NEW YORK STATE OF OPPORTUNITY. | Office of General Services | Procurement Services

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Supplemental Contract Award Notification

Title	:	**Group 22812 – Mailing Machines, Scales, Folders, Inserters, Meter Rental and Other Items (Statewide)** **Classification Code(s): 44**
Award Number	:	**22941-E*** **(Replaces Award 21932-E*)**
Contract Period	:	**February 12 , 2016 – January 31, 2021**
Bid Opening Date	:	**October 29, 2015**
Date of Issue	:	**February 12, 2016**
Specification Reference	:	**As Incorporated Herein**
Contractor Information	:	**Appears on Page 2 of this Award**

Address Inquiries To:

State Agencies & Vendors			Political Subdivisions & Others	
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Procurement Services values your input.
Complete and return "Contract Performance Report" at end of document.

Description

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 22941 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 15, 2015.

This contract provides Authorized Users with a means of acquiring new mailing machine equipment and accessories for delivery throughout New York State. Products for purchase by all Authorized Users include, but are not limited to mailing machines, scales, folders, inserters, sorters, finishers, booklet makers, address printers, bursters and cutters, pressure sealing mailing systems, tabbing and labeling systems, and envelope sealers. Related options, accessories, consumables, parts, software, and services (including, but not limited to, installation, configuration, extended warranties, maintenance/support and other related professional services); including for EOL Equipment are also included. Meter Rental is included. Contractors, at their discretion may lease equipment under the Contract pursuant to the terms and conditions of the Lease Agreement to Non-State Agency Authorized Users only who would prefer that procurement option, if permitted in accordance with statutory requirements and guidelines. The purchase of postage and the payment for postage are excluded.

This Contract Award Notification contains MWBE goals of 0% MBE and 0% WBE.

CONTRACT #	CONTRACTOR	TELEPHONE #	FED.IDENT.# / NYS VENDOR#
PC67334	Bescorp Inc. D/B/A FORMAX	880/232-5535	020407657/ 1000010915
PC67337	Pitney Bowes Inc.	800/322-8000	060495050/ 1000000122
PC67338	RR Donnelley & Sons Company	866/666-7389	361004130/ 1000040640

For complete Contractor contract information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at:
http://www.ogs.ny.gov/purchase/spg/pdfdocs/2281222941ContractorInfo.pdf

Cash Discount and/or Early Payment Discount, If Shown, Should be Given Special Attention.
INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
(See "INVOICING AND PAYMENT" in this document.)

AGENCIES SHOULD NOTIFY PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES.

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the 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).

PERFORMANCE AND BID BONDS

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

ORDER OF PRECEDENCE

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Solicitation #22941 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

1. Appendix A (January 2014), Standard Clauses for NYS Contracts (previously provided);
2. Contract Award Letter;
3. Revisions and Clarifications to Bid Specifications dated October 8, 2015, October 15, 2015, October 19, 2015, and October 22, 2015 (previously provided);
4. Solicitation #22941 (Revised October 15, 2015) including all Appendices and Attachments referenced therein (previously provided);
5. Contractor's Bid Prices as stated in Attachment 1 – Pricelist
6. Contractor's Bid

OVERVIEW

This Contract provides Authorized Users with a means of acquiring new mailing machine equipment and accessories for delivery throughout New York State. Products for purchase by all Authorized Users include, but are not limited to mailing machines, scales, folders, inserters, sorters, finishers, booklet makers, address printers, bursters and cutters, pressure sealing mailing systems, tabbing and labeling systems, and envelope sealers. Related options, accessories, consumables, parts, software, and services (including, but not limited to, installation, configuration, extended warranties, maintenance/support and other related professional services); including for EOL Equipment, are also included.

Meter rental is included. The purchase of postage, and the payment for postage, are excluded.

Equipment leasing by Non-State Agency Authorized Users **only** who would prefer that procurement option is permitted pursuant to the terms and conditions of the Lease Agreement, if permitted in accordance with statutory requirements and guidelines. Only those contractors who have received prior approval from OGS may offer leasing.

Procurement Instructions describing requirements for Authorized Users to purchase from the Centralized Contract are found in Section titled, *Procurement Instructions*.

ESTIMATED QUANTITIES

This Contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. All quantities or dollar values listed within this Contract are estimates. The historical dollar value of all contracts issued under the previous award is approximately $6 million annually.

