information on the OGS web page. The web page makes available information about the list of Bidders that responded to the Solicitation, and may or may not include pricing. Such information is anticipated to be available online within two (2) business days after the completion of the Bid Opening. The Bid Opening Results Page is available at: <https://nyspro.ogs.ny.gov/nyspro-Bid-openings>. NOTE: Due to the large number of anticipated responses to this Solicitation, there may be limited space available for in-person attendance to the Bid Opening. Bidders interested in attending the Bid Opening in person are strongly encouraged to contact the Designated Contact to inquire about seating availability. OGS reserves the right to deny in-person attendance for this Solicitation.

3.15 New York State Reserved Rights

New York State reserves the right, in its sole discretion, to:

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- 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 the Bid;
- F. Amend the Solicitation prior to the Bid Opening to correct errors or oversights, or to supply additional information as it

becomes available;

- G. Direct Bidders, prior to the Bid Opening, to submit Bid 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 requirements 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 a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all 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 in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State;
- T. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, Region, or Lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining products, regions, or lots;
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing;
- W. Award Contracts on a rolling or staggered start basis (i.e. supplemental awards), either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation; and
- X. Unilaterally make revisions, changes and/or updates to any templates, Appendices (excluding Appendices A and B) and/or Attachments to this Contract without processing a formal amendment and/or modification.

3.16 Incorporation

Portions of the successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. A final Contract will be formalized either through a separate contract document or through a contract award letter incorporating the Bid, each having its own provision governing conflict of terms.

3.17 NYS Required Certifications

A Bidder is required to submit a signed Attachment 2 - *NYS Required Certifications* with its Bid. Failure to submit these documents may result in Bid being considered non-responsive and may result in a Bid being rejected.

SECTION 4 METHOD OF AWARD

4.1 Method of Award

Awards shall be made to all responsive and responsible Bidders that are able to meet the terms and conditions of this Solicitation and the requirements detailed in Section 2 - *Bidder Qualifications and Service Requirements*, and whose product offerings meet the Scope of this Solicitation, as detailed in Section 1.2 - *Scope* and whose prices indicate that those products will be provided at a reasonable price as determined by the NYS OGS. Reasonable prices may be determined by, but not limited to, reviewing prices on any current or previously awarded Government Entity contract and/or pricing offered by other Bidders for this Solicitation. Pricing shall be a discount from Manufacturer's List Price, and shall be equal to or better than any other offered to another Government Entity for the same type of products. Discounts will be confirmed by comparison with other Government Entity contracts held by the Bidder. The Bidder must supply copies of their current contract Price Lists with other Government Entities indicating the discount percentage, as per Section 2.1 - *Qualifications*. After the Bid Opening, each Bid will be screened for completeness and conformance with the stated Bidder Qualifications for Bid submission, as set forth in Section 2 of this Solicitation. Any Bid not meeting these requirements may be deemed non-responsive and denied further consideration for award.

Bids will be reviewed to ensure that the Bidder has provided all required Attachments, completed in full, and in original hard

copy, where requested. Failure by a Bidder to provide properly completed required documents and/or Attachments may result in their Bid being deemed non-responsive and denied further consideration for award. NOTE TO BIDDERS: OGS reserves the right to give first consideration to Bids which are substantially complete over those that are not, and to make awards on a rolling or staggered start basis, as per Section 3.15 - *New York State Reserved Rights*, as deemed necessary and determined solely by OGS Procurement.

Bidder must be financially stable and able to demonstrate the financial stability of the company. In addition to sales history, current financial statements or other financial information, as requested and deemed appropriate by OGS, must be provided within five (5) business days of request. New York State reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this contract.

The Commissioner reserves the right to evaluate and/or reject any and all Bids, in whole or in part and to waive technicalities, irregularities and omissions if in his or her considered judgment, the best interests of the State will be served. In the event satisfactory Bids, fully in accord with the Bid documents, are not received, the Commissioner reserves the right to consider late or non-conforming Bids as stipulated in "Late Bid" clause of Appendix B – *General Specifications*.

