

How to Use This Contract

This document provides the Authorized User general instructions on how to use the Project Based Information Technology (IT) Consulting Services Contract. These instructions assume the Authorized User has a good knowledge of IT project procurement methodology. An Authorized User must familiarize itself with the OGS Centralized Contract terms and conditions. Additional general procurement information is available on the OGS website.

Section 1. General Information

1.1 OGS CENTRALIZED CONTRACT SCOPE

The Project Based Information Technology Consulting Services Contracts streamline the procurement of Project Based IT Consulting Services for Authorized Users of NYS OGS Centralized Contracts. To purchase fixed-price deliverable services, an Authorized User must use the process outlined in the OGS Centralized Contract.

1.2 LOT VALUES

OGS Centralized Contracts have been grouped into three (3) lots (see table below). Lot placement was determined by the Contractor's response to OGS Solicitation #22772.

Lot Number	Project Value
Lot 1 Limited to NYS MWBEs, NYS SDVOBs, and NYS SBs	Up to \$200,000
Lot 2	\$200,001 - \$7,500,000
Lot 3	\$7,500,001 - \$25,000,000

The estimated project value as per Lot maximum value, (inclusive of any Enhancement budget) shall be used to determine which Lot must be used. If the option of an Enhancement budget is included, the total value of the Mini-Bid cannot exceed the maximum value of the Lot. Mini-Bids must be completed within a single Lot.

1.3 REQUIREMENTS

- A competitive Mini-Bid is required for every transaction under this Centralized Contract.
- Mini-Bids can be distributed to no more than one Lot per project.
- An Authorized User should prepare a detailed Statement of Work using the Mini-Bid template.
- The Authorized User must distribute the Mini-Bid to all qualified Contractors in the selected Lot (unless a Contractor has removed itself from consideration via the Mini-Bid Participation Interest Template).
- All services performed for an Authorized User shall only be performed within the continental United States.
- An Authorized User shall conduct its Mini-Bid in accordance with the requirements set forth in the How to Use this Contract document.
- E-mail addresses for all awarded Contractors in each Lot can be found on the OGS website at
 - <http://www.ogs.ny.gov/purchase/snt/awardnotes/7360022772can.HTM>, by clicking on the "Mailing List By Lot" link on the PBITS main contract page.
 - The direct link to this document is <http://www.ogs.ny.gov/purchase/snt/awardnotes/7360022772MailingListEmails.xlsx>.
 - See the tabs on the bottom of the document to access the E-mail addresses for each Lot.

1.4 IN-SCOPE PROJECTS

Project Based IT Consulting Services required by an Authorized User must be obtained via a Mini-Bid process under this Contract. The Authorized User shall issue a Mini-Bid with a SOW for the required Project Based IT Consulting Services. A Mini-Bid may include, but will not be limited to, projects requiring: analysis, data classification, design, development, testing, quality assurance, security and associated customized training for IT based applications.

Additional examples of in-scope projects include, but are not limited to:

- Technical architecture advisory services;
- Business analysis for project development;
- Proprietary software application development/customization, programming and Integration;
- Data information Management (including data migration, data conversion, data manipulation, data Integration);
- Project management project support services - including, but not limited to; project management, project quality assurance and control, and independent verification & validation (IV&V);
- Disaster recovery/business continuity and testing;
- Quality assurance;
- Continuity of operations planning (COOP);
- Data categorization; and
- Open-source software implementation.

1.5 OUT-OF-SCOPE WORK

There are service offerings expressly **excluded** from the scope of these contracts. In many instances, such services and/or offerings are (or will be) covered by another OGS Centralized Contract. Examples include:

- Staff augmentation services;
- Time and material services;
- Web hosting;
- Automated network monitoring or any other service provided principally through an automated process;
- Hardware Maintenance and Support;
- Software Maintenance and Support
- Ongoing Maintenance and Support;
- Services priced on a Per Asset Basis;
- Services priced on a contingency basis;
- Equipment maintenance;
- Prepackaged training courses;
- E-Learning;
- Managed services;
- Acquisition of equipment (hardware)
- Acquisition of software, either Commercial off-the-shelf (COTS) software or pre-existing software;
- Acquisition of non-consulting services, such as network provisioning, voice services (local, long-distance), or video bridging;
- Cloud based or “As a Service” offerings, including but not limited to SaaS, IaaS, PaaS, and XaaS;
- Any offering that is a combination of equipment, hardware, software, cloud or “as a service offerings”; and
- Consulting or other installation work which is considered Public Works is excluded from purchase under the scope of this Contract.