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

- The Contract is a nonexclusive Contract;

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

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

DEFINITIONS

Terms used in the IFB documents that have a capitalized first letter shall be defined in accordance with Appendix B, §2 *Definitions*, which is hereby incorporated by reference. The following definitions shall apply:

1. **"End-of-Life (EOL) Equipment"** refers to Mailing Equipment that may be nearing the end of its useful life or that an OEM is no longer manufacturing, but which the OEM continues to provide support. EOL Equipment includes equipment currently deployed by Authorized Users, also commonly referred to as legacy equipment.
2. **"Lease Rate Factor"** shall refer to the lease payment as a percent of the total cost of the leased equipment; when multiplied by the discounted cost of leased equipment, the result equals the periodic lease payment.
3. **"List Price"** shall mean Manufacturer's Suggested Retail Price.
4. **"Mailing Equipment"** refers to equipment to prepare mailings, including but not limited to mailing machines, scales, folders, inserters, sorters, finishers, booklet makers, address printers, bursters and cutters, pressure sealing mailing systems, tabbing and labeling systems, and envelope sealers**.**
5. **"Maintenance"** refers to service and support activities to maintain Mailing Equipment in full working order. Maintenance includes, but is not limited to the following: preventative maintenance, troubleshooting and repair, scheduled cleanings, online and telephone support, and remote and on-site diagnostics.
6. "**MWBE"** shall refer to a business certified with NYS Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.
7. **"N/A"** is a common abbreviation for *not applicable* or *not available*, used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.
8. **"Net Price"** Shall be List Price less all applicable discounts and shall be the price paid by Authorized Users of the resultant Contract. For leased equipment, this shall be the discounted price of equipment before factoring in the Lease Rate Factor.
9. **"NYS Vendor ID"** shall refer to the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.
10. **"Original Equipment Manufacturer (OEM)"** a company that has its name, Product name or logo branded on the Mailing Equipment.
11. **"Preferred Source Products"** shall refer to those commodities or services that have been approved in accordance with State Finance Law §162.
12. **"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 commodities and services from designated organizations when the commodities or services meet the "form, function and utility" requirements of the governmental entity. Under State Finance Law §163, purchases of commodities and services from preferred sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State preferred sources include: Corcraft; New York State Preferred Source Program for People who or Blind (NYSPSP; New York State Industries for the Disabled (NYSID); and the Office of Mental Health (OMH). These requirements apply to a State Agency, political subdivision and public benefit corporation (including most public authorities).
13. **"Procurement Services"**((formerly known as NYSPro or Procurement Services Group (PSG)) shall mean a division of the New York State Office of General Services which is authorized by law to issue centralized,

statewide Contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such Contracts. The terms NYSPro and PSG shall be used interchangeably for purposes of this solicitation.

14. **"Resellers"** any model for distribution of Product other than direct from the Contractor. Resellers include but are not limited to approved value added resellers (VARs), distributors, dealers, sales agents, and alternate channel partners.
15. **"Software"** programs or applications required for functioning or Networking of the Mailing Equipment. Software shall work directly with the Contractor's Mailing Equipment and be directly related to the operational functioning of the Mailing Equipment; or be related to the remote administration of the Mailing Equipment.
16. **"Third Party Products"** refers to Products not directly produced or manufactured by the OEM.

In addition to the above definitions, the following terms are defined as follows regardless of whether they are or are not capitalized:

17. **"May"** denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "Should".
18. **"Must"** denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see "Shall" and "Mandatory".
19. **"Shall" d**enotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see "Must" and "Mandatory".
20. **"Should"** denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "May".

SCOPE

These discount from pricelist Contracts provide Authorized Users with a means of acquiring new mailing machine equipment and accessories for delivery throughout New York State. Products for purchase by all Authorized Users include, but are not limited to mailing machines, scales, folders, inserters, sorters, finishers, booklet makers, address printers, bursters and cutters, pressure sealing mailing systems, tabbing and labeling systems, and envelope sealers. Related options, accessories, consumables, parts, software, and services (including, but not limited to, installation, configuration, extended warranties, maintenance/support and other related professional services); including for EOL Equipment, are also included. The purchase of postage and the payment for postage are excluded. Equipment leasing by Non-State Agency Authorized Users **only** who would prefer that procurement option is permitted pursuant to the terms and conditions of Lease Agreement, if permitted in accordance with statutory requirements and guidelines.

PROCUREMENT INSTRUCTIONS

1. The Contracts are issued under a multiple award structure. Products and services offered under these discount from list Contracts, pricing, and other Contract information will be posted to the OGS website. Authorized Users shall procure Products and services that best meet their form, function, and utility requirements.

2. Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities/services of Preferred Source suppliers such as Correctional Industries (Corcraft), NYS Preferred Source Program for People Who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities/services meet the form, function and utility of the Authorized User.