The New York State Office of General Services Procurement Services reserves the right to hold Periodic Recruitment during the contract period if it is deemed to be within the best interest of the State. During a Periodic Recruitment, Bidders responding to the Periodic Recruitment shall be required to submit this original Solicitation document, which may include an addendum containing additional applicable statutory requirements currently in effect when the new Solicitation/Invitation for Bids is issued. Bids received during Periodic Recruitment shall be evaluated under similar terms and conditions as Bids received for the original Solicitation. Once awarded a contract under the original Solicitation, a Contractor may not resubmit a Bid for future consideration until the new Solicitation/Invitation for Bids is issued. Notice of such Periodic Recruitment will be posted in the NYS Contract Reporter for a minimum of fifteen (15) business days prior to the submission due date.

4.2 Minor Deviations/Minor Technicality

The State reserves the right to have the flexibility to consider Bids with minor deviations or technicalities and to waive minor deviations or technicalities that may be consistent with the intent and scope of the Solicitation. This flexibility may permit a reasonable outcome in cases where the results of a fair, competitive process are clear but the award of a Contract is threatened due to a minor technicality or a minor deviation.

4.3 Notification of Award

Tentative Contract award(s) shall consist of written notice, via e-mail, to that effect by OGS to a selected Bidder, who shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible.

Non-awardees will also be notified, via e-mail, that their Bid was not selected for award.

SECTION 5 TERMS AND CONDITIONS

5.1 Contract Period

The Contract(s) awarded shall be in effect for a term of five (5) years. The Contract(s) period(s) shall commence after all necessary approvals, and shall become effective upon mailing or electronic communication of the final executed documents (see Appendix B, *Contract Creation/Execution*).

5.2 Procurement Instructions

The Contracts resulting from this Solicitation will be centralized Contracts issued under a multiple award structure. Before proceeding with a purchase, an Authorized User shall check the list of Preferred Source offerings and must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities or services of Preferred Source suppliers such as the Division of Correctional Industries (Corcraft), the New York State Preferred Source Program for People who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities or services meet the form, function, and utility of the Authorized User and the price offered by Corcraft does not exceed a reasonable fair market price and the price offered by NYSPSP and NYSID is within 15% of prevailing market prices. If a Preferred Source does not meet an Authorized User's form, function, and utility, or the Preferred Source price is more than fair market price or 15% above prevailing market prices, then the Authorized User may use this Contract.

A Matrix showing the Furniture Categories and Contractors offering products under those Categories will be posted on the OGS website. Authorized Users should determine from the Matrix the Category of furniture they desire, then review the listing of Contractors under that Category. Each Contractor's approved **Price List and/or** catalog of offerings (if available), will be posted on the OGS website, without exception, along with a listing of the furniture manufacturers each Contractor has available.

Bidders/Contractors are encouraged, though not required, to self-identify products meeting EO4 requirements within their Price List. Authorized Users are strongly encouraged to confirm the accuracy of the entries by contacting the Contractor directly.

Authorized Users are strongly encouraged to seek a minimum of three (3) quotes, where possible, as well as to seek better than Contract pricing for all items, especially when purchasing in volume, as Contractors may or may not automatically offer volume discounts. Volume discounts, if offered, will be shown on the *Contractors Contact Information and Terms and Conditions* page posted on the OGS Website.

When placing orders under this Award, the Authorized User must be familiar with and follow the terms and conditions governing its use. Authorized Users have the responsibility to document purchases, and such documentation should include:

1. a statement of need and associated requirements;
2. proof of obtaining all necessary prior approvals;
3. a summary of the Contract alternatives considered for the purchase; and
4. the reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

Authorized Users will place orders directly to the Contractor or the Contractor's Authorized Reseller (if applicable), as specified by the Contractor, and specify any shipping/delivery requirements.

All orders should clearly note the OGS Contract Name and Award Number, Contract Number, and Contractor Name. A Contractor shall not initiate delivery of products until the order is placed by an Authorized User.

