2nd Supplemental Contract Award Notification

Title	:	**Group 39000 – INDUSTRIAL & COMMERCIAL SUPPLIES AND EQUIPMENT (Statewide)** **Classification Code(s): 26, 27 & 46**
Award Number	:	**22918** **(Replaces Award 20304)**
Contract Period	:	**November 13, 2015 – September 30, 2020**
Bid Opening Date	:	**July 8, 2015**
Date of Issue	:	**December 1, 2015**
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 22918 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 JUNE 24, 2015.

This comprehensive catalog contract provides a means for inventory reduction by offering quick shipping (usually 24-48 hours) of a broad array of products; aggregation and purchase of a variety of different products from the same contractor with a single order and subsequent single payment voucher.

This Contract Award Notification contains MWBE goals of 10% MBE and 10% WBE.

CONTRACT #	CONTRACTOR & ADDRESS	FED.IDENT.#	NYS VENDOR#
PC67230	**Interline Brands, Inc. d/b/a SupplyWorks**	**222232386**	**1000008739**
PC67236 MBE SB	**WATS International Inc.**	**141622445**	**1000006906**

For complete Contractor contact information, Products & Districts Matrix, Authorized Resellers 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/awards/3900022918Can.htm

Cash Discount, If Shown On The Contractor Information Document, 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 THE NEW YORK STATE PROCUREMENT 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).

DISPUTE RESOLUTION POLICY

It is the policy of the Office of General Services' Procurement Services to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to Procurement Services Bid solicitations, contract awards and contract administration. Procurement Services encourages vendors to seek resolution of disputes through consultation with Procurement Services staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of Procurement Services' Dispute Resolution Procedures for Vendors may be obtained by contacting Procurement Services or through the OGS Website at: http://nyspro.ogs.ny.gov/content/dispute-resolution-procedures. OGS reserves the right to change the procedures set forth in Procurement Services' Dispute Resolution Procedures for Vendors, in non-material and substantive ways without seeking a contract amendment.

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 #22918 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;
2) Contract Award Letter
3) Revisions and Clarifications to Bid Specifications
   i. Addendum #4 – Dated June 25, 2015
   ii. Addendum #3 – Dated June 15, 2015
   iii. Addendum #2 – Dated June 12, 2015
   iv. Addendum #1 – Dated June 10, 2015
4) Appendix D, 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;
5) Solicitation #22918 including all Appendices and Attachments referenced therein;
6) Bidder's Bid

OVERVIEW

This Contract provides Authorized Users with a means of acquiring Industrial & Commercial Supplies and Equipment which are purchased repetitively or on an emergency basis. It also provides a means for inventory reduction by offering quick shipment (within 24-48 hours) of a broad array of products and aggregation and purchasing of a variety of different products from the same Contractor with a single order. This Contract further offers Authorized Users the ability to pick-up orders. Procurement Instructions describing requirements for Authorized Users to purchase from the Centralized Contract are found in Section Procurement Instructions. Services are excluded from the scope of this Contract.

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 $135,000,000.00 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.

GLOSSARY

The terms used in this Contract shall be defined in accordance with Appendix B – *Definitions*. In addition, the following definitions shall apply.

"Business Day" Shall refer to 8 hours of operation, Monday through Friday within the hours of 7:00 am – 6:00 pm ET, excluding NYS Holidays.

"Contractor" shall refer to a responsive and responsible Bidder who is working under an executed contract with New York State. Contractor is a general term.

"Deeper Discount" refers to an additional discount beyond the Product Category Discount **for** each Product offered within a Product Category.

"District" shall refer to New York State counties that are grouped together for purposes of this Contract.

"Hot List Pricing" shall refer to better pricing on most commonly purchased products.

"Inside Delivery" refers to a delivery method wherein the Contractor brings the shipped Product(s) from the vehicle into the entrance of the ordering Authorized User's building.

"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 refer to the ten-character identifier issued by New York State when the vendor is registered on the Vendor File.

"Periodic Recruitment" is a process whereby OGS, at any time and in its best interest, reserves the right to open the procurement to additional Bidders under the same terms and conditions as the original solicitation.

"Preferred Source Offering" shall refer to those commodities or services 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 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 (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, NYS Industries for the Disabled; and the Office of Mental Health. These requirements apply to a State agency, political subdivision and public benefit corporation (including most public authorities).