3. Where commodities/services are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the centralized Contracts awarded herein. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State. Therefore, Authorized Users are strongly encouraged to obtain quotes from at least three (3) Contractors prior to issuing a purchase order, in order to ensure that the Authorized User is receiving the best possible pricing.

4. When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions,

specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible.

a. statement of need and associated requirements;
b. obtaining all necessary prior approvals;
c. a summary of the Contract alternatives considered for the purchase; and
d. 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).

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

6. Upon Authorized User acceptance of Products and/or services itemized on the purchase order, Contractor will invoice Authorized User for any portion of Products and/or services accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products and services.

7. Only Non-State Agency Authorized Users are allowed to lease equipment from Contractors who have received prior authorization from OGS to offer leasing. Leasing of equipment under this Agreement is done pursuant to the terms and conditions of the Lease Agreement available at: http://www.ogs.ny.gov/purchase/spg/awards/2281222941CAN.HTM

Note: 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 prior to the issuance of an order. OGS has not and will not review specific Contractor licensing terms and conditions. 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.

PRICE

Net 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 Authorized User including all unloading, moving to point of use, uncrating, assembling, complete installation, adjusting, connecting all services and leaving ready to operate to the full extent of its design capabilities. Authorized user is responsible for bringing all services to within 6' of installation site. Additional fees may be charged when delivery to point of use is not possible via dock or other first floor location. Authorized users should clearly indicate on purchase order the specific location where delivery is required to be made. (For Example, Authorized Users should use terminology such as "DELIVERY TO ROOM_____LOCATED ON _____floor," etc., on purchase orders). If additional delivery charges are required for upper floor delivery, Authorized User shall agree to such charges prior to delivery and such costs shall be prepaid by the Contractor and added to the invoice. NOTE: If it is determined the contractor is charging excessive amounts for delivery, the State may seek reimbursement for such amounts.

The percentage discount offered to Authorized Users may, at the Contractor's option, be increased based on individual orders. Discounts may be greater, but in no instance may they be lower than the awarded discount. See Section titled, *Contract Pricelist Update Procedures*

Contractor's pricing information is included in the posted Pricelist linked from the Contractor Information page.

VOLUME DISCOUNTS

Contractor may offer volume discounts at the transaction level using the thresholds listed on each Contractor's Information Page.

PROMPT PAYMENT DISCOUNTS

Contractor may offer prompt payment discounts at the transaction level. Please refer to the Contractor's Information Page.

CONTRACT PRICELIST UPDATE PROCEDURES

The procedures below outline how Contract pricelist updates will be handled under this Contract. NOTE: THE FOLLOWING PROCEDURES ARE NOT APPLICABLE TO CONTRACTOR PROPOSED CHANGES TO CONTRACT TERMS AND CONDITIONS. Any implied or express request for changes in or additions to existing Contract terms and conditions, including new terms and conditions associated with a specific product line being added to the Contract for the first time, requires a formal Contract amendment and requires the approval of OGS. New or revised Contract terms and conditions are subject to the restrictions set forth in Appendix B, Section 27, *Modification of Contract Terms.*

General

Contractor may update their pricelist as follows**:**

- In the first year of the Contract, the Contractor shall be allowed to update the pricelist twice to add/delete Products and services as established by the Contractor in their normal course of business. However, pricelist updates must be submitted no earlier than sixty (60) calendar days from the date of OGS approval of prior pricelist update. There shall be no price increases allowed for existing Products and services during the first year of the contract.

- Commencing with the second year of the Contract, the Contractor may update the pricelist semiannually to reflect Contractor price changes and the addition/deletion of Products and services as established by the Contractor in their normal course of business; thirty (30) calendar days from the anniversary date of the Contract; and, thirty (30) calendar days from the semiannual anniversary date of the Contract. The thirty (30) calendar days includes the anniversary and semiannual anniversary date of the Contract.

Any new Products or services added to pricelists shall have a discount structure consistent with existing Products and services on the pricelist that are comparable in scope. Contractors shall submit their updated pricelist to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website.

All approved pricelist updates shall apply prospectively upon approval by OGS. Any request for a pricelist update not received in accordance with this section shall be deemed denied. Total price increases for pricelist updates in a single year of the Contract shall not exceed the escalation cap in set forth in Escalation Cap subdivision, below. All percentage discounts shall remain firm (unchanged) or they may increase for the duration of the Contract.

Pricelist Format

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or via e-mail to the OGS Procurement Services contract administrator. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

- Price increases;
- Price decreases;
- Products being added; and
- Products being deleted.

