



Office of General Services Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | customer.services@ogs.ny.gov | 518-474-6717

Solicitation (REVISED 6/9/23)

BID OPENING DATE: June 28, 2023 TIME: 1:30 P.M. EST SOLICITATION NUMBER: 23295	TITLE: Group 20915 – Furniture, All Types (Except Hospital Room and Patient Handling) (Statewide) Classification Codes: 56
CONTRACT PERIOD: Upon Execution of Contract for a Period of Five Years	
DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.	
Primary Designated Contacts	
Bradford Deforge Contract Management Specialist I Telephone No. (518) 473-3876 E-mail address: OGS.sm.PS.Furniture@ogs.ny.gov	Cheri McCullough Contract Management Specialist 2 Telephone No. (518) 402-5552 E-mail address: OGS.sm.PS.Furniture@ogs.ny.gov
For MWBE Questions Only Lori Brodhead Telephone No. (518) 486-9866 Email Address: MWBE@ogs.ny.gov	For SDVOB Questions Only NYS Division of Service-Disabled Veterans' Business Development Telephone No. (518) 474-2015 Email Address: VeteransDevelopment@ogs.ny.gov
For INSURANCE Questions Only New York State Office of General Services Bureau of Risk and Insurance Management Telephone No. (518) 473-0310 E-mail address: ogs.sm.insrev@ogs.ny.gov	

Bidder's Federal Tax Identification Number: (Do Not Use Social Security Number)		NYS Vendor Identification Number: (See New York State Vendor File Registration Clause)		
Legal Business Name of Company Bidding:				
D/B/A – Doing Business As (if applicable):				
Street	City	State	County	Zip Code
E-mail Address:		Company Web Site:		

If applicable, place an "x" in the appropriate box(es) (check all that apply)			
☐ NYS Small Business # Employees	☐ Service Disabled Veteran Owned Business	☐ NYS Minority Owned Business	☐ NYS Women Owned Business

If you are not bidding, place an "x" in the box and return this page only. ☐ WE ARE NOT BIDDING AT THIS TIME BECAUSE:

FOR PROCUREMENT SERVICES USE ONLY			
LITERATURE ☐	LETTER ☐	USB FLASH DRIVE ☐	# of Binders/Packages: _____
PURC. MEMO ☐	OTHER ☐	_____	Documented by: _____

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 120 days from the date of submission to the New York State ("NYS") Office of General Services ("OGS"), or for such longer period as is set forth in the Invitation for Bids.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Invitation for Bids.
3. The Bidder has read and understands the provisions of the Invitation for Bids, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS's procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at <https://ogs.ny.gov/acpl>.

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

Print Full Bidder Entity Name

By:

Signature of Person Authorized to
Legally Bind the Bidder

Print Name of Signatory

Print Title of Signatory

Date

RETURN THIS PAGE AS PART OF BID

Contents

Appendices and Attachments	6
SECTION 1 INTRODUCTION	7
1.1 Overview	7
1.2 Scope	7
1.3 Estimated Quantities	9
1.4 Key Events/Dates	10
1.5 Intent To Bid	10
1.6 NYS Contract Reporter	10
1.7 Bidder Questions	10
1.8 NYS Comptroller Approval	10
1.9 MWBE & SDVOB Interest in Partnering with Bidders	11
1.10 Summary Of Policy And Prohibitions On Procurement Lobbying	11
1.11 Definitions	11
1.12 Appendices and Attachments	12
1.13 Conflict of Terms	12
SECTION 2 BIDDER QUALIFICATIONS AND SERVICE REQUIREMENTS	13
2.1 Qualifications	13
2.2 Service Requirements	14
SECTION 3 BID SUBMISSION	17
3.1 Performance and Bid Bonds	17
3.2 NYS Vendor File Registration	17
3.3 Format of Bid Submission	17
3.4 Content	18
3.5 Bid Envelopes and Packages	20
3.6 Bid Delivery	20
3.7 Important Building Access Procedures	20
3.8 NYS Required Certifications	21
3.9 Bid Deviations	21
3.10 Bid Opening Results	21
3.11 Bid Liability	21
3.12 Firm Offer	21
3.13 NYS Reserved Rights	21
3.14 Incorporation	22
SECTION 4 METHOD OF AWARD	22
4.1 Method of Award	22
4.2 Minor Deviations/Minor Technicality	23
4.3 Notification of Award	23
4.4 Periodic Recruitment	23
4.5 Procurement Instructions for Authorized Users	23
SECTION 5 TERMS AND CONDITIONS	24

5.1 Contract Term and Extensions	24
5.2 Short term Extension	25
5.3 Price	25
5.4 Price List Updates	26
5.5 Best Pricing Offer	26
5.6 Price Structure	27
5.7 Volume Discounts	27
5.8 Ordering	27
5.9 Purchasing Card Orders	27
5.10 Minimum Order	27
5.11 Invoicing and Payment	28
5.12 Product Returns and Exchanges	28
5.13 Unanticipated Excessive Purchase	29
5.14 Contract Administration	29
5.15 NYS Financial System (SFS)	29
5.16 Americans with Disabilities Act (ADA)	29
5.17 N.Y. State Finance Law § 139-I	29
5.18 Insurance	30
5.19 Report of Contract Usage	30
5.20 Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women	30
5.21 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses	35
5.22 Bulk Delivery and Alternate Packaging	37
5.23 Surplus/Take-Back/Recycling	37
5.24 Environmental Sustainability and NYS Executive Order Number 22	38
5.25 Consumer Products Containing Mercury	38
5.26 Diesel Emission Reduction Act	38
5.27 Overlapping Contract Products	38
5.28 Preferred Source Products	39
5.29 NYS Vendor Responsibility	39
5.30 NYS Tax Law Section 5-a	40
5.31 “OGS or Less” Guidelines	40
5.32 Non-State Agencies Participation in Centralized Contracts	40
5.33 Extension of Use	41
5.34 Authorized Resellers	41
5.35 New Accounts	42
5.36 Centralized Contract Modifications	42
5.37 Drug and Alcohol Use Prohibited	43
5.38 Traffic Infractions	43
5.39 Instruction Manuals	43

5.40 Contract Documents; Electronic Format	43
5.41 Purchasing Card Orders	43

Appendices and Attachments

APPENDICES

Appendix A – Standard Clauses for NYS Contracts (June 2023)
Appendix B – General Specifications (April 2016)
Appendix C – Contract Modification Procedure
Appendix D – Federal Funding Agency Mandatory Terms and Conditions

ATTACHMENTS

Attachment 1 – Pricing
Attachment 2 – NYS Required Certifications
Attachment 3 – Encouraging Use of NYS Businesses
Attachment 4 – Insurance Requirements
Attachment 5 – Bidder Information Questionnaire
Attachment 6 – Bidder Submission Checklist
Attachment 7 – Bidder Questions Form
Attachment 8 – Report of Contract Usage
Attachment 9 – Intent to Bid Form
Attachment 10 – Contact and Supplemental Information
Attachment 11 – Price List Update Guide
Attachment 12 – Contractor and Reseller/Distributor Information Sheet
Attachment 13 – Category Matrix
Attachment 14 – Supplier/Manufacturer's Certificate
Attachment 15 – Certification Under Executive Order No. 16
Attachment 16 – Proof of Past Sales

SECTION 1 INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for certain furniture products as specified herein for all Authorized Users eligible to purchase through this Solicitation. OGS is a New York State Agency authorized by law to establish Centralized Contracts for use by NYS Agencies and other Authorized Users, as that term is defined by State Finance Law Section 163(1)(k). The purpose of this Solicitation is to award multiple Contracts for furniture to responsive and responsible Bidders that are able to meet the terms and conditions of this Solicitation and the requirements detailed in Section 2 – Bidder Qualifications and Service Requirements, and whose product offerings meet the scope of this Solicitation, as detailed in Section 1.2 – Scope. The Contract(s) awarded as a result of this Solicitation will be for use by New York State Agencies and other Authorized Users (see Section 5.32 – Non-State Agencies Participation in Centralized Contracts) Statewide. Accordingly, references to the State and its Agencies as Authorized Users under this Solicitation and the ensuing Contract(s) shall encompass all such entities within the definition of “Authorized User” set forth in Appendix B – General Specifications.