"Reseller/Distributor/Authorized Dealer" is a company or individual (merchant) that purchases goods with the intention of selling them rather than consuming or using them.

PRODUCT CATEGORIES

Services are excluded from the scope of this Contract and are not offered in any Product Category. **Examples listed below are not limited to the Products listed in each Product Category**.

Product Categories	Examples
Electrical	• Circuit Breakers • Conduits • Electrical Boxes • Fuses • Switches • Wire • Connectors • Outlets • Switches • Cords • Plugs
Fluid Power Equipment	• Pressure Washers • Spray Guns and Kits • Hydraulics • Hoses • Tubing • Hydraulic liquids
HVAC (Heating, Ventilation, Air Conditioning)	• Air Filters • Blowers • Diffusers • Fans • Coolant • Small Heaters • Air Conditioner Units (Window and Portable) • Foam Coil Cleaners • Filters • Valves
Lighting	• Lamps • Ballasts • Fixtures • Bulbs • Diodes • Tubes

Maintenance/Cleaning	• Cleaning Chemicals • Hand Soaps • Paper Products • Trash Can Liners • Ladders • Paint Supplies • Paint • Welding Supplies • Adhesives • Shop Supplies • Fasteners • Seasonal Lawn and Garden Supplies • Metal Raw Materials (Pins, Flat Stock, Rods, etc.)
Material Handling	• Hand Trucks • Containers • Cabinets • Chains • Wire Rope • Pails/Drums
Motors/Power Transmission	• Belts • Pulleys • Comb Hammer • Motors
Pneumatics	• Various Valves • Flanged Globes • Relays • Compressors • Cylinders
Production Tools	• Drive Bits • Friction Lighters • Band Saws • Lighter Sets • Tank Adapters
Pumps and Plumbing	• Facets • Fittings • Pipes • Water Filters • Drains • Pumps • Plumbing Tools
Safety and Security	• Eye Protection • Eye Wash • Head and Face Protection • Hearing Protection • Gloves • Protective Clothing • First Aid • Barricades • Fire Escape Ladders • Strobes • Master Lock

Hand Tools	• Hammers • Pliers • Rakes • Screwdrivers • Shovels • **Hand Saw** • **Measuring Tools (Levels, Tape Measures, etc.**)
Power Tools	• Electric Drills • Electric Grinders • Electric Sanders • Electronic Saws

DISTRICTS

Contractors offered at least four (4) out of thirteen (13) Product Categories in each awarded District. See "Product and District" matrix for specifics.

Districts are grouped by counties as follows:

DISTRICT A	DISTRICT B	DISTRICT C	DISTRICT D
Allegany	Broome	Albany	Bronx
Cattaraugus	Cayuga	Clinton	Kings
Chautauqua	Chenango	Columbia	Nassau
Chemung	Cortland	Dutchess	New York
Erie	Delaware	Essex	Queens
Genesee	Fulton	Franklin	Richmond
Livingston	Hamilton	Greene	Rockland
Monroe	Herkimer	Orange	Suffolk
Niagara	Jefferson	Putnam	Westchester
Ontario	Lewis	Rensselaer	
Orleans	Madison	Rockland	
Schuyler	Montgomery	Saratoga	
Seneca	Oneida	Schenectady	
Steuben	Onondaga	Sullivan	
Wayne	Oswego	Ulster	
Wyoming	Otsego	Warren	
Yates	St. Lawrence	Washington	
	Schoharie	Westchester	
	Tioga		
	Tompkins		

CONTRACTOR REQUIREMENTS

Contractor must offer at least four (4) of the thirteen (13) Product Categories under the Contract. Contractor must also offer a minimum of 100 Products in each category and have a minimum 10,000 Products overall under the Contract. In order to facilitate the need for Authorized Users to pick-up orders, free of charge, Contractor and/or their resellers/distributors/authorized dealers must also have a warehouse/distribution center/store in each District under the Contract. The option to pick-up orders is at the discretion of the Authorized User and must be denoted on the purchase order. Pick-up orders shall be ready within 24 – 48 hours after receipt of order with the exception of non-stock orders which must be ready for pickup within 10 business days after receipt of order. See Section 6.14 – Orders. Warehouse/distribution center/store needs to be in operation for a minimum of 8 hours, Monday through Friday, except NYS Holidays, between the hours of 7:00 am and 6:00 pm.