Contractor's Submission of Contract Updates

In connection with any Contract pricelist update, OGS reserves the right to:

- Request additional information;
- Reject Contract updates;
- Remove Products from Contracts;
- Remove Products from Contract updates; and
- Request additional discounts for new or existing Products.

Escalation Cap

In a single year of the Contract the total request for price increases shall not exceed the lesser of:

- three (3%) percent annually, or
- the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0,CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI-U data may be obtained at www.bls.gov.

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
Result multiplied by 100	0.022 x 100
Equals percent change	2.2

The "CPI for current period" shall be the index in effect at the time the Contract pricelist update request is received; "CPI for previous period" shall be the index in effect when the Contract pricelist was last updated.

Supporting Documentation
Each pricelist update request must be accompanied by an electronic copy of Contractor's nationally published pricelist(s) in its original format detailing current list prices relevant to the Products the Contractor is updating. If the NYS net prices are based on a GSA Schedule or WSCA Contract, that pricing must also be included with the update request.

Cover Letters
All Contract pricelist updates shall be accompanied by a cover letter describing the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA Schedule or WSCA Contract pricing update, to add/delete Products or services, etc.).

GSA Pricing
Where NYS net pricing is based upon an approved GSA Supply Schedule:

1. Associated Discounts: The State is entitled to all associated discounts enumerated in the GSA Supply Schedule (including, but not limited to, discounts for additional sites and volume discounts), as well as any other pricing or discount terms as are expressly enumerated in the NYS Contract or GSA schedule, when calculating the NYS Net Price; and

2. Industrial Funding Fee: GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee." ("IFF") OGS reserves the right to require either that: the IFF is remitted directly to OGS, or the NYS Contract prices are reduced by an amount equivalent to the IFF. If the latter, the NYS Net Price shall be calculated by reducing the published GSA price, after the discounts, if any, set forth in paragraph (1), above, downward by the amount of the IFF, currently set at .75%. Therefore, the "NYS Net Price" shall be calculated by multiplying 0.9925 times the GSA price.

CONTRACT PERIOD AND RENEWAL

The term of this Contract shall be for five (5) years. The contract shall commence after all necessary approvals by both parties and shall become effective upon the mailing or electronic communication of the final executed contract documents (see Appendix B, *Contract Creation/Execution*). All mailing Machines Contracts will terminate conterminously five (5) years from the date of OGS approval of the first Contract awarded.

The parties may renew the contract by written agreement signed by both parties, upon expiration of the original term and approval of the OGS, for two (2) additional one (1) year terms. Upon termination of the Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made or individual licenses granted to Authorized Users prior to such termination.

TERMINATION FOR CONVENIENCE

The State of New York retains the right to cancel this Contract, in whole or in part without reason (see Appendix B, §46.b, *Termination for Convenience*).

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 one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

PERIODIC RECRUITMENT

The State reserves the right to add Contractors beginning in the second year of the Contract and at one year intervals thereafter. The State will formally announce when the bid is reissued, at the discretion of the State. Bidders shall be required to submit such Bid documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the new Bid solicitation. Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration. In addition, if a Bid is deemed non-responsive under periodic recruitment, a vendor cannot reapply for a future Contract until the next periodic recruitment period. For Contracts that are awarded under periodic recruitment, the Contract term will commence upon OGS approval in accordance with Appendix B, Section 24, *Contract Creation/Execution* and will terminate on the then current end date of the Contract or at the end of any approved extension or renewal period.

Vendors shall be required to submit this original bid document which may include additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bidders are advised to review the "Qualification of Bidders" clause before submitting a bid under periodic recruitment to ensure they can meet all bid requirements. Under periodic recruitment, the Bidder must demonstrate proof of a minimum sales volume of $1,000,000 in Products and services for the pricelist offered to national public entities in the 12 month combination during the last 18 months preceding the Bid opening date. Required proof of sales may be demonstrated in the form of a summary of the total sales reported, which shall include the names of the purchasers, the total amount of sales by purchaser and the date of each sale. Sales made directly by the OEM, resellers, or a combination of both can be utilized to demonstrate compliance with this provision. Required proof of sales should be submitted at the time of bid submission. Failure to submit proof of sales at the time of bid submission may result in rejection of bid. NYS OGS Procurement Services reserves the right to request copies of purchase orders and/or invoices for verification or clarification. In addition, if a bid is rejected under periodic recruitment, a Bidder cannot reapply for a future contract until the next periodic recruitment period. For bids that are awarded under periodic recruitment, the Contract term will commence upon award and terminate on the current end date of the Contract unless an extension is mutually agreed upon between Procurement Services and the Contractor.

