

Group 73600 - Solicitation 22772
 Project-Based Information Technology Consulting Services (Statewide)
 INQUIRY RESPONSES

#	Solicitation Document Name	Document Section (Name or Number)	Page #	Comment / Question / Bid Deviation	Response
1	Solicitation	1.1	6	Are vendors who were selected under the initial OGS Centralized Contracts (Award 22772) expected to respond to this request?	No. Current contractors under Award 22772 need only respond to this Periodic Recruitment if seeking to add additional Lots.
2	Solicitation-First Periodic Recruitment	Section 5.8.2	32	We plan to bid this effort with another NY State small business. We will be the prime and they will be the subcontractor as allowed in this referenced section. How do we bid their rates since they were not subcontractors to us under the referenced Government contracts in Attachment Two Financial Submission?	Subcontractor's rates are not acceptable to demonstrate reasonableness of price. As per Attachment 2 - Vendor Price List Instructions - Column Title: Government Entity Contract or Invoice Rate. Instructions: Enter the hourly rate information for each job title listed on the vendor's Government Contract(s) or invoices submitted to support reasonableness of price.
3	Attachment Two Financial Submission		1	How does one account for escalation of our rates over the period of the contract?	Please see Section 5.20 - Price Adjustments for OGS Centralized Contracts.
4	Attachment Two Financial Submission		1	Most of our current jobs are with the [federal agency] and the rates are negotiated at time of award and are not explicitly stated in the contract. These rates are generated based upon our Contract Audit Agency approved Overhead and General and Administrative rates. Is there an alternate method to verify our approved rates for submission on this procurement? For example our approved and paid invoices showing our rates for the contract.	Yes invoices may be submitted. Please see the instruction tab of Attachment 2 - Financial Submission for Column H - Government Entity Contract or Invoice Hourly Rate. The invoices must cite the Government Entity contract number to tie the invoice to a contract.

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5	Solicitation- First Periodic Recruitment	Section 3.1	17	How many contracts have been awarded already under this Solicitation? How many are M/WBE? How many are Women Owned?	Please refer to the contractor information page on the OGS website for a list of all awarded contractors: http://www.ogs.ny.gov/purchase/snt/awardnotes/7360022772ContractorPage.pdf
6	Solicitation	3.1 Vendor Qualifications	17	The section states a minimum qualification for LOT 1 of 2 IT consultant services and 2 prime services. Would OGS accept 2 prime services to a commercial entity who services the Federal Government in place of the Government Entities? My company is NYS WBE certified and I have supporting documentation showing a need in the area I cover. Section 5.15 of the same document encourages minority and women-owned companies to submit a Vendor Submission.	Per Section 3.1 of the Solicitation - all IT projects submitted must be "let" by and performed for a Government Entity as defined in Section 1.4 - Definitions.
7	Solicitation	3.1 Vendor Qualifications	17	This section states a minimum qualification of LOT 1 of 2 years in continuous operation. My company has been in business since March, 2015. I received a waiver from ESD for the 1 year requirement for WBE, and was subsequently awarded NYS WBE certification. Would OGS consider a similar waiver to the 2 year requirement?	OGS respectfully declines the requested change.
8	Appendix C- Contract Modification Procedure	1.1 Types of Contract Modifications	1	Is the Contract Modification Process open throughout the life of the PBITS contract or must it be completed during this open recruitment period? If Appendix C is submitted for a single change to an existing PBITS contract, is it necessary to provide the rest of the vendor submission?	Attachment C -Contract Modification process can be utilized during the entire length of the contract after contract execution. The Attachment C -Contract Modification form only needs to be accompanied by the document that is being modified. The guidelines are subject to change at the discretion of OGS.

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9	Appendix C - Contract Modification Procedure	1.1 Types of Contract Modifications	1	My company offers Strategic Technology Planning services. My goal is that, if I am not eligible to be a prime contractor that I could subcontract to another company. I have not found these services offered from any of the existing vendors, nor any close services at commercially reasonable rates. I have worked with a company who has a PBITS contract and is willing to add my services to their list of services. Is this an acceptable path and would the proper path to be to submit Appendix C?	The PBITS contractor can submit an Appendix C - Contract Modification along with a Price List Update form and add job titles if the prime contractor has a Government contract with that job title and hourly rate to be able to prove reasonableness of price.
10	Appendix H - Vendor Insurance Requirements	B. Insurance Requirements (Workers' Compensation)	5	LOT 1 - My company is a single person company and therefore not requiring Workers' Compensation. Would OGS consider a waiver for this purpose?	Yes, if your company qualifies, a Certificate of Attestation of Exemption, form CE-200, from Workers' Compensation and/or Disability Benefits insurance coverage may be submitted. Information regarding Workers' Compensation coverage is available at www.wcb.ny.gov
11	Appendix H - Vendor Insurance Requirements	B. Insurance Requirements (Commercial Auto)	5	LOT 1 - My company does not transport any material. The auto is not owned by the company and only used for travel to/from client locations. Would OGS accept personal auto insurance with the same limits in lieu of commercial auto insurance, knowing that personal auto insurance cannot have additional named insured.	If your company does not own a vehicle an Auto Attestation form can be used as referenced in Appendix H.
12	Appendix H - Vendor Insurance Requirements	B. Insurance Requirements (General Liability)	5	LOT 1 - It is rare to have the individual occurrence (\$2M) and aggregate occurrence (\$2M) be at the same level. Can OGS clarify the intent of this request?	OGS requires evidence of coverage for a singular large occurrence.

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13	Appendix H - Vendor Insurance Requirements	B. Insurance Requirements (Crime Insurance)	5	LOT 1 - Crime Insurance is typically where there are tangible goods to steal. Information Technology Consulting would typically not require this type of insurance. Can OGS clarify the intent of requiring Crime Insurance?	Crime insurance is applicable because consultants may be required to perform duties on site. In addition crime insurance policies shall also be endorsed to provide coverage for computer crime/fraud.
14	Solicitation	3.4	19	Can a Purchase Order from a government entity be used to prove reasonableness of price?	Yes, if the PO lists the job title(s) and hourly rate(s) from the Government entity listed on Attachment 2 of the vendor submission.
15	Solicitation	1.2	6	Would implementation services around installation / configuration of hardware or software be considered as in-scope?	Yes, implementation services around installation / configuration of hardware or software would be considered as in scope. Purchase of the hardware or software is not. Please refer to Solicitation Section 1.2 - In Scope Projects for a description of services that may be obtained using the resultant Contracts and Section 1.3 - Out-of-Scope Work for services offerings expressly excluded from the scope of the resultant Contracts.
16	Solicitation	3.1 Minimum Qualification	17	[Our firm] has supplied consultants to [a contractor] who is helping [a NYS agency] on a project. Will this be considered as delivering to Government Entities/Prime Vendor since the resource was indirectly for [the NYS agency]?	No. Please see Section 3.1 in the solicitation. OGS will still require Prime Contracting experience with a Government entity for Qualification #3 in each of the three (3) lots.

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17	Solicitation	3.1 Minimum Qualification	17	[We] have been actively doing business mostly with the Private Clients. We can certainly work with Government Entity & help in PBITS. We would like very much to do with business NY State, is there any way to deviate the Bid with this condition & relax Qualification #3 with out having to be the prime vendor?	OGS respectfully declines the requested Amendment.
18	Solicitation	Acknowledgement Form	2	We are already on contract for Lot 1. This submission is for Lot 2. On this form do we check ONLY the box for for Lot 2?	Yes. Only check the box for the new submission. If awarded the additional Lot will be added to the original contract via amendment.
19	Solicitation	4.1.2	22-24	We are already on contract for Lot 1. This submission is for Lot 2. All insurance certifications and tax forms are already on file with OGS. Should they be offered again in connection with this submission?	Yes, all requested information should be resubmitted for the First Periodic Recruitment.
20	Attachment 2 - Financial Submission	Vendor Price List	3	We are already on contract for Lot 1 with 11 job titles listed on this attachment. This submission is for Lot 2. Do we repeat all of those job titles or only any new ones we want to add?	Only include the additional titles you wish to add to your present contract. All awarded titles can be used in all awarded lots.
21	Attachment 2 - Financial Submission	Vendor Price List	3	In responding to a mini-bid, are we limited to offering the services of only of those job titles included on the vendor pricelist or may we offer also the services of individuals with other job descriptions?	In response to a mini-bid, a contractor can only use the job titles listed in their contract. However, an awarded contractor can at any time submit an Appendix C- Contract Modification form, along with a Price List Update form with required back-up documentation in order to add additional job titles to the contract.

