



# Solicitation – First Periodic Recruitment

**VENDOR SUBMISSION MAY BE SENT TO THE ABOVE ADDRESS ONLY  
(E-Mail or Facsimile Submissions Are NOT Acceptable)**

<b>SOLICITATION OPENING DATE:</b> May 19, 2016 <b>TIME:</b> 11:00 AM ET	<b>TITLE:</b> Group 73600 IT Services <b>AWARD DESCRIPTION:</b> Project Based Information Technology Consulting Services (Statewide)
<b>SOLICITATION NUMBER:</b> 22772	<b>SPECIFICATION REFERENCE:</b> As Incorporated in the Solicitation
<b>CONTRACT PERIOD:</b> From Contract Execution to September 8, 2018 , Plus Two Optional Three Year Renewals	

### DESIGNATED CONTACTS

Mark Joly	Donna Pszeniczny	Nancy Dougherty	Daniel DeCamp
Marc Kleinhenz	Karen Fowler	Allison White	

All inquiries shall be submitted to the following e-mail address: [ITSProcurement@ogs.ny.gov](mailto:ITSProcurement@ogs.ny.gov)

The Vendor Submission must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Solicitation, Appendix A (Standard Clauses for New York State Contracts), Appendix B (General Specifications), Terms and Conditions, and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Vendor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b). Information may be accessed at:

Procurement Lobbying: [http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL\\_139j-k.asp](http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp)

<b>Vendor's Federal Tax Identification Number:</b> <i>(Do Not Use Social Security Number)</i>	<b>NYS Vendor Identification Number:</b> <i>(See "New York State Vendor File Registration" clause)</i>			
<b>Legal Business Name of Company:</b>				
<b>D/B/A - Doing Business As (if applicable):</b>				
<b>Street</b>	<b>City</b>	<b>State</b>	<b>County</b>	<b>Zip Code</b>
<b>If applicable, place an "x" in the appropriate box(es) (check all that apply):</b>				
<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> NYS Certified Minority-owned Business Enterprise	<input type="checkbox"/> NYS Certified Women-owned Business Enterprise	<input type="checkbox"/> NYS Service-Disabled Veteran- Owned Business	
<b>If you are not providing a Vendor Submission, place an "x" in the box and return this page only.</b>				
<input type="checkbox"/> WE ARE UNABLE TO RESPOND AT THIS TIME BECAUSE:				
<b>Bidder's Signature:</b>	<b>Printed or Typed Name:</b>			
<b>Title:</b>	(Mr/Ms)			
<b>Phone:</b>	<b>Ext:</b>	<b>E-mail Address:</b>		

**RETURN THIS PAGE AS PART OF VENDOR SUBMISSION OR NO SUBMISSION**

## ACKNOWLEDGEMENT FORM

**VENDOR**

Company Name:	NYS Vendor Identification Number:
---------------	-----------------------------------

Lot(s) Responding to: *(Check all that apply)*

Lot 1 – For projects up to \$200,000 total

Lot 2 – For projects between \$200,001 and \$7,500,000 total

Lot 3 – For projects between \$7,500,001 and \$25,000,000 total

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Vendor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

STATE OF \_\_\_\_\_ }  
 COUNTY OF \_\_\_\_\_ }                      **SS.:**

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_he maintains an office at \_\_\_\_\_, and further that:

- [Check One]**
- If an individual):** he executed the foregoing instrument in his/her name and on his/her own behalf.
  - If a corporation):** he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
  - If a partnership):** he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
  - If a limited liability company):** he is a duly authorized member of \_\_\_\_\_ LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
**Notary Public**  
**Registration No.**

**RETURN THIS PAGE AS PART OF VENDOR SUBMISSION**

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## **Attachments and Appendices**

**Appendix A – Standard Clauses for NYS Contracts (Separately Attached)**

**Appendix B – General Specifications January 2015 22772 Project Based Information Technology Consulting (Statewide) (Separately Attached)**

**Appendix C – Contract Modification Procedure (Separately Attached)**

**Appendix E – Report of Contract Sales (Separately Attached)**

**Appendix H – Vendor Insurance Requirements (Separately Attached)**

**Attachment 1- Administrative Submission (Separately Attached)**

**Attachment 2- Financial Submission (Separately Attached)**

**Attachment 3- Technical Submission (Separately Attached)**

**Attachment 4- Inquiry and Bid Deviations Template (Separately Attached)**

**Attachment 5- Mini-Bid Template (Separately Attached)**

**Attachment 6- How to Use This Contract (Separately Attached)**

**Attachment 7- No Cost Change Request Template (Separately Attached)**

**Attachment 8- Enhancement Request Template (Separately Attached)**

**Attachment 9- Mini-Bid Participation Interest Template (Separately Attached)**

**Attachment 10- Submission Checklist (Separately Attached)**

**Attachment 11- Insurance Checklist (Separately Attached)**

# 1 Introduction

## 1.1 Overview and Purpose of This Solicitation

This Solicitation is issued by the New York State Office of General Services (OGS), a New York State (NYS) agency authorized by law to issue Centralized Contracts for use by NYS Agencies and other Authorized Users.

This Solicitation, as the first periodic recruitment, will establish additional Centralized Contracts with Vendors to provide Project Based Information Technology Consulting Services to NYS Authorized Users on a statewide basis.

The additional OGS Centralized Contracts will be established with vendors meeting specific requirements as detailed in this Solicitation. The original OGS Centralized Contracts (Award 22772) have established a set of standardized terms and conditions, guidelines, processes, and templates for the development, distribution, and award of deliverable-based and fixed-price information technology projects, at the transactional level, through a Mini-Bid process.

It is anticipated that the original and any resultant OGS Centralized Contracts for Project Based Information Technology Consulting Services will improve the procurement process by reducing the amount of time and effort required by Authorized Users to engage consulting services for information technology (IT) projects.

The OGS Centralized Contract sets forth a two-step process for each transaction. The first step is the establishment of the centralized contract, through a non-competitive periodic recruitment process. The second step will be competitive, based on the development of a specific project by an Authorized User in accordance with the contractual terms. IT Project needs will be identified by an Authorized User, and documented in a Statement of Work (SOW). The project will then be distributed to Contractors based on specific Lot(s), via the Mini-Bid process. An award will be based on best-value.