CONTRACT PERIOD AND RENEWAL

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

Contracts awarded under any additional periodic recruitment periods or those Contracts awarded in phases, will have a lesser initial Contract term such that the Contracts from all periodic recruitments and all phases of awards end on the same date, regardless of start date.

If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for a period of up to one (1) additional year.

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 Contract term.

PROCUREMENT INSTRUCTIONS

This Contract is issued under a multiple award structure. Authorized Users shall procure Products that best meet their form, function, and utility requirements.

Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law, particularly §162, regarding Products provided by Preferred Source suppliers.

Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.

Authorized Users shall review multiple Price Lists posted on the OGS website to determine best pricing. Authorized Users shall utilize the Product of the Contractor offering the lowest price that meets the Authorized User's form, function, and utility requirements, documenting in the procurement record the determination of the criteria used for the selection.

Authorized Users are encouraged to use the Contractor offering the lowest price but if that Contractor is not selected, then the agency must prepare documentation for the procurement record explaining the action taken (i.e., the low Contractor could not provide the Product in the time frame required, Contractor did not have the needed equipment, etc.).

SHORT TERM EXTENSION

In the event a replacement contract has not been issued, listed herein, 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, and delivery requirements. Any extension terminates upon award of a replacement contract.

PRICE

Price includes all customs, duties, and charges and is net, F.O.B. destination any point in New York State, for orders, as designated by the ordering agency including Inside Delivery. (See Section *Minimum Order* and Section *Product Delivery*.)

In addition, upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause.

Contractor's pricing information is included in the posted Price List linked from the Contractor's Information page, which will apply to all districts awarded.

Contractors shall hold pricing for one year from the start date of the Contract. Contract prices may be changed on the first anniversary of the Contract start date and annually thereafter. OGS, at its discretion, may request price changes at any time, if it is in the best interest of the State.

Discounts are firm for the entire period of the Contract, and no discount reductions will be allowed at any time. Discount increases are permitted at any time. See Section – *Price Updates*.

ADDITIONAL DISCOUNTS

Deeper Discount

A Contractor may have offered a Deeper Discount by an individual Product within a Product Category. This Deeper Discount is set forth in column "H" - Deeper Discount, in their Price List posted on the OGS Website. ***This discount is included in the NYS Unit Price.***

Volume Discounts

A Contractor may have offered volume discount(s) **at the transaction level** using the following thresholds (Refer to each Contractor's Information Page):

- $500.00 - $1,000.00
- $1,000.01 - $2,500.00
- $2,500.01 - $5,000.00
- $5,000.01 and above

Prompt Payment Discounts

A Contractor may have offered prompt payment discounts **at the transaction level**. (Refer to each Contractor's Information Page).

NYS Procurement Card Discount

A Contractor may have offered a Procurement Card discount **at the transaction level.** (Refer to each Contractor's Information Page.)

Pick-Up Discount

A Contractor may have offered pick-up discounts **at the transaction level.** (Refer to each Contractor's Information Page.)

PRICE UPDATES

Updated Pricing shall be submitted on electronic media (i.e., CD or Flash Drive) **in Excel format**. Submissions in any other format will be returned to the Contractor. Contractors will be required to update their OGS approved Attachment 1 – *Pricing* Pages by redlining additions and deletions and highlighting Products whenever a price adjustment has occurred. **NYS Unit Price must be reasonable. OGS reserves the right to request further information to make a determination of price reasonableness, such as copies of other governmental contracts.**

Contractor may request a price adjustment, including new Products, annually on the anniversary of the contract start date and annually thereafter, but discounts cannot be reduced for the life of the contract. Percentages reflected in the NYS Net. Pricing must be equal to or better than those established by the Contractor's original Bid. New products (Products not previously approved) may also be offered annually. The discount offered on the new products after contract award shall be no lower than the minimum established product category discount or the Deeper Discount by Manufacturer if applicable.

Requests for price adjustments and new Products shall be submitted 30 days prior to the anniversary start date of the Contract and annually thereafter. **Requests from Contractor(s) for price increases at any other time will not be granted**. The Contractor shall provide OGS with one (1) electronic copy of the updated pricing. No Price Updates will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or any other documentation that is required under the resulting contract.

Contractors shall be permitted to reduce their pricing any time during the contract term.