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					Please note that titles cannot be used until they are approved by OGS and posted on the Contract Award page.
22	Solicitation	3.1	17	<p>For the purposes of qualification #1 (Years of continuous operation) and #2 (Years of experience providing IT Consulting Services) in each of the Lots listed above, Vendor experience in either a Prime Contractor or Subcontractor/Reseller role may be used to demonstrate compliance with the qualification.</p> <p>For the purposes of qualifications #2 (Years of experience providing IT Consulting Services) and #3 (Projects as Prime Contractor let by Government Entities) in each of the Lots listed above, all IT projects submitted must be "let" by and performed for a Government Entity as defined in Section 1.4 - Definitions. "</p> <p>The first of these seems to say that qualification #2 can be met with either subcontracts or primary contracts. The second seems to say that only contracts as primary can be used as qualifications. Which is accurate?</p>	For qualification # 2 prime or subcontracting experience is acceptable.
23	Solicitation	3	18	Section refers to "Attachment 1 – Administrative Submission, Designated Personnel tab," where contact information is to be entered. We do not see that tab in Attachment 1.	The Designated Personnel tab is the 9th tab on Attachment 1. Use the right arrow on the bottom left hand side of the Excel spreadsheet to view additional tabs.
24	Attachment 3 - Technical Submission	Lot 2 and Lot 3 Vendor Response Form		We are not able to adjust the size and width of the cells. Will your reviewers click into the cells to view the entire answer, or are you able to provide an editable spreadsheet?	The cells in question can be manually increased In size with the new version of Attachment 3, version 05022016, posted on the OGS website.

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25	Solicitation	3.1	17	Please change qualification 3 for Lot 1, Lot 2, and Lot 3 to prime or subcontractor experience. Also change Lot 1 (earliest Execution Date), Lot 2 and Lot 3 to 6/1/2003. This would give more Job Titles applicable for the contract and I would meet the requirements to submit a proposal.	OGS respectfully declines the requested Amendment.
26		General		Will you please go back to the NYSOGS IT Consulting and Training backdrop contract format with the above qualifications plus other qualifications listed in this RFP as there were job titles, areas of expertise including mind-range, maintenance and as well as training pricing and term.	This request is outside the scope of this Solicitation.
27	Technical Submission Lot1	Attachment 3		Can you participate if your past contracts ARE NOT Government related? For many MWBE's this may be the first time dealing with a government entity.	Per Section 3.1 of the Solicitation qualifying contracts must be "let" by and performed by a Government Entity as defined in Section 1.4 - Definitions.
28	Solicitation	2.9	14	We respectfully take exception to several forms listed as elements of the Contract.	Section 2.9 of the Solicitation cites the documents that make up the Solicitation, not the Contract.
29	Solicitation	5.12	36	We respectfully take exception to the broad scope in 5.12.	The scope of the applicable confidentiality requirements would be determined by the Authorized User depending upon the particular information or data involved.

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30	Appendix H - Vendor Insurance Requirements	Whole Form	All	We respectfully decline to accept the Insurance requirements in Appendix H; pre-negotiated and previously agreed upon terms are included in the [prior] Contract, and those should be honored here.	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
31	Attachment 1 - Administrative Submission			We shall take lawful steps in good faith to conduct its business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations. While we do not permit independent monitoring of compliance with such principles, we have a global equal employment policy to ensure our compliance with the law.	There is no question or proposed deviation to respond to.
32	Attachment 6 - How to Use This Contract	Whole Form	All	While Attachment 6 is instructional to Authorized Users and not intended to bind Contractor, we respectfully inform that State that many elements of this Attachment pertain to requirements to which we have taken exception herein and will not apply. We respectfully request that this form (as currently written) not apply.	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation

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					(Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
33	Attachment 5 - Mini-Bid Template	Whole Form	All	While Attachment 5 is instructional to Authorized Users and not intended to bind Contractor, we respectfully inform that State that many elements of this Attachment pertain to requirements to which we have taken exception herein and will not apply. We respectfully request that this form (as currently written) not apply.	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
34	Solicitation	Section 3.4 Reasonableness of Pricing.	19	We respectfully take exception to this requirement, as written. Although not labeled as such, this requirement amounts to a Most Favored Nations Status (MFNS) clause. By policy, we do not enter into MFNS agreements. Note: We do not discount its rates for any public sector entity. We only bill at our published price list rates in order to maintain our U.S. Commercial Items Contractor status with the Federal Government. We also respectfully take exception to the components of Attachments 2 & 3 that require supporting information on other government contracts. As a policy, [our company] does not provide information about one customer to another, except in those cases where customers have agreed to allow [our company] to disclose, and even in those cases prices are not disclosed.	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.

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35	Solicitation	Section 5.14 Insurance Requirements	38	We respectfully decline to accept the Insurance requirements set forth in Appendix H. We have recently negotiated insurance clauses with OGS based on its status as a self-insured enterprise, which it insists on honoring here.	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
36	Solicitation	Section 3.6 New York State Vendor Responsibility Questionnaire For-Profit Business Entity. Paragraph 9.	21	We respectfully take exception to an open-ended remedy such as this in sole control of the Commissioner. We respectfully request that all remedies be agreed upon in the negotiated final contract.	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
37	Solicitation	5.3.1 Contract Incorporation	36	We respectfully request not to be bound by terms until the parties have negotiated final contract terms. To the extent that we have submitted as	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation

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				<p>“Deviations” certain terms and conditions, our signatures shall not bind us to those terms.</p>	<p>and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
38	Solicitation	Section 5.15 Equal Opportunity Requirements, 2nd paragraph.	38	<p>We respectfully decline to submit reports limited to just those employees to the extent that we maintain records based upon much broader sets of employees and cannot reasonably be expected to anticipate a requirement such as this.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
39	Solicitation	5.18	40	<p>We choose not to extend this contract to Federal or non-NY entities.</p>	<p>There is no question or proposed deviation to respond to.</p>

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40	Solicitation	Section 5.12 Confidentiality and Privacy Policies and Laws	36	<p>We respectfully decline to accept this clause as written as it is overly broad.</p> <p>We cannot agree in advance to a non-disclosure agreement we have not seen.</p> <p>Compliance with HIPAA/HITECH is a joint responsibility of Contractor and Authorized User. For certain (but not all) Cloud Services, we provide a Business Associate Agreement which clarifies the roles of the respective parties in such compliance.</p> <p>If Customer is an educational agency or institution to which regulations under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA) apply, we acknowledge that for the purposes of the agreement, we are a “school official” with “legitimate educational interests” in the Customer Data, as those terms have been defined under FERPA and its implementing regulations, and we agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials.</p> <p>Customer understands that we may possess limited or no contact information for Customer’s students and students’ parents. Consequently, Customer will be responsible for obtaining any parental consent for any end user’s use of the Online Service that may be required by applicable law and to convey notification on our behalf to students (or, with respect to a student under 18 years of age and not in attendance at a postsecondary institution, to the student’s parent) of any judicial order or lawfully-issued subpoena requiring the disclosure of Customer Data in our possession as may be required under applicable law.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p> <p>Cloud services are outside the scope of this solicitation.</p>
41	Solicitation	7.5.3.1 & 7.5.3.2 Additional Requirements	45	<p>We respectfully take exception to this requirement, however for its US employees we do conduct background checks. We will provide additional information about such background checks to Authorized Users upon request.</p>	<p>This would be at the discretion of the Authorized User depending on the particular requirements.</p>

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		from Authorized Users			
42	Solicitation	Attachment 5 - 3.8	10	We do not consent to any payment retainer, but will consider a payment retainer up to a maximum of 10% on a case-by-case basis with each Authorized User Agreement.	OGS respectfully declines the requested change. As per Attachment 6 - How to use this contract - section 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...."
43	Appendix C- Contract Modification Procedure	Whole Form	All	We respectfully decline to submit Appendix C, as written. • We maintain (and periodically updates) a Product List which includes additions and deletions of products, as well as product-specific ordering rules, promotional notifications, etc. • We respectfully decline to submit Product List changes (whether they constitute Simple Updates or Complex Updates) to State (or any other customer's) for approval. • By policy we declines Most Favored Nations pricing. • We do not provide other customer's contracts • We do not use notaries when executing its contract Amendments.	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.