The Mini-Bid award will result in an Authorized User Agreement for Project Based IT Consulting Services. Each Authorized User Agreement for Project Based IT Consulting Services will be governed first by the terms and conditions specified in the OGS Centralized Contract and second by terms and conditions added to the Authorized User Mini-Bid. See Appendix B Section 28 regarding modification of Contract terms.

Services available under the resultant Contracts will be separated into three (3) distinct Lots. Additional information about the minimum qualifications is set forth in Attachment 3 – Technical Submission. A Vendor may respond to and receive an award for more than one (1) Lot.

Lot #	Award Lots (Based on Project Value)
Lot 1 Limited to <u>NYS M/WBEs</u> , <u>NYS SDVOBs</u> , and <u>NYS SBs</u>	Up to \$200,000
Lot 2	\$200,001- \$7,500,000
Lot 3	\$7,500,001- \$25,000,000

## 1.2 In-Scope Projects

Project Based IT Consulting Services required by an Authorized User will be obtained via a Mini-Bid process under this Contract. The Authorized User will issue a Mini-Bid with a SOW for the required



Project Based IT Consulting Services. A Mini-Bid may include, but will not be limited to, projects requiring: analysis, data classification, design, development, testing, quality assurance, security and associated customized training for IT based applications.

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

- Technical architecture advisory services;
- Business Analysis for project development;
- Proprietary software application development/customization, programming and Integration;
- Data Information Management (including data migration, data conversion, data manipulation, data Integration);
- Project Management Project support services - including, but not limited to; project management, project quality assurance and control, and Independent Verification & Validation (IV&V);
- Disaster Recovery/Business Continuity and Testing;
- Quality Assurance;
- Continuity of Operations Planning (COOP);
- Data Categorization; and
- Open-Source Software Implementation.

### 1.3 Out-of-Scope Work

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

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

- Any offering that is a combination of equipment, hardware, software, cloud or “as a service offerings”; and
- Consulting or other installation work which is considered Public Works is excluded from purchase under the scope of this Solicitation. Historically, the New York State Bureau of Public Works has maintained that installation, maintenance and repair of equipment attached to any wall, ceiling or floor or affixed by hard wiring or plumbing is public work. In contrast, installation of a piece of equipment which is portable or a “plug-in” free-standing unit would not be considered public work. Thus, this Solicitation does not authorize installation where the equipment becomes a permanent part of the building structure, or is otherwise incorporated into the fabric of the building (i.e. installation on a wall, ceiling or floor in a fixed location, or affixed by hard-wiring or plumbing). See Appendix B, Clause 10, Prevailing Wage Rates - Public Works and Building Services Contracts. For questions about whether a proposed work constitutes public work, please contact the New York State Department of Labor’s Bureau of Public Work District Office in a specific area. A listing of district offices and contact information is available at <http://www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm>.

#### 1.4 Key Events and Dates

The key dates for this Solicitation are provided below. OGS reserves the right to change any of the dates stated in this Solicitation. Notifications will be posted and released through the New York State Contract Reporter, which can be accessed at <https://www.nyscr.ny.gov>.

Event	Date/Time
Solicitation Release	03/08/2016
Closing Date for Vendor Pre-Submission Conference Registration	03/18/2016 11:00 AM Eastern
Vendor Pre-Submission Conference (Optional)	03/24/2016 9:00 AM Eastern
Inquiry and Bid Deviations Due at OGS	03/31/2016 11:00 AM Eastern
Anticipated Posting of Answers to Inquiries by OGS	04/27/2016
Submission Due/Submission Opening	05/19/2016 11:00 AM Eastern
Anticipated Contract Award Notification Begins	07/15/2016

**Please note:** Vendor must register with the New York State Contract Reporter (“NYSCR”) at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the “I want to find contracts to bid on” page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must choose the option “send me notification updates on this,” located in the lower right hand corner of the particular ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR. If you do not opt-in to receive notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents. **Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information may result in your Vendor Submission being deemed non-responsive to the Solicitation.**

## 1.5 Definitions

Additional definitions applicable to this Solicitation can be found in Appendix B.

Term	Definition
Authorized User Agreement	The document resulting from the transactional Mini-Bid process, which sets forth the specifics regarding the services to be provided by the Contractor to the Authorized User, under the Project Based Information Technology Consulting Contract.
Best Value	The basis for awarding all service and technology contracts to the offerer that optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall be, wherever possible, quantifiable (State Finance Law §163 (1) (j)).
Billing Contact	The name, phone number, e-mail, and billing address a customer uses on a bill for contact information.
Consultant Disclosure Legislation	Chapter 10 of the Laws of 2006 amends State Finance Law § 8 and § 163 by requiring: that the Office of the State Comptroller (OSC) include in the Consulting Services Report it compiles annually on contracts issued by state agencies for consulting services during the previous fiscal year. <a href="http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/C.htm">http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/C.htm</a>
Deliverables	All services or products created during the performance or provision of Services hereunder or identified as a “Deliverable” in an applicable Mini-Bid. A Deliverable is a building block of an overall project. For the purposes of this Solicitation and the resulting Contract, a Deliverable shall not be set forth as a status report, meeting attendance, a block of staff hours, or an invoice submission.
Enhancement	Additional functionality and additional Deliverables unknown to the Authorized User at time of Mini-Bid release.
Execution Date	The date on which a contract has been signed by all necessary parties.
Fixed Price Authorized User Agreement	An agreement pursuant to the Centralized Contract that provides for a fixed cost for a defined project.
Government Contract	A contract let by a Government Entity, not on behalf of a Government Entity (Federal, State, or Local government body) within the United States.
Government Entity	An entity at the federal, state, county or city level.
Implementation	Post sales process of guiding a client from purchase to use of the product that was purchased. This may include but is not limited to post sales requirements analysis, scope analysis, limited customizations, systems integrations, data conversion/migration, business process analysis/improvement, user policy, customized user training, Knowledge Transfer, project management and system documentation.
Integration	The act of bringing together smaller components into a single system that functions as one. In an IT context, Integration refers to the end result of a process that aims to stitch together different, often disparate, subsystems so that the data contained in each becomes part of a larger, more comprehensive system that, ideally, quickly and easily shares data when needed. This often requires that companies build a customized architecture or structure of applications to combine new or existing hardware, software and other communications.
Joint Venture	A contractual agreement joining together two or more business enterprises for the purpose of performing on a State Contract.