Contractor must disclose any forms or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents, which contain additional terms or conditions, must receive pre-approval by the Authorized User. Additional terms or conditions that were not pre-approved by the Authorized User, or which conflict with the Contract terms and conditions, are void and unenforceable at the sole discretion of the State.

5.3 Short Term Extension

In the event 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 three (3) months upon notice to the Contractor, with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such extension), prices, delivery requirements and any approved modifications. Any such extension automatically terminates upon award of a replacement contract.

5.4 Method of Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*.

5.5 Bid Pricing Information

5.5.1 Products and Pricing:

- A. Bidders must submit an Electronically Searchable Price List, such as Attachment 1 – Pricing, a PDF catalog or manufacturer's Price List in either MS Excel or PDF format, which includes base models, as well as options and/or upgrades, based upon the Categories they are bidding (See Attachment 13-*Category Matrix*). Should a Bidder submit an Electronically Searchable catalog that does not contain pricing, an additional Price List containing pricing by Contractor Model/Item Numbers/SKU for those items must be submitted, in addition. Attachment 1 – Pricing may be used; however, it is not required.
- B. Identifying information, which includes, at a minimum, the Product Line Name, Contractor Model/Item Numbers/SKU, and/or Manufacturer Item Numbers, and List Pricing MUST be included within the Electronically Searchable Price List.
- C. Electronically Searchable Price Lists should contain only those Categories and items which correspond to the Bidder's submission of Attachment 13-*Category Matrix*, where the Bidder shall indicate the Furniture Product Categories offered under its Bid by marking an 'X' in each Furniture Product Category, as appropriate.
- D. The Bidder's pricing submission should not contain products or product lines that are out of Scope (see Section 1.2-*Scope*). Price Lists containing items, which do not include identifying information and List Pricing, and/or items that are out of Scope may be removed by OGS, at their sole discretion, and without exception.
- E. Bidder's may submit a discount for either the entire Price List or submit discounts by breakdowns of individual product line, style, function, etc., from the manufacturer's Retail Price List. Discount information, including discount percentages,

for each Price List must be entered within Attachment 10-*Contact Information and Terms and Conditions*. Bidders must provide a discount; full List Price will not be accepted.

- F. Price List submissions that direct Authorized Users to contact the manufacturer or Authorized Dealer for pricing, and/or do not contain List Pricing may be rejected, and the Bidder may be considered non-responsive, with no further consideration for contract award.
- G. Where discrepancies exist between Price List documents, the lowest price shall prevail.
- H. Price Lists submitted with the Bid shall remain in effect for one (1) year from the Bid Opening Date. Price adjustments will be allowed once per year thereafter, during the Contract term or extension, beginning on or around the anniversary of the Bid Opening Date, as determined solely by OGS Procurement, as per Section 5.7 - *Price Adjustments*.
- I. All Bidder Price List submissions should be provided in a single/combined PDF document, vs. multiple individual PDF documents, where possible.
- J. OGS will review each Bidder's Price List submission for completeness, and reserves the right to remove any item(s) where the Contractor Model/Item Numbers/SKU and/or Manufacturer Item Numbers, and/or List Pricing are not included, and/or where the item(s) and/or product line is determined to be out of Scope.
- K. All awarded Contractors' Price Lists must be reviewed and approved by OGS Procurement prior to posting on the OGS Contract website. OGS' determination of acceptable Price Lists, including, but not limited to products, pricing and discounts, shall be final. All OGS approved Contractor Price Lists will be posted on the OGS Procurement Services website, without exception.

5.5.2 EO4 Identification:

A Bidder should self-identify each individual product that meets the EO4 Requirements, **by selecting the appropriate entry from the drop-down box, or by entering an 'X' in the appropriate column(s) within Attachment 1 – Pricing, *should Attachment 1 – Pricing be used.*** See the Instructions tab within Attachment 1 – *Pricing* for additional information.

OGS supports the Executive Order 4 Requirements and strongly encourages Bidders to self-identify each item/offering that meets each listed requirement within Attachment 1 – *Pricing* to assist Authorized Users in making EO4 appropriate determinations. Although encouraged, Bidder completion of the EO4 columns, I through T is not required to be considered for Contract Award. Awarded Bidders must provide EO4 information upon request to Authorized Users.