Hot List Pricing

'*Hot List Pricing*' is a way to provide Authorized Users with better pricing on most commonly purchased products. The Hot List Pricing will be based on the Contractor's report of sales submitted to OGS per the Report of Contract Usage clause.

These prices will be included in the Contractor's annual updated price list published on the OGS website. **All Hot List Pricing shall be in effect until the next annual price list update.**

CENTRALIZED CONTRACT MODIFICATIONS

a. 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 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.

b. 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.

c. 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.

d. All modifications proposed by 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 – *Price Updates* 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.

e. 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* .

PERIODIC RECRUITMENT

This Contract allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State and will only be utilized if deemed necessary to meet the State's ongoing requirements. Additional recruitment periods will be advertised in the NYS Contract Reporter. Bids shall be evaluated under the same terms and conditions as the original Bids.
Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements currently in effect at the time of the new recruitment period.

A Contractor may not resubmit a Bid for future consideration on Districts and Categories awarded. However, a Contractor may submit an offer for additional Districts and/or Categories. If a Bid is deemed non-responsive during the initial solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

Any Contract(s) awarded under Periodic Recruitment will commence upon OGS approval in accordance with Appendix B, *Contract Creation/Execution* and will all terminate as described in Section *Contract Period and Renewal.*

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

Shipped Products will have a minimum order of $50.00 and shall be ordered in the Contractor's standard packaging unless noted in each Contractor's Information page.

NEW YORK STATE PROCUREMENT CARD

See "Procurement Card" in Appendix B, *OGS General Specifications*. Contractors indicated if they will accept the NYS Purchasing Card for orders not to exceed $15,000 and are included on each Contractor's Information page. For all purchases executed using a New York State Procurement Card, Contractor shall provide an itemized receipt with each delivery.

ORDERS

Purchase Orders shall be made in accordance with the terms set forth in Appendix B – *Purchase Orders*. Authorized Users may submit orders over the phone. Orders submitted during business hours shall be deemed received by Contractor on the date submitted. If available, Authorized Users may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted after business hours shall be deemed received by Contractor on the next business day. See Section - *Glossary*, "Business Day." Orders shall be shipped to the specified destination within 24-48 hours after receipt of order with the exception of non-stock orders which must be provided within 10 business days after receipt of order**. In the event that orders are not shipped in the times specified, the Contractor is responsible for contacting the Authorized User in a timely manner utilizing the contact information provided on the Authorized User's purchase order.**

All orders shall reference Contract number, requisition, and/or purchase order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation shall be itemized, and include purchase price, date of purchase, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Sub-Contractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services f/k/a Office for Technology policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based Intranet and Internet information accessible for persons with disabilities.

Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that state agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by Information Technology Systems (ITS) and OGS and the results of such testing must be satisfactory to ITS and OGS before web-based information and applications will be considered a qualified deliverable under the contract or procurement.

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 9.0 Bundle 18, operating on PeopleTools version 8.49.33. The State is planning to upgrade to PeopleSoft Financials version 9.2 sometime in 2015. 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 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/.

INVOICING AND PAYMENT

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

The standard format for invoicing shall be single invoices; meaning the Contractor shall provide the Authorized User with an invoice for each order at the time of delivery. Invoices must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the correct price on the original date of order. At a minimum, the following fields must be included on all invoices:

- Vendor Name
- Vendor Billing Address
- Vendor Federal ID Number
- NYS Vendor ID Number
- Authorized User Account Number
- NYS Contract Number (PCXXXXX)
- Authorized User's Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure

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.

Payment of purchases made by Authorized Entities other than State Agencies under this agreement shall be the sole responsibility of such entities and the Contractor shall bill such entities directly on vouchers authorized by the said entities.

PRODUCT DELIVERY

The Contractor will be expected to process and ship large numbers of orders to various destinations.

The Contractor offered Inside Delivery. Each delivery shall be delivered based upon the needs of the Authorized User.

Authorized User and Contractor may agree to delivery terms other than Inside Delivery, however, such other delivery is not included in the NYS Contract Price and Contractor may add charges with the agreement of the Authorized User.

Delivery shall be made in accordance with the instructions on the Purchase Order from each Authorized User and in accordance with Authorized User's security rules, which will be communicated during purchase ordering process. 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.