Term	Definition
Knowledge Transfer	The transfer of knowledge from the Contractor to the Authorized User. Knowledge Transfer can include full written system documentation including all system changes, training classes, manuals and other items. Depending on the scope of the transaction, there may or may not be a deliverable cost associated. All materials will be the property of the Authorized User unless specifically negotiated during the award process.
May	Denotes the permissive in a contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “Should”.
Must	<del>Denotes the mandatory in a contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “Shall”.</del> Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative.
Mini-Bid	A type of Bid Document used by the Authorized User to obtain Services under the Project Based IT Consulting Services Contracts.
Not To Exceed Rates (NTE)	Amounts proposed by the Contractor at the transactional level shall not exceed the hourly rates provided under this Contract (which will be defined values in US Dollars).
Prime Contractor	For the purposes of Technical qualifications, the business entity with whom a government entity directly has a contract.
Project Based IT Consulting Services	An OGS Centralized Contract which will provide a set of standardized terms and conditions, guidelines, processes, and templates for the development, distribution and award of specific deliverable-based and fixed-price Information Technology projects.
Project Plan	A formal, approved document used to guide both project execution and project control. The primary uses of the project plan are to document planning assumptions and decisions, facilitate communication among stakeholders, and document approved scope, cost, and schedule baselines.
Retainage	A portion of the Authorized User and Contractor fixed-price agreement amount that is held back by the Authorized User until the deliverable or project is satisfactorily finished.
Shall	<del>Denotes the mandatory in a contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “Must”.</del> Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative.
Should	Denotes the permissive in a contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May”.
Solicitation	Refers to this document in its entirety, with all appendices and attachments.
Vendor	An enterprise that sells goods or services.
Vendor Submission	The complete response to this Solicitation submitted by a Vendor to provide, as applicable, the Product and services described in the Solicitation

## 2 Administrative Information

### 2.1 Designated Contacts

OGS Procurement Services Designated Contacts are found on the Cover Page of this Solicitation.

The following Designated Contacts at the OGS Bureau of Risk and Insurance Management are designated exclusively for questions related to the insurance requirements included in the Solicitation:

DESIGNATED CONTACTS	
Leighann Brown	Robert Marriott
All inquiries shall be submitted to the following e-mail address: <b>ITSProcurement@ogs.ny.gov</b>	

### 2.2 Inquiries and Proposed Bid Deviations

All questions regarding this Solicitation should be submitted only to [ITSProcurement@ogs.ny.gov](mailto:ITSProcurement@ogs.ny.gov) and will only be accepted via e-mail. Please use Attachment 4 – Inquiry and Bid Deviation Template to submit any questions and bid deviations/extraneous terms. Answers to all questions and bid deviations/extraneous terms of a substantive nature will be provided to all prospective Vendors in the form of a question and answer document, which will be posted on the OGS website. Notification of this posting will be advertised in the NYS Contract Reporter.

The deadline for submission of questions is stated in **Section 1.4- Key Events and Dates**.

Vendor is advised that OGS will not entertain any exceptions to Appendix A (New York State Standard Clauses). OGS will also not entertain exceptions to the Solicitation or Appendix B (General Specifications) that are of a material and substantive nature.

A Vendor should note that all clarifications including those relating to the terms and conditions of a Contract are to be resolved prior to Vendor Submission.

### 2.3 Vendor Pre-Submission Conference

Participation in the Vendor Pre-Submission Conference is not mandatory but is strongly encouraged. A Vendor may register for the Vendor Pre-Submission Conference by sending an email to [ITSProcurement@ogs.ny.gov](mailto:ITSProcurement@ogs.ny.gov), indicating the names of the people who will be in attendance.

The Vendor Pre-Submission Conference is scheduled to be held in Albany, New York, at the Empire State Plaza. The room location and time will be provided to the registered Vendors prior to the Vendor Pre-Submission Conference. Each interested Vendor is requested to limit the number of representatives attending the Vendor Pre-Submission Conference to three (3). It is suggested that Vendors include a Vendor Submission liaison as a representative. OGS reserves the right to not admit any individuals arriving later than ten (10) minutes after the start time of the Vendor Pre-Submission Conference.

An opportunity to call-in to the conference will be made available for Vendors unable to attend in person.

Please send the name(s) and e-mail addresses of all staff who would like to attend the conference. This information is required no later than close of business on the date listed in Section 1.4 – Key Events and Dates at [ITSProcurement@ogs.ny.gov](mailto:ITSProcurement@ogs.ny.gov). Details regarding this call-in option will be provided to all registered Vendors prior to the Vendor Pre-Submission Conference via email.

The purpose of the Pre-Submission Conference is to review Vendor Submission procedures and to discuss vendor questions related to the Solicitation. Answers given at the Pre-Submission Conference are unofficial and not binding. Answers to all inquiries posed at the Vendor Pre-Submission Conference will be included in the written OGS response to Responses to Inquiries and will be posted in the NYS Contract Reporter. Only those answers provided in writing are official. All subsequent inquiries must then be submitted per Solicitation Section 2.2 - Inquiries and Proposed Bid Deviations.

A list of Vendor Pre-Submission Conference attendees will be posted to the OGS website after the conference.

At the sole discretion of OGS, materials may be posted to the OGS website for viewing prior to the pre-Vendor Submission conference.

## **2.4 Summary of Policy and Prohibitions on Procurement Lobbying**

Pursuant to State Finance Law §139-j and §139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Vendor during the procurement process. A Vendor is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page and in Section 2.1. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Vendor pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period; the Vendor is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

[http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL\\_139j-k.asp](http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp).