CONTRACT ADVERTISING

In addition to the requirements set forth in Appendix B, *Advertising Results*, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by Procurement Services prior to issuance.

MINIMUM ORDER

Minimum order shall be $200.00. Contractor may elect to honor orders for less than the minimum order; however, no additional charges shall be allowed. See Contractor Information page located on the OGS Website for additional information: http://www.ogs.ny.gov/purchase/spg/pdfdocs/2281222941ContractorInfo.pdf

NEW YORK STATE PURCHASING CARD

See "Purchasing Card" in Appendix B, OGS General Specifications. Contractors indicated if they will accept the NYS Purchasing Card for orders not to exceed $85,000. For all purchases executed using a New York State Purchasing Card, Contractor shall provide an itemized receipt with each delivery. Contractor shall state the discount offered when using the NYS Purchasing Card on each Contractor's Information page.

ORDERS

Contractor shall be capable of accepting orders manually, via facsimile, and, electronically via email. As an option, Contractor may also accept orders electronically via the Internet through a web-based ordering system. Contractor shall be required to provide written quotes to Authorized Users who request them prior to placing an order, which details List Price, discount, and Net Price, as applicable.

The web-based ordering system, if offered, shall allow Authorized Users to enter orders and have full order inquiry capabilities. All orders (manual, fax, electronic) shall reference requisition and/or purchase order number as required. If offering a web-based ordering system, the Contractor represents and warrants that it is the sole owner of the software product used for its ordering system, or, if not the owner, has received all proper authorizations from the owner to license the software product, and has the full right and power to grant the rights contained in any Contract resulting from this Invitation for Bids and as described further in Appendix B. Contractor further warrants and represents that the software product is of original development, and/or that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person/company.

Contractor shall defend, indemnify and save New York State wholly harmless from all costs, liability, and damages, including attorney fees incurred by New York State as a result of claims by a third party that New York State use of such data, information, and software infringes the rights of such third party. New York State shall promptly notify Contractor in the event New York State learns of such claim by a third party.

The web-based ordering system* shall be capable of processing, controlling, documenting, and reporting on the following minimum data elements:

- Contractor Name and Address
- Agency/Facility/Political Subdivision, etc.
- Contract Number
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- Net Price
- Extended and Total Amounts
- Comparable systems meeting the intent of the specifications may be considered.

*Comparable systems meeting the intent of the specifications may be considered.
If offering a web-based ordering system, the Contractor shall provide any necessary software (excluding communication software) and training guides/manuals or online support in the use of the web-based ordering system at no additional cost to all Authorized Users capable of placing orders electronically. Samples of software and training guides/manuals may be required. If requested, Contractor must demonstrate its system at an Albany, NY area location designated by the State.

INTERNET WEBSITES

The State encourages Contractors to provide a designated NYS Contract website for Authorized Users' direct access. This website will be listed under the Contractor information. The website will be the responsibility of the Contractor to maintain and keep updated. Changes in Products/services or pricing must be approved by Procurement Services prior to addition to the website. Hard copy catalog and pricelists, either in paper format or electronic format, must be available to all Authorized Users who either do not have Internet access or prefer the optional format.

DISPUTE RESOLUTION POLICY

Section 63 of Appendix B is hereby deleted. All disputes under this Contract shall be handled through the OGS Dispute Resolution Process found at: http://nyspro.ogs.ny.gov/sites/default/files/uploaded/Dispute%20Policy%209-2014.pdf.

PURCHASE ORDERS AND INVOICING

All Purchase Orders and invoices shall include the Contract number and a line by line listing of separate charges. Order confirmation shall mean that the Contractor has received the purchase order, has reviewed it for compatibility

with the Item currently on Contract, has resolved any non-compatibility problems with the Authorized User, and has entered the order, assigned an order number with anticipated delivery date.

Purchase orders are to include the following information:

1. Contract number
2. Contractor name
3. SKU/PN and Product/service description
4. Net Price

Authorized Users are instructed not to process invoices that do not include the required information set forth below. Invoices must be detailed and include in the body of the invoice or an attachment to the invoice **all** of the following items. Failure to comply may result in lengthy payment delays. Original invoices must follow the billing instructions contained in the purchase order. Invoices shall include, at a minimum, the following information:

1. Contract number
2. Contractor name
3. NYS Vendor Identification Number
4. Purchase Order number
5. SKU/PN and Product/service description
6. Line item breakdown of all charges to include Net Price of each Product/service

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users.

SOFTWARE

Software offered must be in a format that does not require any conversion by the Authorized User and shall:

1. Software is available as part of the Contractor's standard commercial offerings; and
2. Be directly related to the operational function of the Products offered under the contract.