5.5.3 Volume Discounts:

Bidders may, and are encouraged to, offer volume discounts, which shall apply to orders delivered to the same Authorized User and/or location, at the same requested time. Volume discounts, if offered, shall be based on products and pricing as submitted within **your submitted Price List**.

Volume discounts shall be entered within Attachment 10 – *Contact Information and Terms and Conditions*. Any restocking fees must be included within Attachment 10 as a percentage (%) of the net price. All approved discounts shall remain in effect for the entire contract period. Discounts may be increased during the Contract term, and as per Section 5.7 – *Price Adjustments*.

Volume discounts may be applied per Purchase Order, cumulatively per ordering entity, or cumulatively statewide. The Bidder shall indicate the basis for applying the volume discount(s) within Attachment 10 – *Contact Information and Terms and Conditions*. Volume discounts shall be defined and applied as follows: Purchase Order volume discounts shall be additional discounts applied to individual Purchase Orders over a specified dollar amount. Cumulative agency volume discounts shall be additional discounts applied to all future orders made by an individual ordering entity once an established volume has been met by that entity. Cumulative statewide volume discounts shall be additional discounts applied to all future orders for all state and non-state orders once an established volume has been met under this Contract.

5.5.4 Minimum Order:

Minimum order, if required, shall be established by the Bidder and stated on Attachment 10 – *Contact Information and Terms and Conditions* where indicated (See Section 3.10 – *Format and Content of Bid Submission*). The Bidder may offer to ship orders less than the minimum order with the freight prepaid and added to the invoice. It shall be the Authorized User's choice if they wish to accept the offer. Bidder must establish minimum order, if they so choose, at time of Bid submission.

5.6 Exclusions

OGS Procurement Services reserves the right to delete, before or after award, any of the products included in the Bidder's offering under this Solicitation that are determined to be out of scope. Notice of such deletion shall be provided to the Bidder by OGS.

5.7 Price Adjustments

Price Lists submitted with the Bid shall remain in effect for one year from the Bid Opening Date. Price adjustments will be allowed

once per year thereafter, during the contract term or extension, beginning on or around the anniversary of the Bid Opening Date, as determined solely by OGS Procurement Services.

Submissions for price adjustments will be accepted during a two-week period only (calendar week), which will be determined solely by OGS Procurement Services; for example, between July 2nd through July 13th. Contractors will be notified, via email, by the OGS Contract Management Specialist in advance of the allowable timeframe for submissions, and provided with the current information and template(s) for the update. Contractors shall adhere to the instruction in Attachment 11 – *Price List Update Guide*, and use the provided Appendix C - *Contract Modification Procedure* for all price adjustment requests. OGS reserves the right to give first consideration to substantially complete submissions, as determined solely by OGS Procurement, as well as to deny price adjustments to Contractors that are delinquent regarding administrative requirements, including, but not limited to, the submission of Attachment 8 - *Report of Contract Usage*, and/or proof of insurance requirements.

Once approved by OGS, discounts offered from manufacturer Price Lists may not be decreased at any time during the Contract term, unless satisfactory proof of undue hardship is submitted by the Contractor and approved by OGS. Proof may include, but not be limited to, signed statements by the Manufacturer detailing and attesting to the need for the discount reduction. Determination of undue hardship is at the sole discretion of OGS.

New manufacturer product lines may be offered within a price adjustment submission, as long as they are within the originally awarded furniture product Category(s). **Additional furniture Categories may not be added post award.** Contractor may offer discounts for the entire product line or breakdown by style, function, etc. from the Manufacturer's Price List. If the discount percentage is the same or greater than existing product lines, then no proof of reasonableness is required. The Contractor is required to provide proof of reasonableness for a new product line if the discount offered is less than existing product lines. Proof of reasonableness may be in the form of pricing from a Government Entity contract held with an entity other than OGS, including invoices from sales made to that entity that are less than twelve (12) months old from the date of the price adjustment submission, or sales reports that are less than twelve (12) months old from the date of the price adjustment submission for the product line offered.