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

The Contracts resulting from the Solicitation will be multiple-award, statewide, Centralized Contracts. When making purchases from the Contracts resulting from the Solicitation, Authorized Users shall procure products and services that best meet their form, function, and utility requirements. Authorized Users are encouraged to obtain quotes from all eligible Contractors prior to making a purchase. Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users shall base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.

This Solicitation outlines the terms and conditions and all applicable information required for submitting a Bid. Bidders should pay strict attention to the Bid submission date and time to prevent disqualification. Bidders are strongly encouraged to read the language of this Solicitation thoroughly and to precisely follow the instructions included in the Solicitation and all attachments.

1.2 Scope

It is the intent of this Solicitation and subsequent Award to establish comprehensive multiple manufacturer's product line Contracts for new, unused and in current production commercial and institutional quality furniture, except for Hospital Room and Patient Handling furniture, in the following ten (10) categories listed below. This Solicitation is NOT intended to provide a full-service furniture solution.

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

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

Category Number	Category	Category Description
1	Conference Furniture (tables and seating)	Includes, but is not limited to: a. tables of various styles and materials, suitable for conference rooms and meeting rooms, from basic to executive levels; b. stacking chairs, rolling chairs, and all other seating of various styles and materials, suitable to go with conference and meeting room tables (as noted above); and c. dollies, chair and table carts.
2	Dormitory Furniture	Includes, but is not limited to: a. bedroom, lounge, and dining hall furniture suitable for school dormitory (generally more durable and versatile than household); and b. in room storage and desks.
3	General Purpose Tables	Includes, but is not limited to: a. assembly tables and work tables of various sizes, styles and materials, including adjustable or fixed height; b. folding tables, occasional and console tables; and c. other tables of various sizes, designs and materials suitable for general purpose.
4	High Density Filing	Includes, but is not limited to: a. manual or powered shelving designed to take as little space as possible; and b. retrieval systems.
5	Household Furniture	Includes, but is not limited to: a. living room, dining room and bedroom furniture, upholstered or non-upholstered, of various sizes, styles and materials, suitable for community residence programs.
6	Library Furniture	Includes but is not limited to: a. tables, lounge, chairs and seating, carrels, upholstered or non-upholstered of various sizes, styles and materials, suitable for library applications; b. bookcases, display cases, case goods, file credenzas, and storage; and c. carts and circulation desks.
7	Office and Courtroom Furniture	Includes, but is not limited to: a. tables, lounge, chairs and seating, benches, podiums, stands, upholstered or non-upholstered, of various sizes, styles and materials, suitable for basic to upper-level Executive offices and courtrooms; b. adjustable height and sit/stand desks, single and double pedestal desks, executive desks, bookcases, case goods, file credenzas, and storage of various styles and materials; c. ergonomic office and task chairs, managerial chairs, and side chairs; d. plastic barriers/sneeze guards, suitable for use with reception desks, conference tables and other office furniture; and e. dollies, chair and table carts.
8	School/Higher Education Furniture	Includes, but is not limited to: a. student desks, tables and seating found in classrooms for elementary schools through college; b. cafeteria tables, laboratory tables, and workshop tables; c. daycare beds (cots, mats, cribs and crib mats); d. bins, tubs, baskets, standalone multi-use wooden storage unit/cubby units, and cube units/organizers; e. activity, sand, puzzle, and water tables; and f. dollies, chair and table carts.
9	Specialty Seating	Includes, but is not limited to: a. big and tall seating, bariatric, gang seating (such as that found in public transportation terminals), and laboratory stools.

10	Systems Furniture	Includes, but is not limited to: a. products and parts to build cubicles and modular office space.
----	-------------------	---

Bidder shall indicate the Furniture Product Categories offered within its Bid by marking an 'X' in each Furniture Product Category within Attachment 13 - *Category Matrix* and submit with its Bid, as per Section 3 - *Bid Submission*. Bidders may offer one or more Furniture Product Categories. Bidders are not required to offer all Categories.

EXCLUSIONS:

The below items are excluded from the scope of this Solicitation. This list is not exhaustive; other items and/or services may be excluded at the discretion of OGS, either prior to or after contract award:

1. Bedding items such as mattresses, sheets, pillows, and other such accoutrements.
2. Carpets and rugs.
3. Wall hangings, mirrors, easels, chalk boards, white/dry erase boards, smart boards, and cork boards.
4. Lighting fixtures and/or solutions.
5. Metal lockers/lockers requiring fixed installation and/or public works.
6. Auditorium equipment, such as platform risers, speakers, etc.
7. Toddler gyms, climbing play sets, agility/balance equipment, physical education equipment, doll houses, playhouses, play kitchens, toys etc.
8. ~~Dollies, chair and table carts.~~
9. Additional charges and fees not specifically listed within the Contract and Supplemental Information sheet (for example, surcharges, fuel charges, storage fees, liftgate service fees, credit card fees, etc.).
10. Installation drawings and/or design services.
11. Public Work and/or Prevailing Wage Rate Work (installation).
12. Outdoor furniture including but not limited to tables, chairs, trash bins, and bike racks.
13. Hospital Room and Patient Handling furniture.
14. Customized furniture and/or solutions without a defined identifying number (model number, SKU, etc.), and List Price.

1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$143,000,000 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued, and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, *Estimated/Specific Quantity Contracts and Participation in Centralized Contracts*.

Numerous factors could cause the actual quantities of Products purchased under a Contract resulting from this Solicitation to vary substantially from the estimates in the Solicitation. Such factors include, but are not limited to, the following:

- Such Contracts may be non-exclusive Contracts.
- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

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

1.4 Key Events/Dates

EVENT	DATE	TIME
Solicitation Release Date	April 6, 2023	N/A
Deadline for Submission of Intent to Bid	April 21, 2023	5:00 PM ET
Closing Date for Submitting Bidder Questions	April 21, 2023	5:00 PM ET
OGS Response to Vendor Questions (estimated)	May 26, 2023	N/A
Bid Opening / Due date for Bids	June 28, 2023	1:30 PM ET
Contract Approval Date / Award Publish Date	Upon OSC Approval	N/A

1.5 Intent To Bid

A Bidder is requested to indicate its intent to bid by sending an e-mail titled “INTENT TO BID-[BIDDER NAME]” to OGS.sm.PS.Furniture@ogs.ny.gov on or before the date and time indicated in the *Key Events/Dates* section. The e-mail should include the Bidder’s company name and a contact name and contact information. The intent to bid is discretionary.