Section 2. Preparing the Mini-Bid

2.1 AUTHORIZED USER COMPLIANCE WITH MWBE PARTICIPATION GOALS

OGS has determined that the overall minority and women owned business enterprise (“MWBE”) participation rate for MWBEs on the Contracts resulting from this solicitation shall be equal to or greater than 20% of the State Agency and Authority (as defined in New York State Executive Law §310 and hereinafter referred to as “State Agency”) spend. When a State Agency issues a competitive solicitation under these OGS Centralized Contracts, the State Agency shall establish agency-specific goals for participation of New York State certified MWBEs and shall seek submittal of the MWBE utilization plan. State Agencies will seek an overall participation rate equal to or greater than 20% based on all acquisitions made throughout the term of the Contracts awarded hereunder.

Other Authorized Users may have their own internal policies and procedures regarding MWBE participation goals to which they should adhere.

2.2 CONTRACT TERMS AND CONDITIONS

An Authorized User must understand the terms and conditions of the OGS Centralized Contract prior to project development.

In accordance with Appendix B, Section 28, Modification of Contract Terms, an Authorized User may add additional required terms and conditions to the Mini-Bid and resultant Authorized User Agreement only if such terms and conditions are more favorable to the Authorized User and do not conflict with or supersede the OGS Centralized Contract terms and conditions. Examples of additional terms and conditions include:

- Any additional security or confidentiality requirements regarding access to sensitive data (such as Federal tax information, health information, criminal justice information or education information); and
- Any additional requirements imposed by the funding source.
- Expedited delivery timeframe;
- Additional incentives, such as discount for expedited payment/Procurement Card use;

2.3 ADDITIONAL CONTRACTOR TERMS AND CONDITIONS WITHIN AN AUTHORIZED USER AGREEMENT

As part of Contractor's response to an Authorized User Mini-Bid/SOW, a Contractor may propose additional terms and conditions which do not contradict or violate any of the terms and conditions of this Contract, are more advantageous to the Authorized User, and place no additional liability or responsibility on the Authorized User. Such additional terms and conditions may be allowed and incorporated into the Authorized User Agreement, provided the Contractor identifies such terms and conditions in Contractor's response to the Authorized User's Mini-Bid/SOW and the Authorized User accepts such additional terms and conditions. Authorized User should review any such terms and conditions proposed by Bidder to ensure compliance with the Contract.

2.4 STATUTORY REQUIREMENTS

An Authorized User of this Contract:

- Must adhere to the procedures of this Contract.
- Must adhere to Authorized User's internal policies and procedures.
- Must adhere to all federal, State and/or local statutes, as applicable.

2.5 DEVELOP A STATEMENT OF WORK

The Authorized User should fully identify their project needs, which may include, but are not limited to such factors as:

- Systems to integrate with;
- Hardware and software environment;
- "As-is" state of project;
- Any additional requirements imposed by the funding source;
- Location where work will be performed;
- Deliverables/payment points;
- Implementation end date;
- "To-be" state of project;
- Available State staffing resources; and
- Knowledge Transfer.

Using the above information, the Authorized User will develop a Statement of Work (SOW) with enough specificity to allow a Bidder to adequately respond to a Mini-Bid.

2.6 DEVELOP A PROCUREMENT PLAN

Based on the individual project, the Authorized User should consider the following factors when developing the Mini-Bid:

- Pre-Mini-Bid
 - Surveying the Contractor pool of the appropriate Lot for interest in the project, utilizing the Mini-Bid Participation Interest Template. (This is an optional process)
- Total procurement timeframes, including but not limited to:
 - Pre-bid conference
 - Question and answer period
 - Bid due date
 - Key personnel interviews
 - Tentative project start date
 - Project timeline
 - Legislative deadlines
- Technical/financial weighting
 - Technical weighting can be no more than 70%, including consideration whether to use the quantitative factors set forth in State Finance Law section 163(1)(j), if applicable
 - Financial weighting can be no less than 30%
 - Authorized Users are encouraged to develop a weighting ratio within these parameters that will provide Best Value – for example 60% Technical / 40% Financial
 - Best Value may also be based on Contractor meeting the mandatory requirements (pass/fail) and lowest cost (100% financial weighting)
 - Evaluation methods
- Reference checks on completed IT projects
 - OGS strongly recommends reference checks on past projects
 - Was the project on time?
 - Was the project on budget?
 - Did the final product meet or exceed expectations?