CUSTOMER SERVICE

The Contractor shall provide a sufficient number of employees for each district who are knowledgeable and responsive to customer needs and who can effectively service the contract. **(Refer to each Contractor's Information Page).**

Contractor shall provide toll-free telephone support/assistance at no extra charge to all Authorized Users. In addition, Contractor will provide a toll-free product emergency service support that is available seven days a week, twenty-four hours a day.

PRODUCT RETURNS AND EXCHANGES

Contractor Errors or Quality Problems

Products returned/exchanged due to quality problems, duplicated shipments, outdated product, incorrect Product shipped, or Contractor errors otherwise not specified, shall be replaced with specified Products or the Authorized User shall be credited/refunded for the full purchase price.

Products shall be replaced within five (5) business days of written notification to the Contractor. Delivery for a replacement Product shall be the same as stated in the Product Delivery clause herein.

Returned Products shall be picked up by the Contractor in accordance with Appendix B, Rejected Product. No restocking Fee is allowed.

Authorized User Errors

Products returned/exchanged due to Authorized User errors shall be replaced with specified Products or the Authorized User shall be credited/refunded for the full purchase price.

Product shall be replaced within five (5) business days of written notification to the Contractor. Delivery for a replacement Product shall be the same as stated in Product Delivery clause herein.

Returned Products shall be picked up by the Contractor at the time of delivery of the replacement Product, or within ten calendar days of receipt of written notification by the Contractor if a credit/refund is to be issued.

There shall be no restocking fee if returned Products are suitable for resale. Contractor may charge a restocking fee not to exceed the net price of a returned Product if not suitable for resale.

CONTRACT ADMINISTRATOR

Contractors have provided a dedicated Contract Administrator to support the updating and management of each Contract. Information regarding the Contract Administrator is provided in each Contractor's Information page linked from the *Contractors Summary* page. 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.

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 USAGE

Contractor shall submit *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all Authorized Resellers, Dealers and Distributors, if any, no later than the fifteenth of the month following the end of each six month period of the Contract start date. If Authorized Resellers or Dealers are utilized, the Contractor shall be responsible for consolidating all contract purchases into a single report.

Contractor shall specify if any Authorized Resellers, Dealers or Distributors are NYS Certified Minority and/or Women Owned Business Enterprises (MWBEs) within the Report of Contract Usage document. Contractor shall refer to Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women section for information on how to verify certified status.

The report is to be submitted electronically via e-mail in Microsoft Excel to the Office of General Services, Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contractor's name, Contract Group Number, Award Number, Contract Number and Sales Period.

The State reserves the right to seek alternate data and reporting elements. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

RESELLER/DISTRIBUTOR/AUTHORIZED DEALER

Contractors may, if they desire, designate Resellers, Distributors or Authorized Dealers with whom purchase orders may be placed, however, they must also indicate if such Reseller(s), Distributor(s) and/or Authorized Reseller(s) are authorized to ship direct and/or receive payment. Reseller(s) and/or Distributors are listed on the *Reseller/Distributor/Authorized Dealer Information Sheet* linked from the *Contractors Information Summary* page.

Reseller(s) must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that the Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall be fully liable for Reseller(s)' performance and compliance with all Contract terms and conditions.

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 §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 Vendor Responsibility 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 §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.

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 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:

a. lower in price
   and/or-
b. 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 "Participation in Centralized Contracts" in Appendix B, OGS General Specifications. 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 **(http://www.ogs.state.ny.us/purchase/snt/othersuse.asp).** 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

This 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 the 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.

AMERICANS WITH DISABILITIES ACT (ADA)

The Federal ADA Act bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities. Contractor is 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 Contractor to have this equipment, it is necessary to identify any such equipment offered they have which falls into the above category.

APPENDIX B AMENDMENTS

Appendix B, § 61, 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.

POOR PERFORMANCE

Authorized Users should notify the OGS Contract Manager for this Award or New York State Procurement Services Customer Services promptly if the Contractor fails to meet the requirements of this contract. Performance that does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services.

Customer Services Contact Information:

Office of General Services
New York State Procurement Services
Customer Services Coordination
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242

Tel: 518-474-6717
Fax: 518-474-2437
E-mail: customer.services@ogs.ny.gov

NOTICE: THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE SOLICITATION. CONTRACTS RESULTING FROM SOLICITATION 22918 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 JUNE 24, 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 & return by FAX to 518/474-2437 or mail to:

OGS Procurement Services
Customer Services, 38th Floor
Corning 2nd Tower - Empire State Plaza
Albany, New York 12242
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