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44	Appendix B	Sections 2o, 2p, 2q and 2r	2	<p>We take exception to 2o, 2p, 2q and 2r, as they are not applicable to human-provided services. We respectfully requests to remove them via Amendment to Appendix B, as follows:</p> <p>Solely for services provided to Authorized Users under the our Services Agreement are hereby deleted and replaced with the following language: Intentionally omitted.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
45	Appendix B	Section 2t	2	<p>This definition was omitted [in a prior agreement] between us and OGS. We respectfully take exception to this definition, as written, and ask that it be deleted. We rely on its standard commercial terms to define what is a "Product" vs. what is a "service," (meant to refer to human-delivered services) and to delineate the scope thereof. Suggested Amendment language for Appendix B follows:</p> <p>The definition of "Product" set forth in Section 2t, Definitions, is hereby deleted.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>

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46	Appendix B	Section 2v	2	<p>Our Enterprise Services organization no longer accepts Procurement Cards, therefore, we respectfully request the following modification to this definition in Appendix B, as follows.</p> <p>The definition of “Purchase Order” in Section 2v is hereby amended and restated as follows:</p> <p>“PURCHASE ORDER” means the Authorized User’s fiscal form or format that is used when making a purchase. For services placed directly with us, examples may include formal written Purchase Orders, electronic Purchase Orders, or other authorized instruments.</p>	<p>As per Attachment 1 -Administrative Submission, P-Card and Vendor Responsibility tab, vendors can choose to opt out of P-Card usage. OGS respectfully declines the requested Amendment to the definition of Purchase Order.</p>
47	Appendix B	Section 2ii	2	<p>Modern cloud systems rely on the use of metadata, which by its nature may include data copied, redirected or modified by the vendor. Metadata generated by us is used in part for our internal metrics, which we (not our customers) control. We commit in our Online Services Terms (for cloud services) not to use any data for purposes other than running the applicable service (e.g. it will not be used for advertising or other such commercial purposes not related to service delivery). We therefore respectfully takes exception to the last sentence of this definition, as written, and requests the following changes in an Amendment to Appendix B: The definition of “Virus” in Section 2ii is hereby amended and restated, as follows: VIRUS Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer. Virus shall also include any malware, adware, or other computer code, whether or not</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions. Please note that cloud services are outside the scope of this solicitation.</p>

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				written or conceived by Contractor, which allows data to be copied, lost, disclosed or altered without the express consent of (or action taken by) the Authorized User.	
48	Appendix B	Section 7	2	<p>This definition was not applicable [in a prior agreement] with OGS (per the last statement in that version, before the index at the end) which excluded this clause from “negotiated contracts” because “bids don’t apply.” We anticipate negotiations with OGS for the terms of the final agreement, and thus requests that this (and all other statements omitted from the [prior agreement] be omitted from the 2015 version. We respectfully request to negotiate terms and conditions, and requests the following Amendment to Appendix B:</p> <p>Section 7 (BID CONTENTS) is deleted and replaced with the following language: Intentionally omitted.</p>	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
49	Appendix B	Section 9 (including 9a and 9b)	3	We and OGS negotiated alternative language this clause in [prior agreements], and we respectfully request to include the same alternative language for this procurement. We have not repeated here the reasons which led to the prior Amendment, but will be happy to discuss with OGS and its attorneys.	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with

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				<p>Section 9, Confidential/Trade Secret Materials, is hereby deleted and replaced with the following:</p> <p>Appendix B §14 Confidential/Trade Secret Materials.</p> <p>This provision is subject to NYS Freedom of Information Law (Public Officers Law Article 6), specifically §87 and §89, which authority would take precedence over this provision should there be any conflict.</p>	<p>vendors that have standardized terms and conditions. In order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
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			<p>a. As used in this Section, “Disclosing Party” means the State or an Authorized User when disclosing its Confidential Information (defined below) to the Contractor, or the Contractor when disclosing its Confidential Information to the State or an Authorized User, and “Receiving Party” means the State or an Authorized User when receiving disclosure of Confidential Information from the Contractor, or the Contractor when receiving disclosure of Confidential Information from the State or an Authorized User. “Confidential Information” means all confidential information disclosed by a party (the “Disclosing Party”) to the other party (the “Receiving Party”) either orally, visually, written or electronically after the effective date of this Contract including, without limitation, information relating to the Disclosing Party’s operations, processes, plans or intentions, know-how, design rights, trade secrets or business affairs. Information when disclosed to Receiving Party shall be considered Confidential Information only to the extent marked or otherwise identified by Disclosing Party as “confidential,” “proprietary,” “restricted” or similar designation at the time of original disclosure. Confidential Information shall be clearly marked as “confidential,” “proprietary,” “restricted” or some similar designation. Except as provided in this Contract and specifically in clause 14(d) hereunder, the Receiving Party further agrees that any Confidential Information obtained by the Receiving Party from the Disclosing Party, its agents, subcontractors, officers, or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the Disclosing Party hereunder, will not be divulged to any third parties. The State and the Authorized User acknowledge that the Source Code to the Licensed Software and the Documentation are Confidential Information of Contractor.</p> <p>b. The Receiving Party:</p>	
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			<p>i. may not use any Confidential Information for any purpose other than in accordance with, and in the performance of, its obligations under this Contract;</p> <p>ii. may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with Clause 14(d); and</p> <p>iii. shall make every reasonable effort to prevent the use or disclosure, other than as expressly permitted herein, of Confidential Information.</p> <p>The Receiving Party’s confidential obligation shall end five years after time of original disclosure, to the extent permitted by applicable law. Receiving Party shall comply with record retention requirements to the extent Confidential Information is subject to State audit requirements.</p> <p>c. The Receiving Party may disclose information which would otherwise be Confidential Information if and to the extent that:</p> <p>i. it is required by law (such as the New York State Freedom of Information Law);</p> <p>ii. the information has come into the public domain, otherwise than through (a) a breach of this Clause by the Receiving Party, (b) a third party’s breach of any duty of confidentiality owed to the Disclosing Party of which the Receiving Party was aware, or (c) a violation of law;</p> <p>iii. it was in the Receiving Party’s lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party;</p> <p>iv. it is required by existing contractual obligations of which the Disclosing Party is aware;</p> <p>v. it is independently developed by the Receiving Party without reliance on the Confidential Information;</p> <p>vi. it is required by any securities exchange or regulatory or governmental body to which it is subject or by judicial process;</p>	
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				<p>vii. it is otherwise obtained under the Freedom of Information Law or other applicable New York State laws or regulations; or</p> <p>viii. the disclosure is to its professional advisers, auditors or banker; or to any of its directors, other officers, employees and sub-contractors (a "Recipient") to the extent that disclosure is reasonably necessary for the purposes of this Contract.</p> <p>d. Suggestions and Feedback. Either party may provide suggestions, comments or other feedback to the other with respect to the other's products or services. Feedback is voluntary and the party receiving feedback may use it for any purpose without obligation of any kind except that the party receiving feedback will not disclose the source of feedback without the consent of the party providing it.</p> <p>e. Knowledge Base. Contractor may use any technical information derived from providing services related to Contractor's products for problem resolution, troubleshooting, product functionality enhancements and fixes, for Contractor's knowledge base. Contractor agrees not to identify the Authorized User or disclose any of Authorized User's confidential information in any item in the knowledge base.</p>	
50	Appendix B	Section 16	4	<p>This clause was omitted from the [prior agreement], between us and OGS. The scope of this agreement, including the services to be provided, is not an agreement for public works or a building services contract, and there is no portion of this agreement that provides for any work that would be subject to the prevailing wage rate provisions of the Labor Laws. As such, we request the deletion of this provision. We respectfully requests the following Amendment to Appendix B: Section 16 (Products Manufactured in Public Institutions) is deleted and replaced with the following language: Intentionally omitted.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>