## **2.5 New York State Procurement Rights**

New York State reserves the following rights. These reserved rights may also be applicable to an Authorized User’s Mini-Bid. The Authorized User may reserve additional rights in the Mini-Bid.

- A. Reject any or all Vendor Submissions received in response to the Solicitation,
- B. Withdraw the Solicitation at any time, in OGS’s sole discretion,
- C. Make an award under the Solicitation in whole or in part,
- D. Disqualify any Vendor whose conduct and/or Vendor Submission fails to conform to the requirements of the Solicitation,
- E. Seek clarifications and revisions of Vendor Submission(s),
- F. Prior to the Submission opening, amend the Solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available,
- G. Prior to the Submission opening, direct Vendor to submit Vendor Submission modifications addressing subsequent Solicitation amendments,
- H. Change any of the schedule dates with notification through NYS Contract Reporter,
- I. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Vendors,
- J. Waive any requirements that are not material,
- K. The Authorized User may utilize any and all ideas submitted in the Mini-Bids received,

- L. Adopt all or any part of a Vendor's Submission in selecting the optimum solution,
- M. Negotiate with the Vendor(s) responding to this Solicitation within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Vendors' Submissions,
- N. All Vendor Submissions and accompanying documentation shall become the property of the State of New York and shall not be returned,
- O. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Vendor's Submission and/or to determine a Vendor's compliance with the requirements of the Solicitation, and
- P. OGS reserves the right to unilaterally make non-material revisions, changes and/or updates to the How to Use this Contract document, Mini-Bid template, Enhancement Request template, or any other templates and/or Attachments to the OGS Centralized Contract without processing a formal amendment and/or modification.
- Q. The State reserves the right to exclude any price lists or individual Products and services that do not fall within the scope of the Solicitation.
- R. OGS reserves the right to incorporate an electronic workflow system that may include elements of the Authorized User Mini-Bid process.
- S. Upon discovery of non-material completeness or conformance issues with a Vendor's Submission, contact the Vendor to attempt to cure the issue prior to completion of the evaluation of the Vendor's Submission.
- T. OGS reserves the right to post information about Authorized User Contract usage of Centralized Contracts.

## 2.6 State Ethics Law Provision

By submitting a Vendor Submission for this Solicitation, the person signing the submission certifies, for and on behalf of the Vendor, that:

- A. He/she is familiar with provisions applicable to post-employment restrictions affecting former State employees, available at <http://public.leginfo.state.ny.us/menuf.cgi>:
  1. Public Officers Law § 73(8)(a)(i), (the two-year bar),
  2. Public Officers Law § 73(8)(a)(ii), (the life-time bar).
- B. Submission of this Vendor Submission does not violate either provision;
- C. He/she is familiar with the Vendor's employees, and its agents,
- D. He/she understands that the State intends to rely on this certification,
- E. No violation shall occur by entering into a Contract or in performance of the contractual services, and,
- F. This certification is material to the Vendor Submission

The Vendor shall fully disclose to OGS on a continuing basis, any circumstances that could affect its ability to comply with the cited laws. Vendor shall address any questions concerning these provisions to:

NYS Joint Commission on Public Ethics  
540 Broadway  
Albany, NY 12207  
Telephone #: (518) 408-3976

## 2.7 Downstream Prohibition

Any and all work from these Contracts that involves developing specifications, establishing a base for other applications or otherwise gaining information that would give a Contractor an unfair competitive advantage in a future procurement may result in the Contractor being precluded from further work (downstream prohibition) due to conflicts of interest. Authorized User shall provide notification of any downstream prohibitions known at the time the Mini-Bid is released. It is in the interest of the Authorized User and the Contractor to explore these issues during the pre-award negotiations and review as the project progresses. See State Finance Law section 163-a and section 163 (2) for additional information on the statutory prohibitions. Non-State agency Authorized Users may have additional statutory prohibitions.

## 2.8 Joint Ventures

Joint ventures are not permitted under the OGS Centralized Contract.

## 2.9 Solicitation Documents

This Solicitation is composed of the following documents:

- The Solicitation
- Appendix A - Standard Clauses for New York State Contracts (January 2014)
- Appendix B - General Specifications January 2015 22772 Project Based Information Technology Consulting (Statewide)
- Appendix C - Contract Modification Procedure
- Appendix E - Report of Contract Sales
- Appendix H - Vendor Insurance Requirements
- Attachment 1 - Administrative Submission
- Attachment 2 - Financial Submission
- Attachment 3 - Technical Submission
- Attachment 4 - Inquiry and Bid Deviation Template
- Attachment 5 - Mini-Bid Template
- Attachment 6 - How to Use This Contract
- Attachment 7 - No Cost Change Request Template
- Attachment 8 - Enhancement Request Template
- Attachment 9- Mini-Bid Participation Interest Template
- Attachment 10 - Submission Checklist
- Attachment 11 - Insurance Checklist

## 2.10 Conflict of Terms and Conditions

In the case of any conflict among these solicitation documents, conflicts shall be resolved in the following order of precedence:

- A. Appendix A, Standard Clauses for New York State Contracts;
- B. The Solicitation;
- C. Appendix B, General Specifications January 2015 22772 Project Based Information Technology Consulting (Statewide); and
- D. All other Appendices and Attachments in sequential order.



## 2.11 Terms and Conditions

The following terms and conditions will apply to the resultant Contracts issued from this Solicitation:

- Responsive and responsible Vendors will be offered a contract with uniform Terms and Conditions; and
- All OGS Centralized Contracts will expire on the same date, regardless of start date.
- All Authorized User Agreements shall be no longer than three (3) years in duration.

## 2.12 Contract Start Date

The Contract term will commence upon execution of the Contract by OGS as evidenced by the date accompanying the OGS signature line and the contract term will run through September 8, 2018.

A Vendor will be eligible to participate in the Mini-bid process upon the OGS Commissioner's mailing or electronic communication to the address in the contract of the fully executed Contract.

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date. This OGS Centralized Contract shall be in effect for an initial term as set forth above with two (2) optional three (3) year extensions. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a contract extension processed under this section.