1.6 NYS Contract Reporter

Bidders must register with the New York State Contract Reporter (“NYSCR”) at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the “I want to find contracts to bid on” page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must “bookmark the ad” on the upper right-hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select “send me notification updates” option listed to the right of the ad. Answers to all questions of a substantive nature will be posted in the form of a question-and-answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR.

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

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

1.7 Bidder Questions

All questions regarding this Solicitation should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to OGS.sm.PS.Furniture@ogs.ny.gov by the date and time indicated in Section 1.4 – *Key Events/Dates*. Questions submitted after the deadline indicated may not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question-and-answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter (“NYSCR”). Your company must select the “opt-in” option within the Contract Reporter ad to receive notification updates of this Solicitation.

If Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the *Questions* period so that they may be given due consideration prior to the submission of Bids. See Section 3.9 - *Bid Deviations* for additional information.

1.8 NYS Comptroller Approval

In accordance with Section 112 of the State Finance Law, a Contract resulting from this Solicitation shall not be valid, effective or binding upon the State until such Contract has been approved by the Office of the New York State

Comptroller (“OSC”). Purchase orders or other procurement transactions issued under such Contract(s) may also be subject to OSC approval.

1.9 MWBE & SDVOB Interest in Partnering with Bidders

If a New York State certified MWBE or SDVOB would like to indicate its interest in working with participating Bidders, please send an e-mail entitled “*Solicitation 23295 MWBE or SDVOB INTEREST_COMPANY NAME*” to OGS.sm.PS.Furniture@ogs.ny.gov on or before April 21, 2023 at 5:00 PM ET. The e-mail content should include:

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

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

1.10 Summary Of Policy And Prohibitions On Procurement Lobbying

Pursuant to State Finance Law § 139-j and § 139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting, on a governmental entity’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter of intent to solicit offers/Bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff, as of the date hereof, are identified on the first page of this Solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to State Finance Law §139-j and §139-k. Certain findings of non-responsibility can result in rejection for Contract award and, in the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at: <https://ogs.ny.gov/acpl/>.

1.11 Definitions

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

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

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

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

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

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

“**NYS Vendor ID**” is a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

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

“Preferred Source Program” shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to a state agencies, political subdivisions and public benefit corporations (including most public authorities).

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

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

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

1.12 Appendices and Attachments

The following appendices and attachments, attached hereto, are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

Appendix A – Standard Clauses for NYS Contracts (June 2023)

Appendix B – General Specifications (April 2016)

Appendix C – Contract Modification Procedure

Appendix D – Federal Funding Agency Mandatory Terms and Conditions

Attachment 1 – Pricing

Attachment 2 – NYS Required Certifications

Attachment 3 – Encouraging Use of NYS Businesses

Attachment 4 – Insurance Requirements

Attachment 5 – Bidder Information Questionnaire

Attachment 6 – Bidder Submission Checklist

Attachment 7 – Bidder Questions Form

Attachment 8 – Report of Contract Usage

Attachment 9 – Intent to Bid Form

Attachment 10 – Contact and Supplemental Information

Attachment 11 – Price List Update Guide

Attachment 12 – Contractor and Reseller/Distributor Information Sheet

Attachment 13 – Category Matrix

Attachment 14 – Supplier/Manufacturer’s Certificate

Attachment 15 – Certification Under Executive Order No. 16

Attachment 16 – Proof of Past Sales

1.13 Conflict of Terms

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

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

5. The Bidder's Bid.

SECTION 2 BIDDER QUALIFICATIONS AND SERVICE REQUIREMENTS

2.1 Qualifications

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

2.1.1 Bidder Qualifications:

- A. A Bidder must be either:

1. An established Manufacturer of the products bid, or
2. An Authorized Representative of an established Manufacturer of the products bid.

- B. Any Authorized Representative hereby guarantees that:

1. It is an Authorized Representative of the Manufacturer;
2. The Manufacturer has agreed to supply such Authorized Representative with all quantities of products required to fulfill its obligations under any resultant Contract with the State, and
3. The Authorized Representative will provide a completed and signed Attachment 14 – *Supplier/Manufacturer's Certificate*, acknowledging this level of support, with the Bid. If such Manufacturer's Certificate is not submitted with the Bid, Bidder must provide within three (3) business days of request by OGS, (via e-mail is acceptable).

- C. A Bidder must have maintained an organization capable of performing the work described in this Solicitation, in continuous operation, for a minimum of three (3) years immediately prior to the Bid Opening date in Section 1.4 - *Key Events/Dates*. By the Bid Opening date, such organization must have adequate inventories of the products offered and must be capable of processing and shipping large numbers of orders to various destinations Statewide.

- D. A Bidder must currently hold at least one Government Entity contract (GSA contract, State contract, Local Governmental Entity contract, BOCES contract, Governmental Cooperative contract, etc.) for Furniture products included in Section 1.2 - *Scope*, by the Bid Opening date in Section 1.4 - *Key Events/Dates*.

1. Proof shall be provided in the form of a current active contract, to include the following: contract number and description, contract term dates, copy of current contract price list and/or discount/pricing structure, contact name, telephone number and/or e-mail address of the contracting entities' contract manager, and a link to the contract website, if available. Proof should be provided in electronic format.
2. Bidder shall submit such proof of currently held Government Entity contract with the Bid. If proof is not submitted with the Bid, Bidder must provide within three (3) business days, or other such timeframe as requested by OGS, (via e-mail is acceptable).

- E. A Bidder must provide proof of total past sales revenue equal to \$1,500,000.00 (one-million five hundred thousand dollars) or greater over the three (3) calendar years prior to the Bid Opening Date (2020, 2021, and 2022) for Furniture products included in Section 1.2 – *Scope*, to one or more Government Entities (GSA, State, Local, BOCES, Governmental Cooperative, etc.) and/or those Authorized Users as defined herein who are eligible to use State contracts (Political Subdivisions, Schools, Not for Profits, etc.). Proof of past sales is not limited only to the Categories being bid.

Proof of past sales revenue may include:

1. Sales made under successful bids (contracts) to Government Entities, for example, (GSA contract(s), State contract, Local Governmental Entity contract(s), BOCES contract(s), Governmental Cooperative contract(s), etc.).
2. Sales made via discretionary purchases (non-contract) to Government Entities, for example, (GSA contract(s), State contract, Local Governmental Entity contract(s), BOCES contract(s), Governmental Cooperative contract(s), etc.).
3. Proof of past sales revenue must be related to the Furniture products included within Section 1.2 – *Scope*. Bidders must show proof of past sales revenue in each of the three calendar years prior to the bid opening and may not have less than \$100,000 in sales revenue during any single year within the required 3-year period.
4. Proof of past sales may include sales made directly to Government Entities or sales made through the Bidder's use of reseller(s) and/or distributor(s).

A Bidder must submit required proof of past sales revenue in Excel format, using Attachment 16 – *Proof of Past Sales*. The Bidder shall provide proof of past sales information that contains at a minimum the Contract Number or purchase order number the sale(s) were made under, the Government Entity name, product item number and description, date of sale, list price, discount percentage, and net sale amount. Copies of invoices, purchase orders, vouchers, etc. will not be allowed as proof of past sales revenue.