Once the procurement plan is complete, the Mini-Bid Template is used to create the final Mini-Bid.

2.7 ADDITIONAL CONSIDERATIONS FOR THE AUTHORIZED USER

2.7.1 Lot Determination

Prior to selection of the appropriate Lot, the Authorized User must calculate the anticipated cost of the Project using its estimated hours of work required to complete the Project.

An Authorized User is cautioned that misidentifying the Lot which their project falls under may result in bids that fall outside of the selected Lot structure. Bid(s) falling outside the solicited Lot structure MUST BE REJECTED. If this should occur, Authorized Users need to consider reassessing the transaction to determine if a rebid would result in a better value.

2.7.2 Retainage

The Authorized User may elect to retain a percentage of each individual Deliverable payment of no more than 20% until the acceptance of the complete Deliverable or project. For example, retainage may be reduced as described in the Mini-Bid instructions, when the Contractor substantially reduces the time required from the timeframes negotiated between the Authorized User and the Contractor for the completion and acceptance of a Deliverable. The Authorized User must include the requirement for retainage, the total percentage of retainage to be withheld, and the potential reduction from the withhold in the Mini-Bid.

The use of retainage, the retained percentages and timing for release employed is at the discretion of the Authorized User within the limits listed in the preceding paragraph. An Authorized User may negotiate with a Tentative Awardee with regard to retainage if retainage is included in the Mini-Bid.

Retainage Example: \$200,000 fixed-price contract, with a 10% retainage to be withheld until the completion of the project. Contractor will receive the accrued retainage that has been held back (\$12,500) with the payment for due for the final Deliverable after the client has accepted that Deliverable.			
	Fixed Deliverable Cost	10% Retainage	Actual Payment to Contractor after acceptance of Deliverable
Deliverable 1	\$25,000	\$2,500	\$22,500
Deliverable 2	\$50,000	\$5,000	\$45,000
Deliverable 3	\$50,000	\$5,000	\$45,000
Deliverable 4	\$75,000	N/A	\$75,000 + \$12,500 (accrued retainage amount) = \$ 87,500

2.7.3 Enhancement Budget

The Authorized User may include an Enhancement budget

- If an Enhancement budget is included, the anticipated cost of the Project must include the allowable Enhancement budget amount anticipated to be included in the total value (up to 10%). This approximate cost shall be used in the selection of the appropriate Lot.
- If an Enhancement budget is included, notice must be provided in the Mini-Bid. If an Enhancement budget provision is not included, it shall not be available under the final Authorized User Agreement.

2.7.4 Evaluation Tools, Criteria and Weighting

The evaluation tools, criteria and weighting must be finalized prior to the Bid opening date. Best practice is that evaluation tools, criteria and scoring factors are finalized prior to Mini-Bid release.

2.7.5 Contractor Insurance

Prior to entering into any Authorized User Agreement, the Authorized User must check the OGS Centralized Contract website to ensure the Tentative Awardee has submitted all the required insurance documentation to OGS and that such insurance coverage is current.

- The Contractor’s insurance information can be found on the OGS website for this Contract. If the required insurance has already been provided to OGS and is current, then the Authorized User may proceed with the transaction. If approved insurance documentation is absent, the Authorized User must advise the Contractor to submit the required insurance documentation to the OGS Contract Administrator and shall not execute the Authorized User Agreement until it confirms that all the required insurance have been submitted to and approved by OGS. Once OGS receives, reviews and approves the insurance documentation, the OGS Centralized Contract website will be updated to reflect the change and agreement can proceed.

Section 3. EVALUATION AND AWARD OF MINI-BIDS

3.1 EVALUATION OF MINI-BIDS

- The Mini-Bid must be evaluated based on the Authorized User’s pre-defined methodology as it relates to project scope described in the Mini-Bid.
- The Authorized User shall reject any Mini-Bid which includes pricing in excess of the “maximum Not-To-Exceed price” established under the OGS Centralized Contract.
- **Evaluation tools cannot be altered after Bid opening.**
- All evaluation tool notes and extraneous items must be included in the Authorized User’s procurement record.

3.2 NOTIFICATION OF MINI-BID RESULTS

The Authorized User must notify the tentative awardee and non-awardees of tentative Mini-Bid results in writing.