## 2.13 Method of Award

In accordance with New York State Finance Law Article 11-A, it is the intent of OGS to award Centralized Contracts for Project Based IT Consulting Services to all responsive and responsible Vendors offering reasonable rates as determined by OGS. The Contract awards made under this Solicitation will be made by Lot based upon the Vendor Submissions of Attachments 1, 2 and 3 of this Solicitation.

## 2.14 Vendor Debriefing

An unsuccessful Vendor shall be notified upon disqualification or non-award. A Vendor shall be accorded fair and equal treatment with respect to its opportunity for debriefing. Requests for debriefings may be made both prior to and after Contracts are awarded. For debriefings prior to Contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that Vendor's Submission. Requests for a debriefing prior to Contract award by an unsuccessful Vendor(s) must be addressed to OGS in writing. The debriefing prior to Contract award should be requested in writing within 15 calendar days of notification that the Vendor Submission was disqualified from further consideration or a non-awardee.

After Contract award, OGS shall, upon request, provide a debriefing to any unsuccessful Vendor that responded to the solicitation, regarding the reason that the Vendor Submission presented by such Vendor was not selected for a Contract award. Requests for debriefings by an unsuccessful Vendor(s) must be addressed to OGS in writing. The post-award debriefing should be requested in writing within 15 calendar days of posting of the Contract award on the OGS website.

## 2.15 Periodic Recruitment

The State reserves the right to add new Contractors during the term of the OGS Centralized Contract via Periodic Recruitment. It is at the discretion of OGS when a future Periodic Recruitment shall commence. OGS will formally announce when the Solicitation is issued. Public announcements will be made through all standard means including, but not limited to: the NYS Contract Reporter and OGS website.

A Contractor shall be required to submit such Submission documentation as required by OGS, as detailed in the Submission Checklist, which may include additional applicable statutory requirements currently in effect at the time of the Periodic Recruitment. If a Contractor Submission for a Lot is deemed non-responsive under any Periodic Recruitment, a Contractor cannot reapply for that Contract Lot until the next Periodic Recruitment is opened.

All OGS Centralized Contracts awarded under the Periodic Recruitment will commence upon OGS approval. All Contracts will co-terminate on the then current end date of the Centralized Contract or at the end of any approved extension or renewal period.

If a Contractor chooses not to provide a Submission for a Lot (during this Solicitation period or any subsequent Periodic Recruitment(s)), or was not previously approved for a specific Lot, such Contractor will be required to wait for the next Periodic Recruitment in order to provide a Submission to add any Lot to the Contractor's Contract. For example:

- If the Contractor initially provided a Vendor Submission for Lot 1 and later wants to add Lot 2, the Contractor would need to wait for the next Periodic Recruitment to submit a complete Submission proposing the addition of Lot 2 to the Contractor's Contract.

## 3 Vendor Qualifications

The Vendor Submission shall clearly provide all of the information required by this Solicitation. Emphasis should be concentrated on conformance to the instructions, responsiveness to the requirements, and clarity of content. The Vendor is advised to thoroughly read and follow all instructions contained in this Solicitation. Responses that do not comply with these instructions may be deemed non-responsive.

The State does not require, nor desire, any promotional material.

A Vendor is permitted to use the same IT project to meet the minimum qualifications for multiple lots as long as such project meets the Lot requirements.

### 3.1 Minimum Qualifications

Minimum Qualifications					
	Qualification # 1	Qualification #2	Qualification # 3		
	Continuous Operation (Years)*	Experience delivering IT consultant services to Government Entities (Years)	Number of Projects as Prime Contractor let by and performed for Government Entities	Earliest Execution Date for all qualifying Projects	Minimum qualifying dollar value per Project
<b>Lot 1**</b>	2	2	2	06/01/2011	\$25,000

<b>Lot 2</b>	4	4	5	06/01/2010	\$125,000
<b>Lot 3</b>	8	8	5	06/01/2006	\$5,000,000
	<b>Prime or Subcontractor/Reseller experience acceptable</b>		<b>Prime experience acceptable only</b>		

\*Years of continuous operation must be immediately prior to this Solicitation Release date (as listed in 1.4 Key Dates)

\*\*Vendor eligibility for this Lot is limited to the following:

- Vendor is a New York State Certified Minority- or Women-Owned Business Enterprise
- Vendor is a New York State Certified Service-Disabled Veteran-Owned Business
  - A business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:
    - (a) at least fifty-one percent owned by one or more service-disabled veterans;
    - (b) an enterprise in which such service-disabled veteran ownership is real, substantial, and continuing
- Vendor meets the definition of a New York State Small Business which is as follows:
  - A business which is resident in New York State, independently owned and operated, not dominant in its field and employs one hundred or less persons (see State Finance Law section 160(8))

For the purposes of demonstrating all minimum qualifications listed in this Section, examples of acceptable projects/contracts that may be used are as follows:

- contracts billed on a Time and Materials Basis (T & M);
- IT Projects/task orders awarded under an indefinite delivery/ indefinite quantity (IDIQ) master contract and
- Certain other fixed price, deliverable based contracts may be used.

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.

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. Any amendments/extensions to an original contract with a Government Entity submitted should be accompanied by an electronic copy of the original fully executed contract document. 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.

For the purposes of qualification #3(Projects as Prime Contractor let by Government Entities) in each of the Lots listed above, subcontracting and reseller experience are specifically prohibited from being used to demonstrate compliance with the qualifications. Master IDIQ contracts shall not be used to demonstrate compliance with this qualification, though IT projects/task orders awarded against a master IDIQ contract may be used for this purpose.

Note: If Vendor is relying on operations of a parent company, subsidiary, predecessor entity, or other entity for purposes of satisfying any of the three listed above, Vendor is required to provide a full explanation describing such relationship and how it satisfies this requirement OGS will determine whether such other entity experience satisfies this requirement, and reserves the right to ask for additional information or require a contract performance guarantee and/or other assurances from such other entity(ies) or the Vendor.