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51	Appendix B	Section 17	5	<p>This clause was omitted from the [agreement] between us and OGS. We request language consistent with terms previously negotiated with OGS. We respectfully request the following Amendment to Appendix B: Section 17 is deleted and replaced with the following language: "Contractor agrees to charge all domestic federal, state or local governmental entities (including sales by third party unaffiliated prime partners) only hourly rates from its then current published pricelist. Contractor will preserve the integrity of its pricelist across the sales to domestic federal, state and local governmental entities and will not discount its hourly rates. No two services engagements are exactly alike regardless of how similar statements of services may be written, given differences in customer environments, requirements, size and complexity, so the level of effort required to perform each engagement or project may vary."</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
52	Appendix B	Section 18	5	<p>In the [prior] version of Appendix B (per the last statement in that version, before the index at the end) OGS excluded this clause from "negotiated contracts" because "bids don't apply." We anticipate negotiations with OGS for the terms of the final agreement, We respectfully request to negotiate terms and conditions. We do not provide drawings with its commercial Products, intended to be sold hereunder.</p> <p>We respectfully requests the following Amendment to Appendix B: Intentionally omitted</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>

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53	Appendix B	Section 19	5	<p>In the [prior] version of Appendix B (per the last statement in that version, before the index at the end) OGS excluded this clause from “negotiated contracts” because “bids don’t apply.” This clause is inapplicable to this solicitation, we respectfully request the following Amendment to Appendix B:</p> <p>Section 19 (Site Inspection) is deleted and replaced with the following language: Intentionally omitted</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
54	Appendix B	Section 20	5	<p>This clause was omitted from the [prior version]. Respectfully request to omit it here. We have not repeated here the reasons which led to the prior Amendment, but will be happy to discuss with OGS and its attorneys. Note we no longer accepts Procurement Cards for services. We respectfully request the following Amendment to appendix B:</p> <p>Section 20 (Procurement Card) is deleted and replaced with the following language: Intentionally omitted.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
55	Appendix B	Section 22	5	<p>In the [prior] version of Appendix B (per the last statement in that version, before the index at the end) excluded this clause from “negotiated contracts” because “bids don’t apply.” We anticipate negotiations with OGS for the terms</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation</p>

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				<p>of the final agreement, and thus request that all such statements be omitted, if not already omitted from the 2015 version. We respectfully request to negotiate terms and conditions, and to amend Appendix B as follows:.Section 22 (Bid Evaluation) is deleted and replaced with the following language: Intentionally omitted.</p>	<p>and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
56	Appendix B	Section 27d (iv)	6	<p>We respectfully request the same modifications agreed by OGS for our [Agreement], to be included in an Amendment to Appendix B as follows:</p> <p>Section 27d(iv) is deleted and replaced with the following language: “(iv) each non-state agency Authorized User guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by their failure to perform in accordance with its obligations under the Contract. Contractor agrees that the State, its officers, agents and employees shall not be liable for the failure of any non-Executive Agency Authorized User or Contractor to perform in accordance with obligations under this Contract.)</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>

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57	Appendix B	Section 28	6	<p>We negotiated this clause for the [agreement], and we respectfully request to include the same alternative language for this procurement (with slight modification for the terminology used here). We respectfully request to amend Appendix B, as follows:Section 28 (Modification of Contract Terms) is deleted and replaced with the following language:The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor.The Contractor may, however, offer Authorized User(s) more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User(s) and Commissioner by the Contractor at the time of such offer.Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, “shrink wrap” terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User’s subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
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58	Appendix B	Section 32	7	<p>We respectfully request the following Amendment to Appendix B:Section 32, Purchase Orders, is hereby amended and restated, as follows :Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the Contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification. All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. This Centralized Contract and the referenced appendices constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Centralized Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the Parties hereto, except as otherwise provided herein. Authorized Users shall not have the authority to modify the terms of the Centralized Contract, except as to better terms and pricing for a particular procurement than those set forth herein. No preprinted terms or conditions on a Purchase Order issued by an Authorized User, which seek to vary the terms of this Centralized Contract or impose new duties or obligations on the Contractor, shall have any force or effect.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
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59	Appendix B	Section 33	7	<p>We negotiated this clause for our [agreement] with OGS, and we respectfully take exception as these terms do not apply to services. We respectfully request the following Amendment to Appendix B:</p> <p>Section 33 (Product Delivery) is deleted and replaced with the following language: Intentionally omitted</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
60	Appendix B	Section 34	7	<p>This section was omitted from the [prior agreement]. We respectfully request to omit it here. Such terms are not applicable to human-delivered services. We respectfully request the following Amendment to Appendix B:</p> <p>Section 34 (Weekend and Holiday deliveries) is deleted and replaced with the following language: Intentionally omitted</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>

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61	Appendix B	Section 42	8	<p>We negotiated this clause for the [prior agreement] and respectfully request to include the same alternative language for this procurement (with slight modification for the terminology used here). We respectfully request the following Amendment to Appendix B:Section 42 (Employee, Subcontractors & Agents) is deleted and replaced with the following language: EMPLOYEES, SUBCONTRACTORS & AGENTS All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Bid Specifications or the Bid Documents, whichever is more restrictive, and must comply with all facilities security and administrative requirements of the Authorized User; provided, however, that any of our employees, subcontractors, and agents (collectively, “us”) (1) may request to review such facilities security and administrative requirements in advance, and (2) are permitted to request a waiver from the Authorized User for those specific requirements to which we are unable to comply. The Commissioner reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor to work on an Authorized User’s premises and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User’s security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Commissioner reserves the right to reject and/or bar from the facility for cause any employee, Subcontractor, or agents of the Contractor performing on-site work for Authorized Users.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
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62	Appendix B	Section 43	8	<p>Like the State, we need to manage its internal organization and the legal entities in which we do business. We need the rights to assign the contract to an Affiliate. However, any assignment would not relieve the assigning party unless otherwise agreed. It would not be fair for either party to assign the contract to an entity that cannot perform, so unless otherwise agreed, the assigning party would not be relieved of its obligations. We respectfully request the following Amendment to Appendix B:</p> <p>The following two sentences are hereby added to the end of Section 43: Contractor may assign this contract to an Affiliate by providing written notice. Any assignment will not relieve the assigning party of its obligations under the assigned contract unless otherwise agreed in writing.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
63	Appendix B	Section 45	8	<p>We are a well-established and funded public company with substantial assets. We respectfully request that this requirement be omitted by amending Appendix B as follows: Section 45 (Performance/Bid Bond) is deleted and replaced with the following language: Intentionally omitted</p>	<p>OGS respectfully declines the requested Amendment. Please see Solicitation section 5.22 whereby the decision is made that there are no bonds required for the Contract and Authorized User Agreements.</p>