Any Software currently on the NYS Miscellaneous Software Catalog contract Prohibited List is excluded from purchase under this Contract, except when the Software is pre-loaded on the equipment at the time of purchase. The Prohibited List may be accessed on the OGS website: http://www.ogs.ny.gov/purchase/snt/awardnotes/79518Prohibited.pdf.

Software offered under this Contract shall be licensed in accordance with the Software developer's standard license and warranty terms, or the terms offered under the NYS Miscellaneous Software Catalog Contract (Group 79518), whichever is more favorable to the Authorized User.

RELATED THIRD PARTY PRODUCTS

Third Party Products which meet and comply with all of the following criteria may be authorized for sale under this Contract:

1. The Third Party Product is available as part of the Contractor's standard commercial offerings.
2. The Third Party Product fits the scope of, or is directly related to Products that fit the scope of the Contract.
3. If the Third Party Product is available on another NYS Contract, such item will only be approved for inclusion on this Contract in accordance with Section 5.46, *Overlapping Contract Items*. If the Third Party Product is not available on another NYS Contract, then price reasonableness must be established in order for such item to be added to the Contract.

MAILING EQUIPMENT LEASING

Bidders may offer Non-State Agency Authorized Users the option to lease Mailing Equipment under the resultant Contract pursuant to OGS' standard leasing terms and conditions detailed in Lease Agreement. A Contractor who wishes to offer leasing must agree to OGS' standard leasing terms and conditions and receive prior written approval from OGS. Leasing terms and conditions may not be revised without the consent of OGS. Lease rates shall be submitted to OGS for review; however, they will not be evaluated. Lease rates shall remain fixed throughout the term of any resultant contract and shall not exceed more than 10% of the purchase price of the equipment, as adjusted by the lease term (i.e., $/# of months). Please refer to the Contractor Information Page for Lease Rates.

POSTAGE METER RENTAL

A postage meter cannot be owned under federal law because postage is considered to be currency and there are strict controls over equipment that can print currency. Postage Meters must either be rented or leased through an authorized provider. Therefore, meter rental is being offered as a procurement option under the Contract.

USE OF RESELLERS/DISTRIBUTORS/ALTERNATE CHANNEL PARTNERS

Contractor must provide service, sales and support staff to service Authorized Users geographically located at multiple purchasing locations throughout New York State. Contractor shall insure that sufficient resources are available directly, or through Resellers to insure maximum service capability throughout the State. The State agrees to permit Contractor to utilize approved, designated value added resellers (VARs), distributors, dealers, and sales agents to participate as alternate channel partners (collectively referred to as "Resellers") for Contractor. Such participation is subject to the following conditions:

1. Designation of Reseller(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). When Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering, billing addresses and Federal Identification numbers in the format provided in Attachment 8 - Reseller Directory.

2. Conditions of Participation**:** Reseller(s) must be approved in advance by the State as a condition of eligibility under this section. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Reseller(s) and their participation as fulfillment agents under this Contract by Product/service line, contracting program (i.e., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that: i) such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; ii) all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term, and iii) those qualifying criteria met by the Reseller must be identified on the form provided in Attachment 8 - Reseller Directory at the time that Reseller approval is requested under this paragraph; and iv) immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.

3. All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Except as otherwise set forth in Attachment 8, Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order. Reseller Directory updates will be allowed no more than twice annually. On the first business day of the month following the sixth and twelfth months of each contract year, Contractors shall be given an opportunity to submit revised Reseller Directories electronically. When submitting Reseller Directory updates, Contractors shall be required to separately specify additions, deletions, and/or any other changes to the directory in an accompanying communication submitted with the request in order to facilitate a more expeditious review; failure to do so may result in the rejection of the request.

4. Responsibility for Reporting/Performance: Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions. Products/services purchased through Reseller(s) must be reported by Contractor in the required Semi-Annual Reports to the State as a condition of payment, and where applicable, to Third Party Developer(s) in accordance with the reporting requirements of this Contract. In addition to inclusion of Reseller(s) volume in the Contractor's semi-annual reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with semi-annual reports of the individual Authorized User's Contract activity with Reseller. For details, refer to Section titled, *Report of Contract Usage*.

5. Applicability of Contract Terms: Products/services ordered directly through Reseller(s) shall be limited to Products/services previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

INSTRUCTION OF PERSONNEL

Within five business days of delivery of Product, Authorized User may request that the Contractor Provide instruction by qualified personnel sufficient to ensure that the Product is operated and operator maintained so as to

perform to the full extent of its design capabilities. Authorized user shall designate personnel which are to receive instruction.