All adjustments to a Contractor's previously approved **Price List** are allowable at the sole discretion of OGS Procurement Services. OGS reserves the right to remove any items(s) deemed to be out of scope and/or unreasonably priced. In addition, OGS reserves the right to deny price adjustments during the last twelve (12) months of the Contract term, without prior notice.

5.8 Centralized Contract Modifications

OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new products or services at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

All modifications proposed by the Contractor, shall be processed in accordance with Appendix C, *Contract Modification Procedure*. The Contractor shall submit all requests, except for product and pricing updates as set forth in Section 5.7 – *Price Adjustments*, in the form and format contained in Appendix C, *Contract Modification Procedure*. The form contained within Appendix C is subject to change at the sole discretion of OGS.

Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of Contract Terms*.

5.9 New York State Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>.

There are no fees required for a Contractor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: www.sfs.ny.gov and <https://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

5.10 Contract Administration

The Bidder/Contractor shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Bidder/Contractor shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Bidder/Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in Attachment 5 – *Bidder Information Questionnaire*. Contractor must notify OGS within five (5) business days if its Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically, via e-mail, to the attention of the OGS Contract Management Specialist, as shown on the front page of the Contract Award Notification document posted on the OGS website.

5.11 Insurance Requirements

The Contractor shall procure, at its sole cost and expense, and shall maintain in full force and effect at all times during the term(s) of the resultant Contract(s) resulting from this Solicitation, all policies of insurance pursuant to the requirements outlined in Attachment 4 - *Insurance Requirements*.

5.12 Report of Contract Usage

The Contractor shall furnish semi-annual reports, using the format specified in Attachment 8 – *Report of Contract Usage*, containing total sales for both State Agency and Authorized non-State Agency Contract purchases no later than forty-five (45) days after the close of the reporting period. For example, sales for January 1st through June 30th would be due by August 15th. Attachment 8-*Report of Contract Usage* template must be used, and the report must be completed in its entirety, referencing the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name. Incomplete, altered, locked, pdf. or hard copy submissions will not be accepted. The report must be submitted, via e-mail, in MS Excel format only, to the attention of the OGS Contract Management Specialist, as shown on the front page of the Contract Award Notification document posted on the OGS website. OGS Procurement reserves the right to make changes to the template and/or to request additional information, if needed. Additional related sales and/or detailed Authorized User purchase information may be required by OGS and must be supplied within thirty (30) calendar days, upon request. Failure to submit reports timely may result in the denial of price adjustments and/or Contract suspension.

5.13 Company and Contact Information

Changes regarding the Contractors company and/or contact information, during the Contract term, should be submitted, via e-mail, to the OGS Contract Management Specialist no later than five (5) business days of the change.

5.14 Contractor Requirements And Procedures For Participation By New York State Certified Minority-And Women-Owned Business Enterprises And Equal Employment Opportunities For Minority Group Members And Women

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-owned Business Enterprises (“MWBES”) and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, 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.
 - 1. Contractor and subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
 - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 - Staffing Plan.

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

- C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”).
 - 1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April,

July, October, and January.

2. Separate forms shall be completed by Contractor and any subcontractor.
 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall 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.

IV. Contract Goals

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

V. MWBE 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.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an 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 New York State 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. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied

towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.

- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. 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.
- F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
 - 1. If a Bidder fails to submit an MWBE Utilization Plan;
 - 2. If a Bidder fails to submit a written remedy to a notice of deficiency;
 - 3. If a Bidder fails to submit a request for waiver; or
 - 4. If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Business Enterprises for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in Clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver 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 V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. 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.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

VII. 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:

- A. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations and any responses thereto.
- B. A list of the certified MWBEs appearing in the Empire State Development (“ESD”) 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.
- C. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
- D. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
- E. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
- F. Other information deemed relevant to the request.

VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is 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 performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor’s responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification (“audit notice”) indicating that a representative of its company needs to log-in to the NYSCS to report the company’s MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor’s responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: “**Introduction to the System - Vendor training**” and “**Contract Compliance Reporting - Vendor Training**” to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>.
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on “**Account Lookup**” to identify the Contractor’s account by company name. Contact information should be reviewed and updated if necessary by choosing “**Change Info.**” It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through “**Request New User.**” When identifying the person responsible, please add “**- MWBE Contact**” after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for “**Contact Us & Support**” then “**Technical Support**” on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month

during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

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

IX. Breach of Contract and Liquidated Damages

- A. Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

X. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

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

5.15 New York State Vendor Responsibility

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 at <http://www.osc.state.ny.us/vendors/index.htm> or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see Section 3.3 - the *NYS Vendor File Registration*. 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 and submit 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.

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.

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

- A. The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, 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.
- B. The Commissioner of OGS, 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 issues a written notice authorizing a resumption of performance under the Contract.
- C. The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.
- D. 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 at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.
- E. 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.

5.16 New York State Tax Law §5-a

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to 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 the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. **Only the Form ST-220-CA is required to be filed with OGS.** The ST-220-CA can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are 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. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors. Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <http://www.tax.ny.gov/> for additional information.

5.17 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

5.18 Traffic Infractions

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

5.19 Overlapping Contract Products

Products/services available in the resulting Contract may also be available from other New York State Contracts. 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.

5.20 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, *Participation in Centralized Contracts*. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the *Price* clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<https://www.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

5.21 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. Please contact NYS Procurement Services Customer Services for more information via email at: OGS.sm.customer.services@ogs.ny.gov.

5.22 Federal Funding

For an Authorized User using Federal funds, Contractor shall cooperate in adding to the Authorized User's Agreement any Federal funding contract clauses necessary for the Authorized User's project. An Authorized User shall identify to Contractor, as a condition of using this Contract and during the RFQ process, whether Federal funds will be utilized for the project.

5.23 Contract Advertising

In addition to the requirements set forth in Appendix B, *Contract Publicity*, any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to an awarded Contract must be reviewed and approved by OGS prior to issuance. Contractor also cannot use, for any purpose, the New York State of Opportunity registered trademark or the State coat of arms without prior approval from the State.

5.24 Americans with Disabilities Act (ADA)

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidders are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by persons with visual, hearing, or any other physical disabilities.

Although it is not mandatory for Bidders to have these products in order to receive an award, it is necessary to identify any such product offered, which falls into the above category.

5.25 Participation Opportunities For New York State Certified Service-Disabled Veteran-Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

I. Contract Goals

A. OGS hereby establishes an overall goal of three percent (3%) for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/Veterans/default.asp>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts within the OGS Division

of Service-Disabled Veterans' Business Development (the "Division"). Additionally, following Contract execution, Contractor is encouraged to contact the Division at 518-474-2015 to discuss additional methods of maximizing participation by SDVOBs on the Contract.

B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

II. SDVOB Utilization Plan

A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.

B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows 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 SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.

C. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt.

D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven 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/Contractor and direct the Bidder/Contractor to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

1. If a Bidder fails to submit an SDVOB Utilization Plan;
2. If a Bidder fails to submit a written remedy to a notice of deficiency;
3. If a Bidder fails to submit a request for waiver; or
4. If OGS determines that the Bidder has failed to document good faith efforts.

F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

III. Request For Waiver

A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts in the Division for guidance.

B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB 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.

D. If OGS, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to VeteransDevelopment@ogs.ny.gov.

IV. Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- A. Copies of solicitations to SDVOBs and any responses thereto.
- B. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- C. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified SDVOBs whom OGS determined were capable of fulfilling the SDVOB goals set in the Contract.
- D. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- E. Other information deemed relevant to the waiver request.

V. Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available on the OGS website and should be completed by the Contractor and submitted to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: VeteransDevelopment@ogs.ny.gov.

VI. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

ALL FORMS ARE AVAILABLE UNDER AT: <https://ogs.ny.gov/Veterans/default.asp>

End of Solicitation Document