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64	Appendix B	Section 46	8	<p>This section was omitted from the [prior agreement]. With respect to services, we respectfully requests the addition of the noted language for equitable and reasonable adjustments. We respectfully request the following Amendment to Appendix B:Section 46 (Suspension of Work)) is amended to add the following language: Contractor shall be paid for all services performed prior to such suspension of work. If the Commissioner or Authorized User issues a formal written notice authorizing the resumption of performance of services, then Contractor and Authorized User agree to negotiate in good faith to execute a change order if such suspension results in additional service costs. Authorized User shall extend Contractor’s time for completing the services by an amount reflecting any such extension.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
65	Appendix B	Section 47	8 to 9	<p>We negotiated this clause for our [agreement]. We accept the termination language with the exception of Subparagraph (a), and we have proposed alternative language below. We respectfully request to amend Appendix B, as follows: Section 47(a) (Termination for Cause) is deleted and replaced with the following language: The Commissioner or an Authorized User may terminate this Contract or an Authorized User Agreement, respectively, if Contractor is in material breach or default of any obligation that is not cured within 30 calendar days’ notice of such breach. Contractor may terminate an Authorized User Agreement if an Authorized User is in material breach or default of any obligation that is not cured within 30 calendar days’ notice of such breach or fails to pay any invoice that is more than 60 calendar days outstanding. Authorized User agrees to pay all fees for services performed and expenses incurred prior to termination and any additional amounts that may be specified in an Authorized User Agreement.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>