INSTRUCTION MANUALS

Simultaneous with delivery, the Contractor(s) shall furnish to the Authorized User a complete instruction manual for the Product and for each component supplied if commercially available. The manual shall include complete instructions for unpacking, inspecting, installing, adjusting, aligning, and operating the product, together with layout and interconnection diagrams, schematic and wiring diagrams, preventive and corrective maintenance procedures, and complete parts lists, manufacturer's catalog numbers, and ordering information, if applicable.

BACKORDERING

Backordering shall be permissible only when authorized by the ordering Authorizes User. Contractor must complete orders within the guaranteed delivery period offered.

PACKING SLIPS

A legible packing slip and/or purchase order copy must accompany each shipment. The carton containing packing slip must be so marked.

LABELING

Number of packages in a single shipment must be marked on outside of each carton. Purchase order numbers, where required by the ordering Authorized User, must appear on the outside of each carton delivered.

SUBSTITUTIONS

Substitutions and/or additions of items shall not be permitted without prior written authorization from the ordering Authorized User. All unauthorized substitutions and/or additions shall be returned to the Contractor at the Contractor’s expense.

PRODUCT RETURNS BECAUSE OF QUALITY PROBLEMS

Upon written notification by the Authorized User to the Contractor, Products determined to have quality problems, outdated product, damage, etc., shall be picked up by the Contractor within ten (10) business days after notification with no restocking charge. The Authorized User shall elect whether to receive a replacement product, have the Contractor make any necessary repairs, or receive a credit/refund for the full purchase price. The Authorized User must conduct its inspection, and notify the Contractor within 30 calendar days of delivery.

PRODUCT RETURNS DUE TO AUTHORIZED USER ERROR

Products ordered in error by an Authorized User shall be returned by Authorized User at its expense for credit within fifteen (15) business days of delivery. Standard stock Products must be in resalable condition (original packaging, unused). The Contractor may charge a restocking fee--not to exceed ten percent--for product returns due to Authorized User error.

CANCELLATION OF PURCHASE ORDERS

Cancellation of orders in part or whole for unavailable Products shall be made by means of appropriate notations and adjustments on orders returned by Contractor to the Authorized User. Contractors shall make no shipments of canceled Products except on the basis of a new order. Products not supplied by the Contractor may be purchased from any other Contract source.

CONTRACT PAYMENTS

Payments cannot be processed by Authorized Users until the items have been delivered and accepted. Payment will be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section *Purchase Orders and Invoicing*.

CONTRACT ADMINISTRATOR

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Contract Administrator shall be set forth in Attachment 3 – General Questions. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide an interim contact person until the position is filled. Changes to Contractor contact

information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

TOLL-FREE NUMBER

A Contractor must provide a toll-free telephone number for the Authorized User usage. Contractor must staff this toll-free number at a minimum from 8:00 a.m. to 5:00 p.m. ET Monday through Friday, excluding NYS holidays. If Bidder does not currently maintain a toll-free number, the Contractor must be willing to establish one prior to award of Contract.

INSURANCE REQUIREMENTS

The Contractor shall procure, at its sole cost and expense and shall maintain in full force at all times during the term of this Contract, all policies of insurance pursuant to the requirements outlined in Insurance Requirements of the bid solicitation.

REPORT OF CONTRACT SALES

Contractor shall furnish a report semiannually of all Products and services purchased under the Contract during each semiannual period, no later than the 15th of the month following the close of each six month period. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required. Contractor shall provide separate sales data for any leases under the Contract. A template for such report is included in Attachment 10, Report of Contract Sales. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided in Microsoft Excel 2013, or lower version (or as otherwise directed by OGS), to the attention of the OGS contract manager and shall reference the Group Number, Award Number, Contract Number, and Sales Period. OGS reserves the right to amend the report template during the Contract term.

AUTHORIZED USER SALES REPORT

Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on a monthly basis, a report listing the following: name of products purchased, quantity purchased, unit price and total dollar volume of purchases.

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

POLICY STATEMENT

The New York State Office of General Services ("OGS"), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

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

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

The Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over $25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Contractor further agrees to submit with the bid a staffing plan on Form EEO 100 identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to OGS, a workforce utilization report on Form EEO 101, identifying the workforce actually utilized on the Contract if known.

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

BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBEs)

A. For purposes of this procurement, OGS has conducted a comprehensive search and has determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to the awarded Contractors. Contractors are, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528. Additionally, 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.

B. Good Faith Efforts
   Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

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

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

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

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 Bundle 18, operating on PeopleTools version 8.49.33.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors 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. There are no fees required for a Vendor'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 http://www.osc.state.ny.us/agencies/guide/MyWebHelp/.