2.2 Service Requirements

2.2.1 Delivery:

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

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

1. Delivery location has a loading dock or off-street loading area;
2. The delivery will be to the same floor as the loading dock or there is a freight elevator available;
3. The delivery may be completed during regular working hours;
4. The delivery fee is negotiable and may be lower than but not greater than the percent posted to the OGS website. Additionally, fees must be agreed to by the Authorized User and Contractor prior to delivery; and

NOTE: Any deviations from the above delivery requirements are outside the scope of the Contracts resulting from this Solicitation and may require the Authorized User to make a separate, non-contract purchase in accordance with the Authorized User's standard purchasing rules and procedures.

- C. Delivery shall be expressed in number of calendar days required to make delivery after receipt of a Purchase Order (or P-Card order). Product is required as soon as possible, and guaranteed delivery may be considered in making award. Delivery shall be made in accordance with instructions from the Authorized User included on the Purchase Order. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the Authorized User and, if applicable, from OGS Procurement Services.
- D. Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State, as designated by the Authorized User, including dock delivery and tailgating of load, which means bringing the truck to the loading dock or loading area and bringing the load to the tailgate of the truck or liftgate for Authorized

User personnel to remove the load without entering the truck. In addition, upon agreement, delivery locations may be expanded per the "Extension of Use" clause.

- E. The Bidder may allow multiple delivery points from the same Authorized User, at their discretion, at the time the order is placed, and/or prior to delivery.
- F. Delivery services performed, including any sub-contractor/third-party usage, shall be the sole responsibility of the Bidder.

2.2.2 Installation:

- A. Bidders have the option of offering installation, which may be at an additional cost represented by a percentage above the net price charged and may be charged at a different percentage rate for Downstate and Upstate. For this Solicitation, Downstate is defined as the Metropolitan NYC area, which includes the following nine (9) counties: Rockland, Westchester, Nassau, Suffolk, Queens, Kings, New York, Bronx and Richmond. Upstate is defined as the rest of New York State.
- B. Installation includes inside delivery as described in Section 2.2.1 – *Delivery*; however, it is intended for the additional work involved with regard to assembly of other than free-standing furniture, such as systems furniture, high density filing, and furniture shipped KD ("Knocked Down"), and any other assembly not considered minor assembly as described in Section 2.2.1 – *Delivery*. Installation does not include repairs or moving. The Authorized User must specify at time of order, and prior to delivery, if installation is required.
- C. Installation shall include the following:
 - 1. Inside delivery to the pre-agreed upon building location;
 - 2. Unpacking boxes;
 - 3. Checking parts for damage;
 - 4. Assembly utilizing the installers own tools;
 - 5. Disposal of boxes and packing materials; and
 - 6. Clean up after completion.

NOTE: Any deviations from the above installation requirements are outside the scope of the Contracts resulting from this Solicitation, and may require the Authorized User to make a separate, non-contract purchase in accordance with the Authorized User's standard purchasing rules and procedures.

- D. Installation services performed, including the use of a sub-contractor/third party, shall be the sole responsibility of the Bidder.
- E. While inside delivery and basic installation are optional services allowable under the Scope of this Solicitation, it is NOT the intent of this Solicitation to provide Authorized Users with a full-service furniture solution. Authorized Users requiring a full-service solution should consider their own solicitation, and/or utilize discretionary purchasing to obtain the additional services needed. Additionally, while installation drawings, hardware/parts lists and design services are excluded from the Scope of this Solicitation, they may be provided by the Contractor, at their discretion and at no charge, to an Authorized User upon request to assist with purchases under Category 10-Systems Furniture only.

2.2.3 Catalogs:

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

Catalogs and Price Lists may be furnished in either hard-copy or electronic format. If available in both formats, they shall be furnished in the format preferred by the requesting Authorized User. In the case of discrepancies regarding products and/or pricing between the catalog or Price List furnished by the Contractor to the Authorized user, in either

electronic or hard copy formats, the products and pricing approved by OGS, in effect and posted on the OGS website, per the Contract, shall always take precedence. Upon request, the Contractor shall assist Authorized Users in the use of catalogs and Price Lists.

2.2.4 Finishes:

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

2.2.5 Workmanship:

The assembly and finishing of all component parts shall be of the highest quality workmanship and comply with all applicable industry standards as set forth by, but not limited to, UL, ANSI/BIFMA, ASTM or OSHA. All upholstery shall be free of loose stitching, raw edges, ripples or sagging. The finished product shall be neat, trim and visually acceptable.

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

2.2.6 Flammability:

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

2.2.7 Construction:

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

2.2.8 Decorating Aids, Catalogs, and Price Lists:

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

- A. Quantities of fabric swatches to facilitate the interior decoration of their facilities. The swatches shall be 3" x 3" or larger, per Contractor availability, and be available for all regularly stocked fabrics.
- B. Photographs or drawings of the furniture that clearly show the product size, manufacturer name and model number of each piece, and finish blocks for all finishes.
- C. Price Lists and/or catalogs (as per Section 2.2.3 - *Catalogs*), and/or appropriate excerpts.

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

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

2.2.9 Delivery Condition:

All furniture, with the exception of systems furniture, high density filing, frame type beds where side rails are attached to head and foot boards without the use of tools, and dining room tables shall be delivered fully assembled and ready for use. KD ('Knocked-Down') furniture shall be allowed, and the Authorized User shall have the option, prior to delivery, to either accept it as such, or request installation, as described in Section 2.2.2 - *Installation*. Other exceptions may be made with prior agreement between the Contractor and ordering Authorized User.

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

SECTION 3 BID SUBMISSION

3.1 Performance and Bid Bonds

There are no bonds for this Contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the contract is required at any time during the term of the resulting Contract.

3.2 NYS Vendor File Registration

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

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

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

For more information on the Vendor File please visit the following website: <https://osc.state.ny.us/vendors/>

3.3 Format of Bid Submission

- A. The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be handled in accordance with Appendix B, *Late Bids*. Any Bid pricing or portions thereof submitted on USB flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder.

Situations where Bids are susceptible to Disqualification may include:

1. E-mail or facsimile Bid submissions, which are not acceptable, and
2. Absent Price Pages (Electronically Searchable Price List (such as Attachment 1 – *Pricing* (Excel)), a PDF catalog or manufacturers Price List (PDF or Excel)), which are not acceptable.

- B. It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up location. Only completed files (in the specified format) should be saved to a USB flash drive for submittal.
- C. Any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.
- D. Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation may be considered non-responsive and may be rejected.