## 3.2 Required Documentation

### 3.2.1 Administrative Required Documents

1. Completed and signed pages 1 and 2 of the Solicitation Cover Sheet and Acknowledgement Page
2. Completed Attachment 1- Administrative Submission
3. Completed and signed Contractor Certification ST-220-CA ([http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)).
4. Completed Vendor Responsibility Questionnaire For-Profit Business Entity or proof of on-line submission (see Section 7.26, New York State Vendor Responsibility)
5. Completed EEO 100 Form (available at <http://www.ogs.ny.gov/MWBE/Forms.asp>)
6. Completed Submission Check List

### 3.2.2 Financial Required Documents

Completed Attachment 2- Financial Submission, with associated electronic files

### 3.2.3 Technical Required Documents

Completed Attachment 3- Technical Submission, with associated electronic files

## 3.3 Designated Personnel

The Vendor will provide contact information, using Attachment 1 – Administrative Submission, Designated Personnel tab, for each of the following:

1. A designated Account Manager for the OGS Centralized Contract. The Account Manager is responsible for the overall relationship with the State during the course of the Contract and shall act as the central point of contact. All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract will be sent to the address specified for this contact.
2. A designated Billing Contact. The Billing Contact will become the single point of contact between the Contractor and the Authorized User for matters related to invoicing, billing and payment.
3. A designated Emergency Contact. The Emergency Contact will be available to OGS 24 hours a day, 365 days per year.
4. A designated Email Address for this Contract. This Email address will be published on the OGS website for this Contract for use by all Authorized Users when distributing Mini-Bid Participation Forms and Mini-Bids. This can be the email of a designated Account Manager or a dedicated generic email account that multiple employees can access.

The Vendor is asked to consider providing a different individual at the organization for each of the designated personnel roles, rather than providing the same party for all four roles to allow for multiple points of contact for OGS.

## 3.4 Reasonableness of Price

Vendor is required to demonstrate that all the New York proposed prices are reasonable. The Vendor must submit Attachment 2 – Financial Submission and should include all referenced electronic contract files to demonstrate that the rates offered to NYS are at or below rates offered to other Government customers.

Vendor should submit documentation from other Government Contracts, as defined within the Solicitation, to show price reasonableness. Vendors are encouraged to offer their best possible pricing.

Examples of acceptable documentation of reasonableness of price, in order of preference are:

1. Awarded NYS Centralized Contract Price Lists;
2. Approved Federal Contract Price Lists, such as GSA Supply Schedules; or
3. Other NYS or Government Entity Contract Price Lists.
4. Paid Invoices from Government Entities

OGS reserves the right to independently review all other government contract pricing utilized by the Vendor and use it as a basis to determine reasonableness of price in accordance with this Section.

Please note:

- Only fixed price contracts which include a backup matrix setting forth hourly rates to support the fixed price or a fixed price contract which includes additional time and material rates can be used as price justification of a Government Contract.
- GSA pricing incorporates a sum referred to as the “GSA Industrial Funding Fee” (IFF). If the referenced pricing is from a GSA contract, the NYS Net Price offered in Appendix 2 – Financial Submission should be calculated by reducing the published GSA price, after the discounts, if any, downward by the amount of the Industrial Funding Fee, currently set at 0.75%. Therefore, as an example, the NYS Net Price should be calculated by multiplying 0.9925 times the GSA price.

### **3.5 New York State Vendor File Registration**

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

If the Vendor is already registered in the Vendor File, the Contractor must enter its ten-digit Vendor ID on the first page of this Solicitation. Authorized resellers already registered should list the Vendor ID number along with the authorized reseller information.

If the Vendor is not currently registered in the Vendor File, the Vendor must request assignment of a Vendor ID number from OGS. Vendor must complete the OSC Substitute W-9 Form ([http://www.osc.state.ny.us/vendors/forms/ac3237\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf)) and submit the form to OGS in advance of the Vendor Submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if an authorized reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form ([http://www.osc.state.ny.us/vendors/forms/ac3237\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf)) should be completed by each designated authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for all Vendors and their authorized resellers. Once the process is initiated,

registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the Vendor File please visit the following website:  
[http://www.osc.state.ny.us/vendor\\_management/](http://www.osc.state.ny.us/vendor_management/).

### **3.6 New York State Vendor Responsibility**

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

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

Please note that a Vendor ID is required to enroll in the VendRep System. Please see §3.5 for information on how to obtain a Vendor ID. Note: Allow up to four (4) business days to accommodate the verification process associated with assigning a Vendor ID and updating the OSC Online Services portal to allow a vendor to enroll to use the VendRep System.

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbus.htm>. Vendor opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

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

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

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

The Commissioner of OGS or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that

calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

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

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

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

### **3.7 Tax Law Section 5-A**

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

A Vendor is required to file the completed and notarized Form ST-220-CA with the Vendor Submission to OGS certifying that the Vendor filed the ST-220-TD with the NYS Department of Taxation and Finance (DTF). Only the form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The ST-220-TD can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Proposed Contractors should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Vendor Submission). Failure to make either of these filings may render a Vendor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 for any and all questions relating to §5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.tax.ny.gov>.

## **4 OGS Centralized Contract: Format and Content of Vendor Submission**

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### **4.1 Vendor Submission Content**

A complete Vendor Submission consists of the following materials as indicated in Section 4.1.3, Submission Checklist:

#### **4.1.1 Hard Copy Vendor Submission**

The official name of the Vendor's organization(s) as well as the name and number of the Solicitation should appear on the outside front cover of each copy. If the Vendor Submissions are submitted in a loose-leaf binder, this information should also appear on the spine of the binder.

Two (2) original hard copies clearly labeled containing the following documents, completed in their entirety, signed in black or blue ink where required, and notarized where required. All hard copy documents should also be submitted as electronic copies.

#### **4.1.2 Electronic Vendor Submission**

Vendor shall submit two (2) separate, electronic Vendor Submissions, each contained on a separate DVD or USB flash drive, which has been clearly labeled externally following the format specified below. Included on each DVD or flash drive shall be a complete electronic Vendor Submission, which consists of all documents listed in Section 4.1.3 Submission Checklist marked with a "X" in the chart in both the Electronic Copy (Excel File) column and the Electronic Copy (Searchable .pdf File, except signed documents) column.