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66	Appendix B	Section 48	9	<p>The provision is acceptable with the exception of the last paragraph – it is not customary in a force majeure provision. This clause is too subjective. If such an event occurs then there should be mutual agreement regarding an equitable remedy. We respectfully request to amend Appendix B as follows: Section 48, Savings/Force Majeure is deleted in its entirety and replaced as follows: SAVINGS/FORCE MAJEURE A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented. The affected party shall provide the other party with written notice of any Force Majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the Force Majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the Force Majeure condition continues beyond thirty (30) days, the Parties shall jointly decide on an appropriate course of action that will permit fulfillment of the Parties’ objectives hereunder. The Contractor agrees that in the event of a delay or failure of performance by the Contractor, under the Contract due to a Force Majeure occurrence: a. The Commissioner may purchase from other sources (without recourse to and by the Contractor for the</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
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				<p>costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the Force Majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the Force Majeure event. Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed. Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.</p>	
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67	Appendix B	Section 52	10 to 11	<p>This clause was omitted from the [prior agreement]. We respectfully request to omit it here. We respectfully request to amend Appendix B as follows:Section 52 (Remedies for Breach) is hereby deleted and replaced by the following:REMEDIES FOR BREACH It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:a. Intentionally Omitted. b. Withhold Payment In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.c. Bankruptcy In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit the Authorized User the amounts owed by the Contractor arising out of the same transactions.d. Intentionally Omittede. Deduction/Credit Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
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68	Appendix B	Section 59	11 to 12	<p>We negotiated this clause for the [prior agreement], and we respectfully request to include the same alternative warranties language pre-negotiated in our Agreement. We will, of course, honor those prior commitments. We will not provide a warranty for title or non-infringement as we provide the State with a solid IP defense obligation in case of infringement or trade secret misappropriation claims. We respectfully requests to Amendment Appendix B as follows: Section 59 (Warranties) shall be deleted and replaced in its entirety with the following: Workmanship Warranty. Contractor warrants that all services will be performed with professional care and skill. Should OGS or Authorized User make a determination that Contractor is in breach of this services warranty, Contractor shall make corrections, cure material defects or deficiencies, or re-perform services to make them conforming to the standard set forth herein, or if Contractor is directly responsible for system performance issues from services rendered, Contractor agrees to return the effected system to original workmanlike manner.Licensed Software Performance. Contractor warrants that the Licensed Software will materially conform to the functional specifications, if any, at the time of Authorized User’s acceptance and for a period of sixty (60) days thereafter, provided Authorized User notifies Contractor in writing of any non-conformance within the sixty (60) day period. As Contractor’s sole</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
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				<p>obligation and Authorized User's exclusive remedy for breach of this warranty, Contractor will, at Contractor's option, correct any material non-conformance in the Licensed Software reported by Authorized User within the warranty period or refund the fees Authorized User paid Contractor for the non-conforming Licensed Software. If Contractor investigates the claimed non-conformance and determines that the Licensed Software conforms, Authorized User will pay Contractor for such investigative services at Contractor's then current published standard hourly rates. This warranty shall not apply if (i) the system(s) on which the Licensed Software depends, is modified by Authorized User or a third party; (ii) is used improperly or (iii) if non-conformance is due to causes external to the Licensed Software. Virus Warranty The Contractor represents and warrants that Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee's site. TO THE EXTENT PERMITTED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT WITH RESPECT TO THE PRODUCTS, FIXES, SERVICE DELIVERABLES AND SERVICES. WE WILL NOT BE LIABLE FOR ANY SERVICE(S) OR PRODUCT(S) PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO YOU BY US UNLESS SUCH THIRD PARTY PRODUCTS OR SERVICES ARE PROVIDED UNDER OUR WRITTEN AGREEMENT BETWEEN YOU AND US, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THIS AGREEMENT.</p>	
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69	Appendix B	Section 60	12	<p>We negotiated this clause for the [agreement], and we respectfully request to include the same alternative language for this procurement (with slight modification for the terminology used here, and to add some of the State’s recently added language). We have not repeated here the reasons which led to the prior Amendment, but will be happy to discuss with OGS and its attorney. we respectfully requests to amend appendix B as follows:Section 60 (Legal Compliance) is hereby deleted and replaced with the following:Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract generally applicable to information technology services providers. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
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70	Appendix B	Section 61	12 to 13	<p>This clause was omitted from the [prior agreement]. With respect to services, such indemnity has been previously negotiated and agreed by OGS in our [prior] Agreement. We respectfully request to use the same language as previously agreed by the parties. See our agreement terms below in Section 62 pertaining to Defense of infringement and 3rd party claims.</p> <p>Section 61 (Indemnification) shall be deleted and replaced in its entirety with the following: Contractor agrees to defend Authorized Users against third party claims for personal injury and damage to real or personal tangible property caused by any intentional act or gross negligence of Contractor, and pay damages that a court of competent jurisdiction finally awards or that are in a settlement approved by Contractor. Upon being served with any action or claim, Authorized User shall promptly notify Contractor in writing of same. Authorized User shall permit Contractor to control the defense of any action or claim to the extent permitted by law, and shall cooperate with Contractor in the defense.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
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71	Appendix B	Section 62	13	<p>We negotiated this clause for the [prior agreement], and we respectfully request to include the same alternative language for this procurement. Section 62 (Indemnification Relating to Third Party Rights) is deleted and replaced with the following language: Defense of infringement and misappropriation claim. Contractor will defend Authorized User against any claims made by an unaffiliated third party that any service deliverable or fix infringes its patent, copyright, or trademark or misappropriates its trade secret, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). Authorized User must notify Contractor promptly in writing of the claim and give Contractor sole control over its defense or settlement. Authorized User agrees to provide Contractor with reasonable assistance in defending the claim, and Contractor will reimburse Authorized User for reasonable out of pocket expenses that Authorized User incurs in providing that assistance. The terms “misappropriation” and “trade secret” are used as defined in the Uniform Trade Secrets Act. The State and the Authorized User reserve the right to join such action, at its sole expense, when it determines there is an issue</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
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			<p>involving a significant public interest. Contractor’s obligations will not apply to the extent that any claim or adverse final judgment is based on (i) computer code or materials (e.g. specifications) Authorized User provides; (ii) Authorized User’s use of a fix or service deliverables after Contractor notifies Authorized User’s representative identified on the front page of [Our Service] Description to discontinue use due to such a claim; (iii) Authorized User’s combining a fix or service deliverables with a product, data or business process; (iv) damages attributable to the value of the use of a non [contractor] product, data or business process; (v) an alteration of fixes or service deliverables by someone other than Contractor or Contractor’s vendors; (vi) Authorized User’s distribution of the fix or services deliverables to, or its use for the benefit of, any third party other than as permitted by an applicable statement of services; (vii) Authorized User’s use of Contractor’s trademark(s) without express written consent to do so; or (viii) any trade secret claim that is a result of Authorized User acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than us or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. Authorized User will reimburse Contractor for any costs or damages that result from these actions. In the event that an action at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User’s use of the services deliverable or fix under the Centralized Contract infringes any patent, copyright, trademark or misappropriates a trade secret for which Authorized User has promptly provided Contractor notice in writing of the claim and has given Contractor sole control over its defense and settlement, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the defense provisions set forth in the Centralized Contract, Contractor shall promptly notify the Authorized User and the Office of the</p>	
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			<p>Attorney General of New York State in writing within a reasonable time after making such determination and shall specify to what extent Contractor believes it is obligated to defend under the terms and conditions of the Centralized Contract. Contractor shall in such event attempt to secure a continuance at your expense to the extent permitted by the applicable court's rules and procedures to permit the State and the Authorized User to appear and defend its interests in cooperation with Contractor, as is appropriate, including to the extent applicable any jurisdictional defenses the State and Authorized User may have. If Contractor receives information concerning an infringement claim related to a fix or service deliverables, Contractor may, at its expense and without obligation to do so, either (i) procure for Authorized User the right to continue to use the allegedly infringing fix or service deliverables as permitted by the applicable statement of services; or (ii) modify the fix or service deliverables or replace it with a non infringing functional equivalent, to make it non-infringing, in which case Authorized User will stop using the allegedly infringing fix or service deliverables immediately. If as a result of an infringement claim, Authorized User's use of a fix or service deliverables is enjoined by a court of competent jurisdiction, Contractor will, at our option, either i) procure the right to continue its use; ii) modify it to make it non infringing; iii) replace it with a non infringing functional equivalent; or iv) refund the amount paid for the infringing fix or service deliverables and terminate the license for (or as applicable, Authorized User's ownership rights in) the infringing fix or service deliverable. If any other type of third party claim is brought against Authorized User regarding Contractor's intellectual property, Authorized User must notify Contractor promptly in writing. Contractor may, at its option, choose to treat these claims as being covered by this Section 62. This Section 62 provides Authorized User's exclusive remedy for third party infringement and trade secret misappropriation claims.</p>	
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72	Appendix B	Section 63A	13 to 14	<p>We respectfully takes exception to this clause as alternate terms have been recently agreed in the [prior] Agreement. We propose to leverage existing terms, as shown in the following language we propose for Amendment to Appendix B:Section 63A (Limitation of Liability) is deleted and replaced with the following:Limitation on Direct Damages. There may be situations in which Authorized User has a right to claim damages or payment from Contractor. Except as otherwise specifically provided in this paragraph, whatever the legal basis for Authorized User’s claims, Contractor’s total liability (and that of Contractor’s vendors) will be limited, to the maximum extent permitted by applicable law, to direct damages up to an amount equal to two (2) times the</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded</p>
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			<p>amount Authorized User has paid under the applicable statement of services for the services giving rise to the claims. In the event services or any service deliverables are provided to Authorized User on a gratuitous or no-charge basis, Contractor's total liability to Authorized User will not exceed US\$5000. The limitations contained in this paragraph will not apply with respect to the following: (i) Contractor's liability for damages for gross negligence or willful misconduct, to the extent caused by Contractor or its vendors and awarded by a court of final adjudication; and (iii) Contractor's obligations under Section 9 (Confidential/Trade Secret Materials) of Appendix B. The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs. NO LIABILITY FOR CERTAIN DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY NOR THEIR AFFILIATES, SUPPLIERS OR VENDORS WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, DAMAGES FOR LOSS OF PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION), ARISING IN CONNECTION WITH THIS AGREEMENT, ANY STATEMENT OF SERVICES, SERVICES, SERVICE DELIVERABLES, FIXES, PRODUCTS, OR ANY OTHER MATERIALS OR INFORMATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. THIS EXCLUSION OF LIABILITY DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATION, REDISTRIBUTION OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS. Application. Except as specified expressly in this Section 76, the limitations on and exclusions of liability for damages in this Centralized Contract apply regardless of whether</p>	<p>and executed, each of which contains these same terms and conditions.</p>
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				the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.	
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73	Appendix B	Section 66	17	<p>This section was omitted from the [prior agreement]. We respectfully takes exception to this clause as alternate terms (shown below) have been recently agreed in the [prior] OGS Agreement. We proposes to leverage existing terms. We respectfully request to amend Append B as follows:Section 66 (Product Acceptance) is hereby deleted and replaced with the following:Unless an Authorized User gives written notice of rejection within thirty (30) business days of receipt from Contractor, the service deliverable will be deemed to have been accepted by the Authorized User. If the service deliverable is deemed unacceptable by an Authorized User, the Authorized User will send a written set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection within thirty (30) business days from the date the Authorized User receives the service deliverable(s) from Contractor. Upon rejection and receipt of comments, the Contractor will have ten (10) business days, unless otherwise mutually agreed, to resubmit the service deliverable(s) to the Authorized User with all appropriate corrections or modifications made and/or addressed. Unless otherwise mutually agreed, the Authorized User will again determine whether the service deliverable(s) is acceptable and provide a written determination within ten (10) business days of receipt of the revised or amended service deliverable(s). If the service deliverable(s) is once again deemed unacceptable by the Authorize User and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Authorized User. In the event that a service deliverable must be resubmitted more than twice for acceptance or if an Authorized User claims Contractor has materially breached the terms of this Centralized Contract, the Contractor and Authorized User may seek resolution of any disputes through the Informal Dispute Resolution Process set forth in section 2.5 to achieve a mutually agreeable remediation plan or resolution. If unsuccessful, Authorized User may either require Contractor to refund amounts paid for such service deliverable or pursue resolution through the Formal</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
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				Disputes process set forth in section 2.5. The Authorized User may seek any and all damages and remedies, subject to the limitation of liability provision herein, available under the terms of this Centralized Contract and available at law or equity. Additionally, the Authorized User may terminate its agreement with Contractor.	
74	Attachment 7 - Enhancement Request Template	Introduction	1	We respectfully take exception to the introductory paragraph as it introduces ambiguous language into a Fixed Price Project.	There is no question or proposed deviation to respond to.
75	Attachment 10 - Submission Checklist	List	1	We respectfully take exception to some of the documents listed that have been noted here in the deviation form.	There is no question or proposed deviation to respond to.
76	Solicitation	New York State Procurement Rights 2.5 - p	13	We respectfully take exception to 2.5(P) and request that this requirement be omitted by amending the solicitation as follows: Section 2.5 p - Unilateral non-material modifications is deleted and replaced	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to

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				with the following language: Intentionally omitted	establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
77	Appendix B	Section 8	3	This definition was not applicable to [prior] version of Appendix B in our [agreement] with OGS (per the last statement in that version, before the index at the end) which excluded this clause from “negotiated contracts” because “bids don’t apply.” We anticipate negotiations with OGS for the terms of the final agreement, and thus requests that this (and all other statements omitted from the [prior] Appendix B) be omitted from the 2015 version. We respectfully requests to negotiate terms and conditions, and requests the following Amendment to Appendix B:Section 8 (EXTRANEIOUS TERMS) is deleted and replaced with the following language: Intentionally omitted.	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
78	Copy of 22772prb_Attachment02.xlsx	Price Table		"Government Entity Name" – what does that mean? Is that the name of the Government Entity that this person has done work with in the past?	Yes. See the Instructions tab in Attachment 2 - Financial Submission, Column J.
79	Solicitation	Solicitation		For Government contract from other States\Federal, if the MSA prohibits disclosure of certain information, can we provide the redacted version?	OGS will not accept redacted versions of the contract documents provided. See Attachment 1 - Administrative Submission, Foil Redaction tab.