3.4 Content

A complete Bid consists of submission of the following completed documents:

REQUIRED BID DOCUMENTS	REQUIRED ELECTRONIC FILE FORMAT	ELECTRONIC COPY (USB) REQUIRED	ORIGINAL (Hard Copy with Ink Signature) REQUIRED
Pages 1 and 2 of the Solicitation <u>w/original ink signature</u>	PDF	X	X
Completed Appendix D – Federal Funding Agency Mandatory Terms and Conditions	PDF	X	
Completed Attachment 1 – Pricing (must be submitted as an Excel file) see requirements below: <i>Attachment 1 Requirements, (or a PDF catalog or manufacturers Price List)</i>	EXCEL	X	
Completed Attachment 2 – NYS Required Certifications (signed and scanned)	PDF	X	
Completed Attachment 3 – Encouraging use of NYS Businesses	PDF	X	
Proof of compliance with Attachment 4 – Insurance Requirements	PDF	X	
Completed Attachment 5 – Bidder Information Questionnaire	EXCEL	X	
Completed Attachment 6 – Bidder Submission Checklist	EXCEL	X	
Completed Attachment 10 – Contact and Supplemental Information	EXCEL	X	
Completed Attachment 12 – Contractor and Reseller/Distributor Information Sheet	EXCEL	X	
Completed Attachment 13 – Category Matrix	PDF	X	
Completed Attachment 14 – Supplier/Manufacturer's Certificate (signed and scanned)	PDF	X	
Completed Attachment 15 – Certification Under Executive Order No. 16 (signed and scanned)	PDF	X	
Completed Attachment 16 – Proof of Past Sales (per Section 2.1(E))	EXCEL	X	

Proof of Current Government Contract (per Section 2.1 (D))	PDF	X	
Completed ST-220-CA Contractor Certification, notarized with <u>original ink signatures</u>	PDF	X	X
Completed MWBE 100 – <i>MWBE Utilization Plan</i> (signed and scanned)	PDF	X	
Completed SDVOB 100 – <i>SDVOB Utilization Plan</i> (signed and scanned)	PDF	X	
Completed Form EEO100 – <i>Equal Employment Opportunity Staffing Plan</i> (signed and scanned)	PDF	X	
Standard Vendor Responsibility Questionnaire – (completed and scanned to PDF) or Certification that Questionnaire has been completed online	PDF	X	Not required if submitted online

All documents must be completed in accordance with the instructions for the individual document, which may include an original signature or an original notarized signature. At this time, OGS cannot accept an eSignature that has been generated by software.

Documents should be submitted as an electronic copy and in the format specified in the list above for each document (e.g., PDF, Excel), following the instructions provided in this Section. Electronic copies of documents must be submitted on two (2) USB flash drives, with each USB flash drive containing a complete set of the submitted documents. When submitting electronic documents, include a printed copy of pages 1 and 2 of the Solicitation with the Bid (see Section 3.5 - *Bid Envelopes and Packages*, below).

Electronic copies of documents provided in PDF format should be saved as an Adobe Acrobat PDF, AND THEN converted to allow for Optical Character Recognition (OCR) (see <https://www.adobe.com/acrobat/how-to/ocr-software-convert-pdf-to-text.html>).

Bidders are strongly encouraged to submit a fully completed bid package to avoid disqualification. Failure to provide all required and satisfactorily completed documentation in a timely manner upon request by OGS may result in that Bidders Bid being found non-responsive and disqualified with no further consideration for contract award. Bidders are encouraged to seek clarification from OGS, if necessary, prior to submitting the requested document(s) and/or revisions.

Bidder is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically until a determination of award is made. If an award is made to Bidder, the documents with original signatures shall be retained by the Bidder for a period of six (6) years after the term of the contract has ended. Bidder shall submit such documents with original signatures to OGS upon request.

In the case of discrepancies between paper copies (if applicable) and USB flash drive submissions of the documents submitted by the Bidder, the electronic USB flash drive copy shall take precedence over the paper copy.

Notes to Bidder:

1. Do not include hard copies of any other Bid documents except Pages 1 and 2 of the Solicitation and the ST-220-CA Contractor Certification.
2. Bidder should note that a completed electronic copy of Attachment 1 – *Pricing* or other Electronically Searchable Price List is required. Bidders must provide a discount; full List Price will not be accepted. Price List submissions that direct Authorized Users to contact the manufacturer or Authorized Dealer for pricing, and/or do not contain List Pricing may be rejected, and the Bidder may be considered non-responsive, with no further consideration for contract award. Failure by a Bidder to submit Electronically Searchable pricing may result in automatic rejection of that Bidder's Bid and no further consideration for award. Failure to submit pricing includes missing or incomplete pricing; electronic media that does not allow for review/retrieval of information contained within; failure to complete all tabs and/or columns within Attachment 1 - *Pricing*, as per the Instructions within the Pricing Excel Worksheet/Workbook and/or failure to provide Pricing in unlocked Excel Format.

3. In the case of discrepancies between Electronically Searchable Price Lists, the Price List with the lowest price shall take precedence.
4. A Bidder should note that any indicators or messages that have been built into the Attachments are informational only and provided solely for the purpose of assisting Bidders in completing the Attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the Attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the Attachments to ensure compliance with the Solicitation requirements.

3.5 Bid Envelopes and Packages

All Bids should have a label on the outside of the envelope or package itemizing the following information:

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation number (Solicitation #23295)
3. Bid Opening Date and Time (as per Section 1.4 – *Key Events/Dates*)
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

All Bids should also include a PRINTED copy of pages 1 and 2 of the Solicitation, completed with the Bidder's information and signature. The printed and completed copy of pages 1 and 2 should be placed in the envelope or package with the USB flash drives.

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

3.6 Bid Delivery

Bids shall be delivered to the following address on or before 1:30 p.m. ET, on or before the Bid opening date as stated in Section 1.4 - *Key Events/Dates*:

State of New York Executive Department
Office of General Services
Procurement Services
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242
Attn: Bid Enclosed – Solicitation 23295

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

3.7 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the Corning Tower Information Desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services Receptionist at (518) 474-6262 or Customer Services (518) 474-6717 at least 24 hours prior to the visit. If no answer, leave a detailed phone message including the following information: reason for visit and/or delivering a bid, solicitation number, date and estimated time of delivery or visit, first and last name of visitor, and visitor's cell phone number. Visitor may email customer.services@ogs.ny.gov providing the same information. Visitors who are not pre-registered will be directed to a designated phone at the Corning Tower Information Desk, where they are to call the Procurement Services Receptionist (518) 474-6262 or Customer Services (518) 474-6717 for access. The visitor will be registered at that time. Bids are not allowed to be left at the Corning Tower Information Desk. Please note that delays may occur. Building access procedures may change or be modified at any time.

3.8 NYS Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 2 – *NYS Required Certifications*) with its Bid.

3.9 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Bidder Questions, if a Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid. Bidder is advised that OGS will not entertain any exceptions to Appendix A (Standard Clauses for New York State Contracts). OGS will also not entertain exceptions to the Solicitation or Appendix B (General Specifications) that are of a material and substantive nature.

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

3.10 Bid Opening Results

OGS Procurement Services posts Bid information on the OGS Procurement Services website. The Bid Opening Results webpage makes available the list of bidders that responded to the Solicitation. Such information is anticipated to be available online within two business days after the Bid opening.

The Bid Opening Results Page is available at: <https://ogs.ny.gov/procurement/bid-opening-results-0>.

3.11 Bid Liability

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

3.12 Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least 120 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 120 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

3.13 NYS Reserved Rights

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

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;

- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State; and
- T. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, region, category or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, categories, or lots;
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing;
- W. To give first consideration to Bids which are substantially complete over those that are not and to Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation;
- X. Unilaterally make revisions, changes and/or updates to any templates, Appendices (excluding Appendices A and B) and/or Attachments to this Contract without processing a formal amendment and/or modification.