The following guidelines relate to the electronic Vendor Submission:

- Electronic media shall be included on Microsoft Windows formatted USB flash drives or DVDs..
- USB flash drives or DVDs cannot be password protected or require the installation of software in order to read files.
- All Vendor Submissions should be saved in separate unprotected files in Microsoft Office products (Word and Excel) in product release 2007 or higher.
- Each electronic file submission should be externally labeled in the following manner:

*Vendor Name, Solicitation # 22772*

- Pages where a signature is required should be printed, signed, scanned and submitted as a .pdf file.
- It is recommended that the Vendor open, review and save/download all electronic files to the Vendor's hard drive and/or to a secure back-up. Only completed files (in the specified format) should be saved to a CD or flash drive.

Five folders should be created at the root of the DVD or flash drive. Each folder should contain the Vendor's completed Electronic Copy (Excel File) of that Attachment, along with the Vendor's Electronic Copy (PDF) of that Attachment and searchable PDFs of any supporting electronic Contract Files that correspond with that Attachment. The folders are to be named as indicated and should consist of the following documents:

- "Attachment 1":
  - Cover Sheet



- Affirmative Statements
- Vendor Information,
- Encouraging NYS Business
- Use of SDVOBE
- NYS Required Certifications
- P-Card & Vendor Responsibility
- FOIL Redaction
- Designated Personnel
- "Attachment 2":
  - Cover Sheet
  - ~~Affirmative Statements~~
  - Vendor Price List Form
- "Attachment 3":
  - Cover Sheet
  - Affirmative Statements
  - All Lot Response Form(s) as applicable;
- "Insurance documents":
  - Certificate(s) of Insurance for all required insurance policies
  - Additional Insured endorsement(s) as applicable
  - Proof of compliance with Workers' Compensation requirements
  - Proof of compliance with Disability Compensation requirements
- "Additional Required Documentation":
  - Form ST-220-CA Contractor Certification to Covered Agency (PDF)
  - Form EEO 100 Equal Employment Opportunity Staffing Plan
  - NYS Vendor Responsibility Questionnaire For-Profit Business Entity (not required if completed on-line via the New York State VendRep System)

In the event that there are any inconsistencies between the electronic Vendor Submissions and the hard copy Vendor Submissions:

- the hard copy will be deemed controlling by OGS when reviewing each submission.

For the contract files submitted for Attachment 2 and 3, however,

- the electronic Submission will be deemed controlling.

A Vendor should note that any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Vendors in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Solicitation requirements. Vendors remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.

#### 4.1.3 Submission Checklist

To ensure that a Vendor Submission is submitted to Procurement Services in the correct format (hard copy), electronic copy (excel format) and/or electronic copy (.pdf file), a Vendor should submit documents as outlined in the Submission Checklist below. Procurement Services requests submission of electronic files in the same order and naming convention as the Submission Checklist. The chart that follows has been included as a separate document, Attachment ~~11~~ **10**– Submission Checklist and should be completed and submitted with the Vendor Submission.

	<b>Name/ Description of Document</b>	<b>Hard Copy</b>	<b>Electronic Copy (.pdf File)</b>
1.	Solicitation Cover Page - Vendor Signature Page (Page. 1 of this Solicitation)	X	X (Signed and Scanned)
2.	Acknowledgement Page (Page 2 of this Solicitation)	X	X (Notarized and Scanned)
3.	ST-220-CA (Completed and Signed)	X	X
4.	EE0 100 Form ( Completed) (see Section 5.15)	X	X (Signed and Scanned)
5.	Proof of Compliance with Appendix H - Insurance Requirements ( Please refer to Attachment 11 – Insurance Checklist)	X	X
6.	Contract Files or Invoices as Referenced In This Submission in support of Attachment 2 – Financial Submission	Not Required	X
7.	Contract Files or Invoices as Referenced In This Submission in support of Attachment 3 – Technical Submission	Not Required	X

	<b>Name of Attachment</b>	<b>Tab Name</b>	<b>Hard Copy</b>	<b>Electronic Copy (Excel File)</b>	<b>Electronic Copy (Searchable .pdf File, except signed documents)</b>
8.	Attachment 1 – Administrative Submission	Cover Sheet	X	X	X (Signed, Notarized and Scanned)
		Affirmative Statements	X	X	X
		Vendor Information	X	X	X
		Encouraging Use of NYS Businesses	X	X	X
		Use of SDVOBE	X	X	X
		NYS Required Certifications	X	X	X (Signed and Scanned)
		P-Card & Vendor Responsibility	X	X	X
		FOIL Redaction	X	X	X
		Designated Personnel	X	X	X
9.	Attachment 2 - Financial Submission	Cover Sheet	X	X	X (Signed, Notarized and Scanned)
		<del>Affirmative Statements</del>	<del>X</del>	<del>X</del>	<del>X</del>
		Vendor Price List Form	X	X	X
10.	Attachment 3 – Technical Submission	Cover Sheet	X	X	X (Signed, Notarized and Scanned)
		<del>Affirmative Statements</del>	<del>X</del>	<del>X</del>	<del>X</del>
		Applicable Lot Responses (Lot 1, Lot 2, Lot 3)	X	X	X

## 4.2 Documentation

Please ensure the Vendor Submission contains no extraneous documentation, sales literature or other documentation.

## 4.3 Extraneous Terms

As set forth in Section 2.2 Inquiries and Bid Deviations, OGS has established a specific process for the submission of extraneous terms and bid deviations. Any extraneous terms submitted with the Vendor Submission shall not be considered part of the Vendor Submission or resulting OGS Centralized Contract, and shall be disregarded.

#### 4.4 Accuracy of Vendor Submission

A Vendor is responsible for the accuracy of their Vendor Submission. A Vendor is directed to take extreme care in developing their response. Prior to submission, Vendors are cautioned to carefully review their Vendor Submissions.