USE OF RECYCLED OR REMANUFACTURED MATERIALS

The New York State, as a member of the Council of Great Lakes Governors, supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Bid solicitation. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See "Remanufactured, Recycled, Recyclable or Recovered Materials" in Appendix B, Section 13, *Remanufactured, Recycled, Recyclable or Recovered Materials.*

BULK DELIVERY AND ALTERNATE PACKAGING

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

SURPLUS/TAKE-BACK/RECYCING

1. A State agency is reminded of its obligation to comply with the NY State Finance Law §§167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.

2. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section 3 below for specific requirements governing electronic equipment recycling.

3. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of

electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: http://www.dec.ny.gov/chemical/65583.html.

4. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at: http://ogs.ny.gov/EO/4/Default.asp. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

PREFERRED SOURCE PRODUCTS

Section 162 of the State Finance Law requires that agencies, including Executive Agencies, afford first priority to the products/services of preferred source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such products/services meet the form, function and utility of the agency. Some products/services in the resultant Contract(s) may be available from one or more preferred sources. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law Section 162(3) or (4)(b), respectively, before engaging the Contractor.

NEW YORK STATE VENDOR RESPONSIBILITY

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

The Commissioner of OGS or her designee, her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract. The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

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

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

NEW YORK STATE TAX LAW SECTION 5-A

Tax Law Section 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.

Contractors may consult with DTF's website at http://www.tax.ny.gov/ for additional information and frequently asked questions.

OVERLAPPING CONTRACT ITEMS

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.

"OGS OR LESS" GUIDELINES

Purchases of the Products included in the IFB and resulting Contract are subject to the "OGS or Less" provisions of State Finance Law §163(3) (a) (v). This means that State Agencies can purchase products from sources other than the Contractor provided that such products are substantially similar in form, function or utility to the products herein and are:

1. lower in price

   -and/or-

2. available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit. State Agencies should refer to Procurement Council Guidelines for additional information.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in 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, Sections 2, *Definitions* ("Authorized User") and 26, *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 (www.ogs.state.ny.us). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

EXTENSION OF USE

The contract 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.

EMERGENCY PURCHASING

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or that the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of products or services, the Commissioner reserves the right to obtain such products and services from any source, including but not limited to this Contract, as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for products or services procured from other sources pursuant to this paragraph.

CONTRACTOR PERFORMANCE/POOR PERFORMANCE

Contractors shall be required, upon request, to provide performance surveys to customer agencies. Contract performance measures may include, but not be limited to, the following: delivery time, fill rate, response time to inquiries, resolution of problems, employee courtesy, staff knowledge ability, and overall performance. The information reported on the surveys will be used to assess contractor's performance and may, if necessary, be used to determine continuation or cancellation of award.

MERCURY-ADDED CONSUMER PRODUCTS

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Contract.

RESERVATION

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An “unanticipated excessive purchase” is defined as an unexpected order for a Contract product(s) totaling more than $100,000.00.

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. Contractors are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals.

Although it is not mandatory for Contractors to have this equipment in order to receive an award, it is necessary to identify any such equipment offered they have which falls into the above category.

ADDITIONAL REQUIREMENTS

1. NO DRUGS OR ALCOHOL
   For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

2. TRAFFIC INFRACTIONS
   The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

APPENDIX A

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this bid document as fully 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.

APPENDIX B

Appendix B, Office of General Services General Specifications, dated May 2015, attached hereto, is hereby expressly made a part of this Bid Document 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.

APPENDIX B AMENDMENTS

Appendix B, § 32, *Product Delivery*, is hereby deleted and replaced with the following:
Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within 45 days after receipt of Purchase Order with the exception "made-to-order" or customized Products, which shall be delivered within 90 calendar days or otherwise agreed upon timeframe by the Authorized User and the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

Appendix B, § 60, Indemnification is hereby deleted and replaced with the following:
Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder is due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 22941 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE SOLICITATION DOCUMENT DATED REVISED OCTOBER 15, 2015.

State of New York
Office of General Services
Procurement Services
Contract Performance Report

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one Contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

Contract No.:_____ **Contractor**._____

Describe Product* Provided (Include Item No., if available):_____

***Note**: "**Product**" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments:_____

_____

_____(over)

Agency:_____ Prepared by:_____

Address:_____ Title:_____

_____ Date:_____

_____ Phone:_____

_____ E-mail:_____

Please detach or photocopy this form & returned to:

OGS Procurement Services
Customer Services, 38th Floor
Corning 2nd Tower - Empire State Plaza
Albany, New York 12242
customer.service@ogs.ny.gov
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