3.14 Incorporation

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

SECTION 4 METHOD OF AWARD

4.1 Method of Award

Awards shall be made to all responsive and responsible Bidders that are able to meet the terms and conditions of this Solicitation and the requirements detailed in Section 2 - *Bidder Qualifications and Service Requirements*, and whose product offerings meet the Scope of this Solicitation, as detailed in Section 1.2 - *Scope* and whose prices indicate that those products will be provided at a reasonable price as determined by the NYS OGS. Reasonable prices may be determined by, but not limited to, reviewing prices on any current or previously awarded Government Entity contract and/or pricing offered by other Bidders for this Solicitation. Pricing shall be a discount from Manufacturer's List Price and shall be equal to or better than any other offered to another Government Entity for the same type of products. Discounts will be confirmed by comparison with other Government Entity contracts held by the Bidder. The Bidder must supply copies of their current contract Price Lists with other Government Entities indicating the discount percentage, as per Section 2.1 - *Qualifications*. If a Bidder holds another contract that requires them to offer a better discount than to any other entity, then the Bidder will be required to provide a copy of the contract language. If a Bidder holds another contract in which the price is F.O.B. origin, then OGS will allow up to a three (3) percent difference in the discount structure. After the Bid Opening, each Bid will be screened for completeness and conformance with the stated Bidder Qualifications for Bid submission, as set forth in Section 2 of this Solicitation. Any Bid not meeting these requirements may be deemed non-responsive and denied further consideration for award.

Bids will be reviewed to ensure that the Bidder has provided all required Attachments, completed in full, and in original hard copy, where requested. Failure by a Bidder to provide properly completed required documents and/or Attachments may result in their Bid being deemed non-responsive and denied further consideration for award. OGS reserves the right to give first consideration to Bids which are substantially complete over those that are not, and to make awards on a rolling or staggered start basis, as per Section 3.13 - *New York State Reserved Rights*, as deemed necessary and determined solely by OGS Procurement.

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

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

4.2 Minor Deviations/Minor Technicality

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

4.3 Notification of Award

Tentative award of the Contract shall consist of written notice to that effect by OGS to a selected Bidder, who shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible.

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

4.4 Periodic Recruitment

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for Categories covered by the scope of the awarded Contract. In addition, 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.

4.5 Procurement Instructions for Authorized Users

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

- B. A Matrix showing the Furniture Categories and Contractors offering products under those Categories will be posted on the OGS website. Authorized Users should determine from the Matrix the Category of furniture they desire, then review the listing of Contractors under that Category. Each Contractor's approved Price List and/or catalog of offerings (if available), will be posted on the OGS website, without exception, along with a listing of the furniture manufacturers each Contractor has available. Additionally, a copy of each Contractor's Contact and Supplemental Information sheet will be posted to the OGS website, without exception, where Authorized Users can find contact information, as well as discount structure, inside delivery, installation, and/or restocking fees.
- C. Authorized Users are strongly encouraged to seek a minimum of three (3) quotes, where possible, as well as to seek better than Contract pricing for all items, especially when purchasing in volume, as Contractors may or may not automatically offer volume discounts. Volume discounts, if offered, will be shown on the Contractor's Contact and Supplemental Information page posted on the OGS Website.
- D. When placing orders under this Award, the Authorized User should follow and be familiar with the terms and conditions governing the Contract and are responsible for determining that the product(s) they intend to purchase fit within the scope of the Award. Bidders/Contractors are encouraged, though not required, to self-identify products meeting EO22 requirements within their Price List. Authorized Users are strongly encouraged to confirm the accuracy of the entries by contacting the Contractor directly.

Authorized Users have the responsibility to document purchases, and such documentation should include:

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

Authorized Users will place orders directly to the Contractor or the Contractor's Authorized Reseller (if applicable), as specified by the Contractor, and specify any shipping/delivery requirements, including inside delivery and/or installation. Inside delivery and installation terms must be agreed upon at time of order and prior to delivery.

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

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

SECTION 5 TERMS AND CONDITIONS

5.1 Contract Term and Extensions

The Contract will be in effect for a term of five (5) years. The Contract term shall commence after all necessary approvals and shall become effective upon the date of OSC approval of the final executed documents.

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for up to five (5) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to the approval of OSC and any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

The Contract term provided for in this section shall extend six (6) months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g., changes in minimum, prevailing or living wages, or regulated services).

5.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract 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 30 calendar days 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 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

5.3 Price

- A. Bidders must submit an Electronically Searchable Price List, such as Attachment 1 – *Pricing*, a PDF catalog or manufacturer's Price List in either MS Excel or PDF format, which includes base models, as well as options and/or upgrades, based upon the Categories they are bidding (See Attachment 13 - *Category Matrix*). Should a Bidder submit an Electronically Searchable catalog that does not contain pricing, an additional Price List containing pricing by Contractor Model/Item Numbers/SKU for those items must be submitted, in addition. Attachment 1 – *Pricing* may be used; however, it is not required.
- B. Identifying information, which includes, at a minimum, the Product Line Name, Contractor Model/Item Numbers/SKU, and/or Manufacturer Item Numbers, and List Pricing MUST be included within the Electronically Searchable Price List.
- C. Furniture items that are KD ("Knocked-Down") or otherwise require assembly should be clearly noted as such within the Price List(s).
- D. Electronically Searchable Price Lists should contain only those Categories and items which correspond to the Bidder's submission of Attachment 13 - *Category Matrix*, where the Bidder shall indicate the Furniture Product Categories offered under its Bid by marking an 'X' in each Furniture Product Category, as appropriate.
- E. The Bidder's pricing submission should not contain products or product lines that are out of Scope (see Section 1.2- *Scope*). Price Lists containing items, which do not include identifying information and List Pricing, and/or items that are out of Scope may be removed by OGS, at their sole discretion, and without exception.
- F. Bidder's may submit a discount for either the entire Price List or submit discounts by breakdowns of individual product line, style, function, etc., from the manufacturer's Retail Price List. Discount information, including discount percentages, for each Price List must be entered within Attachment 10 - *Contact and Supplemental Information*. Bidders must provide a discount; full List Price will not be accepted.
- G. Price List submissions that direct Authorized Users to contact the manufacturer or Authorized Dealer for pricing, and/or do not contain List Pricing may be rejected, and the Bidder may be considered non-responsive, with no further consideration for contract award.
- H. Where discrepancies exist between Price List documents, the lowest price shall prevail.
- I. Price Lists submitted with the Bid shall remain in effect for one (1) year from the Bid Opening Date. Price List Updates will be allowed twice per year thereafter, during the Contract term or extension, beginning on or around the anniversary of the Bid Opening Date, as per Section 5.4 - *Price List Updates*.
- J. All Bidder Price List submissions should be provided in a single/combined PDF document, vs. multiple individual PDF documents, where possible, if Attachment 1 is not used.
- K. OGS will review each Bidder's Price List submission for completeness and reserves the right to remove any item(s) where the Contractor Model/Item Numbers/SKU and/or Manufacturer Item Numbers, and/or List Pricing are not included, and/or where the item(s) and/or product line is determined to be out of Scope.
- L. Price Lists must not contain any other terms and conditions or have references to any other contracts (i.e., GSA). OGS reserves the right to remove any additional terms and conditions that apply to another contract, or that conflict with those of the OGS Award.
- M. All awarded Contractors' Price Lists must be reviewed and approved by OGS Procurement prior to posting on the OGS Contract website. OGS' determination of acceptable Price Lists, including, but not limited to products,

pricing and discounts, shall be final. All OGS approved Contractor Price Lists will be posted on the OGS Procurement Services website, without exception.