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80	Section 2.12	Solicitation		If a won mini-bid project surpasses the contract term, will the project be allowed to continue to completion?	Yes, if it was executed prior to contract expiration and meets the other qualifications listed in Solicitation Section 7.2 - Contract Survival.
81	Section 2.15	Solicitation		If the state chooses to perform a Periodic Recruitment, do contractors that have already been approved need to resubmit or re-respond to the recruitment?	No. Current contract holders are only required to resubmit to a Periodic Recruitment if seeking to add an additional Lot(s).
82	Section 3.4	Solicitation		It's noted in Section 1.3 that time and material services are out of scope. Section 3.4 states "...a fixed price contract which includes additional time and material rates can be used as price justification of a Government Contract." Does that mean that mini-bid responses can be a mixture of fixed fee and time and materials as appropriate?	No. Solicitation Section 1.3 - Out of Scope Work refers to services that are not within the scope of this contract. Section 3.4 - Reasonableness of Price refers to the process by which a vendor provides proof that the titles submitted for this contract are reasonable. Section 6.1.1 - Fixed-Price states in part, An Authorized User Agreement shall be awarded on a fixed-price basis only.
83	Section 5.10.1.1	Solicitation		Does the Authorized User Agreement and it's stipulations regarding key personnel apply to a mini-bid project-by-project basis or is this something that applies globally?	Stipulations regarding Key Personnel apply to a mini-bid and subsequent Authorized User Agreement on a project by project basis and only when included in a mini-bid.
84	Section 5.10.1 bottom	Solicitation		What is the result (timeline, recourse, effect) of the suspension of activities under the Authorized User Agreement?	This should be addressed with the Authorized User as part of the Mini-Bid process.

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85	Section 5.10.2.2	Solicitation		Do all state facilities have accessible free parking and/or parking validation?	This should be addressed with the Authorized User as part of the Mini-Bid process.
86	Section 7.5.3	Solicitation		Will the state reimburse the Contactor for the fees for state-requested additional background checks and fingerprinting?	This should be addressed with the Authorized User as part of the Mini-Bid process.
87	Section 7.5.3	Solicitation		Will any state driver's license also work as a form of identification?	This should be addressed with the Authorized User as part of the Mini-Bid process.
88	Section 44	Appendix B		The statement "...company has previously provided unsatisfactory work or services." is arbitrary and subjective. Would it not make more sense to exclude only those Contractors who were unable to remedy and work or services issues within written or established timeframes?	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.

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89	Section 59a 3 rd paragraph, Section 62 multiple places	Appendix B		Can we add “knowing” in front of each occurrence of “infringe”, “infringing” and “infringement”?	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
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90	Appendix H - Vendor Insurance Requirements	Paragraph A.4. (page 2) Paragraph B.1., section 3, fourth bullet	2	[Our] insurance policies, only the general liability policy and the auto policy have coverage that is primary. As an industry standard, the other policies required by this RFP do not have coverage that is primary: Tech E&O, workers compensation, and crime.	Please see: Contractor's Insurance Requirements First Periodic Recruitment – Update #3 at: http://www.ogs.ny.gov/purchase/biddocument/22772prBid.asp
91	Appendix H - Vendor Insurance Requirements	Paragraph B.1., section 3, fourth bullet	6	[Our] general liability includes coverage for defense and/or indemnification, but as an industry standard, it is “per the policy terms and conditions”, and this phrase is required as shown on the page markup.	It is the bidder's obligation to verify per their policies terms and conditions that the requirements of Appendix H are met. OGS declines to amend this requirement.
92	Solicitation	Section 4.1 - Vendor Submission Content	22	In the event that we wish to respond to multiple Lots would we be required to submit multiple proposals? If not please define what would encompass a compliant submission for multiple Lots for both hard copy as well as electronic versions.	In the event a vendor wishes to respond to multiple Lots, only one complete submission would be required. Responding to multiple Lots is accomplished within Attachment 3 - Technical Submission. Complete the information for each Lot Response Form using the tabs within Attachment 3.
93	Attachment 3 - Technical Submission	Technical Submission	Attachment 3	If an existing PBITS vendor is already on Lot 1, do they need to submit a response just to add additional lots or do they need to send a new response including Lot 1 plus the additional lots?	If a contractor is already awarded a Lot, a complete Periodic Recruitment submission for the additional Lot(s) would be required.
94	Attachment 2 - Financial Submission	Financial Submission	Attachment 2	If an existing PBITS vendor was previously awarded Lot 1, but was not awarded all of the job titles in Lot 1, is that vendor permitted to propose rates on all job titles for this proposal, despite not being awarded them for Lot 1?	A current contract holder seeking only to add additional titles to an already awarded lot would not submit a new submission in response to the Periodic Recruitment. Current contract holders should utilize Appendix C- Contract Modification Form as per their

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					contract, along with a Price List Update Form and required back up documentation. Please go to: http://www.ogs.ny.gov/purchase/snt/awardnotes/7360022772can.HTM "click" <i>Contractor Template Page</i> to access forms.
95	Attachment 2 - Financial Submission	Vendor Price Form		Some of the fields, i.e. Vendor name, Fed ID # are locked out and need password.	The forms were created so the vendor only has to input certain data once. Input the Vendor Name and Fed ID on the Cover Page and the rest will be generated.
96	Attachment 3 - Technical Submission	Lot 2		Cannot type in fields for Vendor name and Fed ID.	The forms were created so the vendor only has to input certain data once. Input the Vendor Name and Fed ID on the Cover Page and the rest will be generated.
97	Attachment 3 - Technical Submission	Lot 3		Cannot type in fields for Vendor name and Fed ID.	The forms were created so the vendor only has to input certain data once. Input the Vendor Name and Fed ID on the Cover Page and the rest will be generated.

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98	Solicitation	General		Can SKU's/job titles/rates be added to already awarded contracts in Lots 1, 2 & 3?	A current contract holder seeking only to add additional titles to an already awarded lot would not submit a new submission in response to the Periodic Recruitment. Current contract holders should utilize Appendix C- Contract Modification Form as per their contract, along with a Price List Update Form and required back up documentation. Please go to: http://www.ogs.ny.gov/purchase/snt/awardnotes/7360022772can.HTM "click" <i>Contractor Template Page</i> to access forms.
99	Attachment 2 - Financial Submission	Vendor Price List Form	Column G & H	Would OGS permit a vendor to leverage another vendor's published rates if the resume and work experience of the individuals are the same (i.e. both have the same years of work experience, education background, qualifications, etc.)?	No, In order to prove reasonableness of price the price list would have to be from a contract between the vendor submitting the proposal and a governmental entity.
100	Appendix H - Vendor Insurance Requirements	Sect. 4, Primary Coverage	2	This section calls for all insurance to be primary and non-contributory. We have this coverage for Commercial General Liability, Automobile Liability and Umbrella Liability. It is not available for our Technology Errors & Omissions insurance. It's our understanding that OGS agreed to this for our parent company and we request the same waiver.	Please see: Contractor's Insurance Requirements First Periodic Recruitment – Update #3 at: http://www.ogs.ny.gov/purchase/biddocument/22772prBid.asp

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101	Appendix H - Vendor Insurance Requirements	Sect. 6, Self- Insured	3	All of our retentions are substantially in excess of the \$100,000 limit. NYOGS has agreed to this under previous contracts with our parent company. Request the same waiver.	Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. If the Vendor/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.
102	Appendix H - Vendor Insurance Requirements	Sect. B, 1 - Commercial General Liability Insurance	6	This section requires “means and methods” and explosion, collapse and underground coverage. Can OGS provide a meaning of “means and methods?” In our experience, this is generally held to be construction related professional liability. We do not hold this coverage. We also don’t have specific explosion, collapse or underground hazards coverage but the exposure is not excluded under our policy so we believe we meet this requirement.	Unless your policy has an exclusion this requirement is understood to be covered under a standard CG 00 01 form. Please consult with your broker for clarification.
103	Appendix H - Vendor Insurance Requirements	Sect. B, 3 - Technology Errors and Omissions	7	One of the coverages asked for is “training, staffing or other support services.” Our policy is Technology Errors & Omissions and does not specifically include this service but it also does not exclude it either so we believe we meet the requirement	Please consult with your broker for clarification.
104	Appendix H - Vendor Insurance Requirements	Sect. B, 4 - Crime Insurance	7	This section requires an Extended Reporting Period of no less than one year. Our policy does not have this feature and we request a waiver.	OGS declines to amend this requirement.