3.3 NEGOTIATION WITH TENTATIVE AWARDEE

If desired, the Authorized User should enter into negotiations with the tentative awardee to ensure that both the Authorized User and Contractor have the full understanding of each other's roles and responsibilities of the Project. The Authorized User and the Contractor will develop a Project Plan from this mutual understanding. The Project Plan must be documented fully, including deliverables/milestones, timeframes, dependencies, risk mitigation, roles and responsibilities, payment points, Knowledge Transfer and decision points. This documentation will be attached as backup to the Authorized User Agreement. Negotiation and finalization of a Project Plan are to be provided to the Authorized User at no charge.

In addition, the Authorized User should enter into negotiations to obtain the best price possible for the project.

An Authorized User is cautioned that at-risk work is strictly prohibited. No work is to be undertaken by the Contractor prior to receipt of the executed Authorized User Agreement. Additional information is available in the OSC Guide to Financial Operations, XI.2.F Timely Submittal of Contracts at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/2/F.htm>.

Section 4. Contract Number

4.1 OBTAIN CONTRACT NUMBER WITH SUFFIX

All Authorized Users subject to SFS processing are required to contact the OGS Procurement Services Contract Administrator at PBITS.AuthorizedUsers@ogs.ny.gov for this contract to obtain an individual contract identification number specific to each project under this contract.

Section 5. Allowable Changes After Award

5.1 NO COST CHANGE REQUEST

The Authorized User reserves the right to reasonably amend a fixed-price Deliverable, provided the amendment does not materially change the scope of the Deliverable, without a cost increase. Although the Authorized User has endeavored to identify many tasks associated with a fixed-price Deliverable (Tasks), additional Tasks which can reasonably be anticipated to carry out the Deliverable shall be within the scope of the Deliverable, and shall not result in a cost increase. Change Requests will be authorized using the No Cost Change Request Template. Written approval is required from both the Contractor and the Authorized User regarding the no cost change order.

5.2 ENHANCEMENT REQUEST

Enhancements mean additional functionality and additional Deliverables unknown to the Authorized User at time of Mini-Bid release. As such, an Authorized User's project is permitted to include an Enhancement budget as included in the Mini-Bid (up to 10%). The total Project cost including the Enhancement budget may not exceed the Lot parameters from which the award was made. Written approval is required from both the Contractor and the Authorized User for the Enhancement request.

Enhancements will be authorized using the Enhancement Request Template. The total additional cost of all Enhancements cannot exceed 10% of the original Project cost. The total project value including the Enhancement budget cannot exceed the Lot maximum value

Section 6. DOCUMENTATION

6.1 PROCUREMENT RECORD

An Authorized User must adhere to the procedures of this OGS Centralized Contract, its own internal procurement policies and procedures and all federal, State and/or local statutes, when applicable.

The following are examples of documentation that should be created and maintained by the Authorized User as part of a Procurement Record. This list is not meant to be all inclusive

- Approved Requisition or Purchase Order;*
- DOB 1184 Attachment A or B http://www.budget.ny.gov/guide/bprm/bulletins/b-1184_revised.html;
- Bid distribution and announcements;
- Pre-bid Conference Sign-In Sheet and Transcript;
- Bid Protests and Responses;
- Justification for Rejecting Bids or Proposals;
- Blank Solicitation Document (including appendices);
- Questions & Answers;
- Evaluation Instruments;
- Completed Evaluation Score Sheets & Evaluation Summary;
- Bid Tabulation;
- Bidders List;
- Reasonableness of Price;
- Price Lists, if applicable;
- Awarded Bid;
- Proposals Received;
- If less than 3 Bids received, No-Bid/No-Reply Survey;
- Any Contractor Correspondence (e.g. clarifications);
- Rejected Bids with Justification;
- Tentative Award letter;
- Non-award Letters;
- Authorized User (Contract) Agreement; and
- Consultant Disclosure Form A & Form B Reporting Requirements*.

*Requirement for State Agency

6.2 OFFICE OF THE STATE COMPTROLLER

For the purchase of services available from this Contract, the Authorized User may issue a purchase order/Authorized User Agreement directly to the Contractor without prior approval by the Office of the State Comptroller (OSC).

The State retains the right to post-audit any procurement, including those executed from this Contract. Authorized Users are reminded to follow all procurement guidelines.

6.3 NEW YORK STATE PROCUREMENT GUIDELINES

Additional information relating to a Best Value procurement is available in “The New York State Procurement Guidelines”, which can be found at:

<http://nyspro.ogs.ny.gov/sites/default/files/uploaded/NYS%20Procurement%20Guidelines.pdf>.