5.4 Price List Updates

- A. Updates to a Contractor's OGS Price List (price list updates) will be allowed twice per year, after the first anniversary date of the Bid Opening. Price list updates may not be allowed within 90 days of a prior price list update approval unless deemed within the best interest of the State. Additional price list update requests may not be granted, unless OGS determines that it is within the best interest of the State and/or its Authorized Users. Requests for price list updates must be submitted via email to the OGS contract manager listed on the OGS Website. The price list update request must be dated, complete and accurate, and in the format required by OGS in order to be considered for approval. Contractors shall adhere to the instructions in Attachment 11 – *Price List Update Guide* and use the provided Appendix C - *Contract Modification Procedure* for all price list update requests. OGS reserves the right to give first consideration to substantially complete submissions, as determined solely by OGS Procurement, as well as to deny price adjustments to Contractors that are delinquent regarding administrative requirements, including, but not limited to, the submission of Attachment 8 - *Report of Contract Usage*, and/or proof of insurance requirements.
- B. Once approved by OGS, discounts offered from manufacturer Price Lists may not be decreased at any time during the Contract term, unless satisfactory proof of undue hardship is submitted by the Contractor and approved by OGS. Proof may include, but not be limited to, signed statements by the Manufacturer detailing and attesting to the need for the discount reduction. Determination of undue hardship is at the sole discretion of OGS.
- C. New manufacturer product lines may be offered within a price adjustment submission, as long as they are within the originally awarded furniture product Category(s). Additional furniture Categories may not be added post award. Contractor may offer discounts for the entire product line or breakdown by style, function, etc. from the Manufacturer's Price List. If the discount percentage is the same or greater than existing product lines, then no proof of reasonableness is required. The Contractor is required to provide proof of reasonableness for a new product line if the discount offered is less than existing product lines. Proof of reasonableness may be in the form of pricing from a Government Entity contract held with an entity other than OGS, including invoices from sales made to that entity that are less than twelve (12) months old from the date of the price adjustment submission, or sales reports that are less than twelve (12) months old from the date of the price adjustment submission for the product line offered.
- D. All adjustments to a Contractor's previously approved Price List are allowable at the sole discretion of OGS Procurement Services. OGS reserves the right to remove any items(s) deemed to be out of scope and/or unreasonably priced, at any time. In addition, OGS reserves the right to revise the Price List Update process at any time during the contract term and/or deny price adjustments during the last twelve (12) months of the Contract term, without prior notice.
- E. It is OGS's intention that all Contractor price lists be maintained and updated regularly to keep product offerings, pricing, product numbers and product descriptions current. Contractors are required to honor their posted contract pricing at all times and may not charge greater than Contract price at any time during the Contract term. Contractors are encouraged to review their posted price lists regularly and submit a price list update request at least once per year. Contractors should contact the OGS contract manager for the most current price list update procedures and forms. Contractors shall submit their price list update request to the OGS Procurement Services contract manager pursuant to the requirements of this Section for review and written approval prior to use. Revised pricing is effective upon the date OGS approves the request. Revised price lists shall be posted by OGS on the contract website within five (5) Business Days after approval, or as soon as possible thereafter.

5.5 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

5.6 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, *Savings/Force Majeure*.

Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 business days written notice mailed to the Contractor.

5.7 Volume Discounts

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

Volume discounts shall be entered within Attachment 10 – *Contact and Supplemental Information*. Any restocking fees must be included within Attachment 10 as a percentage (%) of the net price. All approved discounts shall remain in effect for the entire contract period. Discounts may be increased during the Contract term, and as per Section 5.4 – *Price List Updates*.

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

5.8 Ordering

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, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

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

5.9 Purchasing Card Orders

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, *Purchasing Card*), also referred to as the Procurement Card, the Contractor shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges, or other fees.

5.10 Minimum Order

Minimum order, if required, shall be established by the Bidder and stated on Attachment 10 – *Contact and Supplemental Information* where indicated (See Section 3.3 – *Format of Bid Submission*). The Bidder may offer to ship orders less than the minimum order with the freight prepaid and added to the invoice. It shall be the Authorized

User's choice if they wish to accept the offer. Bidder must establish minimum order, if they so choose, at time of Bid submission. The minimum order amount may not be increased once established.

5.11 Invoicing and Payment

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

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line-item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

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. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/nys-vendors>.

5.12 Product Returns and Exchanges

In addition to the provisions of Appendix B, *Title and Risk of Loss*, *Product Substitution*, and *Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Stock products shall be replaced within 10 business days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Products that are not stock shall be replaced within the normal delivery terms listed on Attachment 10 - Contact and Supplemental Information following written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund is made in such fashion the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

5.13 Unanticipated Excessive Purchase

The State reserves the right to negotiate lower pricing, or to advertise for Bids, for any unanticipated excessive purchase.

5.14 Contract Administration

The Bidder shall provide a sufficient number of customer service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Bidder shall also provide an afterhours contact in the event of an emergency occurring after business hours or on weekend/holidays. Bidder shall provide a dedicated contract manager to support the updating and management of the Contract on a timely basis. Information regarding the customer service, emergency contact, and contract manager shall be set forth in Attachment 5 – *Bidder Information Questionnaire*. Contractor must notify OGS within five (5) Business Days if its contract manager, emergency contact, or customer service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS contract manager.

5.15 NYS 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 supports requisition-to-payment processing and financial management functions.

The State may be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

5.16 Americans with Disabilities Act (ADA)

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidder is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not mandatory for Bidder to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

5.17 N.Y. State Finance Law § 139-I

Pursuant to N.Y. State Finance Law § 139-I, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and

consideration of such statement, OGS may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

The certification required above can be found on Attachment 2 – *NYS Required Certifications*, which Bidder must submit with its bid.

5.18 Insurance

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements*.

5.19 Report of Contract Usage

The Contractor shall furnish semi-annual reports, using the format specified in Attachment 8 – *Report of Contract Usage*, containing total sales for both State Agency and Authorized non-State Agency Contract purchases no later than forty-five (45) days after the close of the reporting period. Sales for January 1st through June 30th would be due by August 15th. Sales for July 1st through December 31st would be due by February 15th.

Contractors shall specify if any authorized resellers are NYS Certified Minority and/or Women-Owned Business Enterprises (MWBES), small business enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the contract manager listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number, Contractor's name and sales period.

The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases, may be required by OGS and must be supplied upon request. Failure to submit completed reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

This Contract may be terminated if, on the one-year anniversary date of the Contract Award, and annually thereafter, the reports required to be filed under this Section show that the Contractor has made no sales to any Authorized User under the Contract for the prior year. Termination of the Contract under this Section is in addition to and separate from Appendix B – *Termination* and shall take effect 30 calendar days from the date of written notification to the Contractor. The Contract may also be terminated for failure to submit the required Report of Contract Usage as specified under this Section.

5.20 Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

I. New York State Law

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

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBES Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal opportunities for minority group members and women shall apply to all Contractors and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing to be performed for or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
 - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
 - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 - Staffing Plan.

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

C. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)

The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January to report the actual workforce utilized during the previous quarter in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>

The Workforce Audits must be completed electronically in the NYS Contract System Workforce Audit Module. Separate audits shall be completed by Contractor and all subcontractors, and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided relates to the actual workforce

utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

IV. Contract Goals

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Business Diversity. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify

the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333.1. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

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

G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.

H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333.1, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued with regard to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

VII. Required Good Faith Efforts

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

- 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, copies of such solicitations and any responses thereto.
- 2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

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.

VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: **"Introduction to the System - Vendor training"** and **"Contract Compliance Reporting - Vendor Training"** to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/FrontEnd/TrainingList.asp>.
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on **"Vendor Account Lookup"** to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing **"Change Info."** It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through **"Request New User."** When identifying the person responsible, please add **"- MWBE Contact"** after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for **"Contact Us & Support"** then **"Technical Support"** on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS OBD Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

IX. Breach of Contract and Liquidated Damages

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

X. Fraud

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

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

Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.

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

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

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

I. Contract Goals

- A. OGS hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/Veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the OGS Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.
- C. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. OGS may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

III. Request For Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at OGS for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regard to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The

Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OGS.sm.PS.Furniture@ogs.ny.gov.

IV. Required Good Faith Efforts

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

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

V. Monthly SDVOB Contractor Compliance Report

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

VI. Breach of Contract and Damages

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

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

5.22 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.

5.23 Surplus/Take-Back/Recycling

- A. 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.
- B. 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 III below for specific requirements governing electronic equipment recycling.

- C. 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>
- D. 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.

5.24 Environmental Sustainability and NYS Executive Order Number 22

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. 22 (Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 22, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 22 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.

5.25 Consumer Products Containing Mercury

Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Contract.

5.26 Diesel Emission Reduction Act

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the “Law”), it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology (“BART”) and ultra-low sulfur diesel fuel (“ULSD”). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by Contractors “on behalf of” State Agencies and public authorities and require certain reports from Contractors. All heavy-duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy-duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

5.27 Overlapping Contract Products

Products available under the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost-effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

5.28 Preferred Source Products

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products 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 meet the form, function and utility of the Authorized User. Some Products in the resultant Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

5.29 NYS Vendor Responsibility

OGS conducts a review of prospective Contractors (“Bidders”) to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter “Questionnaire”) is used for non-construction Contracts and is designed to provide information to assess a Bidder’s responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State’s execution of the Contract will be contingent upon the State’s determination that the Bidder is responsible, and that the State will be relying upon the Bidder’s responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

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

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the *NYS Vendor File Registration* section. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

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

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

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

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

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

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

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

5.30 NYS Tax Law Section 5-a

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <https://www.tax.ny.gov/> for additional information.

5.31 “OGS or Less” Guidelines

Purchases of the Products included in the Solicitation 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 Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

5.32 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, *Participation in Centralized Contracts*. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the *Price* clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the

OGS web site (<https://online.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

5.33 Extension of Use

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State 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. Requests must be submitted to the OGS contract manager prior to the use of any Contract. Requestors will be provided with instructions and the proper form(s) to be completed for review and approval by OGS.

5.34 Authorized Resellers

A. Definitions

"Authorized Reseller" shall refer to alternate distribution sources (distributors or dealers) for a manufacturer that are authorized and designated by said manufacturer, subject to approval by New York State.

B. Conditions of Authorized Reseller Participation

Authorized Resellers 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 Contractor name additional Authorized Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Authorized Resellers and their participation under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that:

1. Such qualifying criteria are uniformly applied to all potential Authorized Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. All general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. Those qualifying criteria met by the Authorized Reseller must be identified in Authorized Reseller designations on Attachment 12 –*Contractor and Reseller/Distributor Information Sheet* at the time that Reseller approval is requested; and,
4. Immediate advance notice is provided to OGS in the event that a change in Authorized Reseller's status occurs during the Contract term.

All Authorized 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. Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Authorized Reseller's participation or ability to quote a particular order.

C. Designation of Authorized Resellers

Bidders should submit with their Bid a listing of Authorized Reseller(s) chosen to fulfill orders, and/or accept payments under this Solicitation and subsequent Award, within Attachment 12 –*Contractor and Reseller/Distributor Information Sheet* and note whether the Authorized Reseller is a Minority or Women Owned Business Enterprise (MWBE), a Service-Disabled Veteran Owned Business (SDVOB), or a New York State Small Business (SB). Should the Bidder allow the Authorized Reseller to take orders, ship direct, or accept payments, they must note such within the Attachment. All Authorized Resellers chosen to fulfill orders to include, though not limited to, issuing invoices and receiving payments, must be authorized by OGS. If Authorized Reseller(s) are designated to fulfill orders under this Contract, issue invoices and receive payment, and do not possess a New York State Vendor ID number, the Bidder/Contractor must provide OGS, in advance, with an Office of the State Comptroller (OSC) Substitute W-9 form https://ogs.ny.gov/BU/RE/Retail/2017/18316_18317/Substitute2017.pdf, which should be completed by each of the

Authorized Reseller(s), and submitted to the Office of General Services. OGS will initiate the vendor registration process for all Bidders recommended for Contract Award and their Authorized Reseller(s). Once the process is initiated, such registrants will receive an e-mail from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application. **All Authorized Reseller(s) must be approved in advance by OGS.**

D. Responsibility for Reporting/Performance

Contractor shall be fully liable for an Authorized Reseller's performance and compliance with all Contract terms and conditions. Product purchased through an Authorized Reseller must be reported by the Contractor in the required semi-annual sales reports to the State as a condition of payment. In addition to inclusion of Authorized Reseller volume in the Contractor's sales reporting obligation to the State, at the request of an Authorized User, the Authorized Reseller shall provide the Authorized User with reports of the individual Authorized User's Contract activity with the Authorized Reseller.

E. Applicability of Contract Terms

Product ordered directly through Authorized Resellers shall be limited to Products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Authorized Reseller participation.

F. Authorized Reseller Updates

If the Bidder/Contractor allows Authorized Reseller(s) to participate in the Contract, requests to add or delete Authorized Reseller(s) or to modify their information must be submitted by the Contractor for prior approval of OGS. Submissions for the addition and/or deletion of Authorized Reseller(s) will be accepted quarterly, January 1st through January 15th, April 1st through April 15th, July 1st through July 15th, and October 1st through October 15th. Contractors must utilize Attachment 12 – *Contractor and Reseller/Distributor Information Sheet* for each submission and are strongly encouraged to email the OGS contract manager, in advance of the allowable timeframe for submissions, to obtain the most current template(s) for the update. OGS reserves the right to give first consideration to substantially complete submissions, as well as to deny revisions to a Contractor's Authorized Reseller Information Sheet whereas the Contractor is delinquent regarding administrative requirements, including, but not limited to, the submission of Attachment 8 - *Report of Contract Usage*, and/or proof of Insurance requirements. In addition, OGS reserves the right to deny revisions to a Contractor's Authorized Reseller Information Sheet during the last six (6) months of the Contract term without prior notice.

5.35 New Accounts

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references or complete a credit application.

5.36 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, make price level revisions, delete Products, 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 5.4 – *Price List 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*.

5.37 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the Contractor's personnel shall not be impaired by alcohol or drugs of any kind in the performance of the Contract.

5.38 Traffic Infractions

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

5.39 Instruction Manuals

At the time of delivery, Contractor shall provide a complete instruction manual for the Product and for each component supplied, as applicable, to the Authorized User.

5.40 Contract Documents; Electronic Format

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the contract and any extensions thereof, and for a period of six (6) years after the term of the contract has ended. Contractor shall submit such documents with original signatures to OGS upon request. If Contractor seeks to assign the contract during the term, Contractor shall provide all documents relating to the bid and contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.

5.41 Purchasing Card Orders

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, *Purchasing Card*), also referred to as the Procurement Card, the Contractor shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.

End of Document