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105	Appendix A	10. Records	4	<p>We seek confirmation that Contractor books, records and accounts means all materials required to back up the accuracy of our invoices only and that it does not include proprietary financial information or confidential personnel data. While Contractor will provide all materials required to back up the accuracy of our invoices, we are unable to disclose proprietary financial information or confidential personnel data.</p>	<p>As stated in Appendix A, Section 10, Records are defined as the “complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract.” Any Records which may be exempt from disclosure under Section 87 of the Public Officers Law, such as proprietary or confidential personnel information, would be protected from public disclosure in accordance with the statute.</p>
106	Appendix B	17.f. Best Pricing Offer	4	<p>Will the State consider deleting this provision? Our offerings are based on circumstances unique to each contract such as geographic location, contract terms, volume of services, industry differences affecting information technology costs, workload and complexity factors, service levels, investment made by Contractor in equipment and personnel, overhead, and unique factors such that we could not make a true comparison to equalize pricing among our different customers.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
107				<p>This row does not display all the text that is input here.</p>	<p>There is no question to answer here.</p>

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108	Appendix B	20. Procurement Card	5	Will the State consider removing the requirement to accept procurement cards? Procurement cards are not an ideal payment method for an implementation and ongoing services project such as this one.	There is no requirement to accept procurement card payments. In Attachment 1 of the Periodic Recruitment a vendor can choose to not accept the Procurement Card payments on the tab titled "P-Card & Vendor Responsibility".
109	Appendix B	47.b. Termination For Convenience	8	In the event of a termination for convenience or non-appropriation, will the State agree to compensate Vendor for any unamortized costs and reasonable wind-down costs? Vendor respectfully requests that in the event of any termination for reasons other than default by Vendor, the State reimburse Vendor for the unamortized costs of investments that Vendor undertook in reliance on its agreement with the State.	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
110	Appendix B	61. Indemnification	12	Will the State consider changing the standard of care to a gross negligence standard for claims caused as a direct result of Contractor's acts or omissions? The suggested edits provide reasonable limits to indemnification and are fair to both parties, assuring Contractor's commitment to indemnify the State in those instances in which Contractor failed its duties while assuring [the contractor] that it will not be required to indemnify in those cases when [the contractor] did nothing other than its duty.	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded

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					and executed, each of which contains these same terms and conditions.
111	Appendix B	67. Ownership/Title to Project Deliverables	14	<p>Will the State consider adding a clarification that all intellectual property developed prior to or independently of this project shall continue to be owned by vendor or any relevant third parties and will be for the term of the agreement only.</p> <p>We respectfully seek confirmation that Vendor and all relevant third parties will maintain ownership to all independently developed software and related materials. Such a clarification will have no deleterious effects on Vendor's performance under this agreement.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.</p>
112	Solicitation	General		<p>In the event of a partial termination in part by the State, we propose an equitable adjustment of pricing. Pricing is based on the total projected volumes outlined in the RFP. It is fair to the vendor that a partial termination by the State result in an equitable adjustment of pricing.</p>	<p>OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded</p>

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					and executed, each of which contains these same terms and conditions.
113	Solicitation	General		We request that the State consider compensating Vendor for any unrecoverable costs incurred by delay of the program due to acts or omissions of the State. Contractor is firmly committed to implementing the program as scheduled. The State's agreeing to this will have only positive effects for the success of the project.	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
114	Solicitation	4.1.2, Electronic Vendor Submission	22	Both CD and DVD are mentioned here, in addition to USB flash drive. Please confirm that vendors can use either CD, DVD, or USB flash drive for the electronic submission, depending on file sizes.	The vendor can submit either a CD, DVD or USB flash drive for the electronic submission. Please ensure all electronic copies are searchable.
115	Appendix A	4. Workers' Compensation	3	Will the State consider minor changes to the insurance provisions for conformance with our standard policies and several clarifications to the requirements that we can discuss upon contract award?	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded

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					and executed, each of which contains these same terms and conditions.
116	Appendix B	45. Performance/Bid Bond/Letter of Credit	7	Will the State consider minor changes to the insurance provisions for conformance with our standard policies and several clarifications to the requirements that we can discuss upon contract award?	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
117	Appendix H - Vendor Insurance Requirements	General	1 through 8	Will the State consider minor changes to the insurance provisions for conformance with our standard policies and several clarifications to the requirements that we can discuss upon contract award?	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation

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					(Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
118	Attachment 10 - Submission Checklist	Item # 5. Insurance Clause	1	Will the State consider minor changes to the insurance provisions for conformance with our standard policies and several clarifications to the requirements that we can discuss upon contract award?	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
119	Attachment 11 - Insurance Checklist	General	1 and 2	Will the State consider minor changes to the insurance provisions for conformance with our standard policies and several clarifications to the requirements that we can discuss upon contract award?	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation

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					(Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
120	Solicitation	5.14	36	Will the State consider minor changes to the insurance provisions for conformance with our standard policies and several clarifications to the requirements that we can discuss upon contract award?	OGS respectfully declines the requested change. As stated in Section 1.1 of the Periodic Recruitment Solicitation, the purpose of the original solicitation and this Periodic Recruitment Solicitation is to establish a suite of centralized contracts with vendors that have standardized terms and conditions, in order to facilitate competition on a level playing field. Under the original solicitation (Award 22772), over 100 contracts were awarded and executed, each of which contains these same terms and conditions.
121	Solicitation	3.1 Minimum Qualifications - Qualification number 3	17 of 47	What is the purpose of the statement "Please note: the earliest execution date for qualifying projects is based on the original contract execution date and not the execution date of the Amendment or extension" I had a contract as a prime contractor prior to 6/1/2011 that terminated in September 2011. At that time the agency decided to extend for 3 months (as opposed to procure) Why should I be disenfranchised because of the agency's decision to extended and not rebid? I am requesting the note be removed.	The date of execution refers to the original contract, not an extension. The note was added to clarify the requirement. OGS respectfully declines the requested change.

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122	Solicitation	3.1 Minimum Qualifications - Qualification number 3	17 of 47	<p>What is the purpose of the earliest execution date for all qualifying projects? My Company (a NYS SBE) has been providing IT consulting services to the State, as a prime contractor, since 2002. However I was unable to continue as a prime after 2011 because the State cancelled the backdrop contracts; which was the mechanism for agencies to procure my services. This forced me into subcontracting with the larger companies who had other contractual vehicles. I believe I and many SBEs were disenfranchised when the backdrop contracts were replaced by the HIBITS contracts. I request that you remove the limitation that a contract has to be executed before a particular date. If I was providing IT services as a prime before 6/1/2011 satisfactorily then what is the purpose of the 6/1/2011 date?</p>	<p>The earliest execution dates vary depending on the minimum qualifying dollar value and current prime experience for the Government Entity IT projects due to the nature of the services being provided. OGS respectfully declines the requested change.</p>
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