#### 4.5 Vendor Submission Delivery Instructions

If using a commercial delivery company that requires that their shipping package or envelope be used, Vendor's Submission should be placed within a second sealed envelope labeled as detailed below. This will ensure that Vendor's Submission is not prematurely opened.

Complete Vendor Submissions in response to this Solicitation are to be packaged, sealed and submitted to the Office of General Services. Responses are to be addressed to:

**NYS Office of General Services  
Solicitation #22772 – First Periodic Recruitment  
Corning Tower, 38th Floor  
Empire State Plaza  
Albany, NY 12242**

**All Vendor Submissions should have a label on the outside of the box or package itemizing the following information:**

**VENDOR SUBMISSION ENCLOSED (*preferably bold, large print, all capital letters*)  
Solicitation number (Solicitation Number 22772 – First Periodic Recruitment)  
Submission Opening Date and Time (e.g., May 19, 2016 11:00 AM ET)  
The number of boxes or packages (e.g., 1 of 2; 2 of 2)**

Vendor should allow extra time to comply with the Building Access procedures in effect at the Empire State Plaza when hand delivering Vendor Submissions or using deliveries by independent courier services. A Vendor assumes all risks for timely, properly submitted deliveries.

#### 4.6 Vendor Submission Liability

The State of New York will not be held liable for any cost incurred by the Vendor for work performed in the preparation and production of a Vendor Submission or for any work performed prior to the formal execution of a Contract. Vendor Submissions must be **received** in the above office at or before 11:00 AM ET on the Submission Opening date. Vendor assumes all risks for timely, properly submitted deliveries. A Vendor is strongly encouraged to arrange for delivery of bids to OGS prior to the date of the Submission opening. **LATE VENDOR SUBMISSIONS may be rejected.** The received time of all submissions will be determined by OGS by the clock at the above noted location.

#### 4.7 Vendor Submission Validity

Vendor Submissions must remain open and valid for at least 180 days from the Submission opening date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Vendor. A Vendor Submission shall continue to remain an effective offer, firm and irrevocable, subsequent to such 180 day period until either tentative award of the Contract by OGS is made or withdrawal of the Vendor Submission in writing by the Vendor. Tentative award of the Contract shall consist of written

notice to that effect by OGS to a successful Vendor, who shall thereupon be obligated to execute a formal Contract.

## 4.8 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the Information Desk. A Vendor who elects to deliver its Vendor Submission is encouraged to pre-register for building access by contacting the receptionist at 518-474-6262 at least 24 hours prior to the Submission date.

Visitors who are registered can check in directly with the Information Desk. Visitors who are not pre-registered will be directed to a designated phone to call the receptionist. The receptionist will register the visitor at that time but delays may occur. A Vendor who intends to deliver a Vendor Submission or conduct OGS business should allow extra time to comply with these procedures. Building Access procedures may change or be modified at any time.

## 4.9 Electronic Submission Opening Results

OGS posts Solicitation results on the OGS web page. The web page makes available information about the list of Vendors that responded to this Solicitation. The Solicitation Opening Results Page is available at: <http://nyspro.ogs.ny.gov/nyspro-bid-openings> (Bid Opening Results). Due to the large volume of submissions anticipated in response to this solicitation, there will be no public observation of the Submission opening process.

# 5 OGS Centralized Contract: Terms and Conditions

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The terms and conditions set forth in this section are expressly incorporated in and applicable to the Contract(s) resulting from this Solicitation. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

## 5.1 Appendix A

Appendix A — Standard Clauses for New York State Contracts, dated January 2014, attached hereto, is hereby incorporated in, and expressly made a part of, this Solicitation.

## 5.2 Appendix B

Appendix B, Office of General Services General Specifications, dated January 2015 22772 Project Based Information Technology Consulting (Statewide), attached hereto, is hereby incorporated in, and expressly made a part of, this Solicitation.

### 5.2.1 Appendix B Amendments

Appendix B is hereby amended as follows:

1. Section 64 (*Disputes*) is hereby deleted and replaced with the following:

### I. Policy

It is the policy of OGS, to provide Interested Parties, as that term is defined herein, with an opportunity to administratively resolve disputes related to OGS bid solicitations, contract awards or contract administration. Interested Parties are encouraged, but not required, to seek resolution of

disputes through consultation with Procurement Services staff through the Informal Dispute Resolution Process described herein, prior to filing a Formal Dispute. All Informal and Formal Disputes will be accorded full, impartial and timely consideration.

## **II. Dispute Resolution Procedures**

### **A. Informal Dispute Resolution Process**

1. In the event there is a dispute under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.
2. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Centralized Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result through negotiation.
3. If negotiation between the Contractor and Authorized User fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior executive officer representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.
4. The Contractor shall extend the informal dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

### **B. Formal Dispute Process**

#### **1. Definitions**

- a. Filed means the complete receipt of any document by OGS before its close of business.
- b. Interested Party for the purpose of filing a dispute relating to a solicitation, as used in this section, means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a Contract or by the failure to award a Contract.

- c. Interested Party for the purpose of filing a dispute relating to a Contract award, as used in this section, means an actual bidder or offeror for the subject Contract.
- d. Interested Party for the purpose of filing a dispute relating to the administration of the Contract, as used in this section, means the awarded Contractor for the subject Contract.
- e. Issuance of award means the Date of Issue identified on the Contract Award Notification transmitted by OGS.
- f. A Formal Dispute means a written objection by an Interested Party to any of the following:
  - i. A solicitation or other request by OGS for offers for a contract for the procurement of commodities, services or technology.
  - ii. The cancellation of the solicitation or other request by OGS.
  - iii. An award or proposed award of the Contract by OGS.
  - iv. A termination or cancellation of an award of the Contract by OGS.
  - v. Changes in the scope of the Centralized Contract by the Commissioner of OGS.
  - vi. Determination of “materiality” in an instance of nonperformance or contractual breach.
  - vii. An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

2. Submission of Formal Disputes

- a. A Formal Dispute must be filed in writing with the Director of Procurement Services by mail or email, using the following contact information:

**Director, Procurement Services**  
**A Division of the Office of General Services**  
38th Floor, Corning Tower  
Empire State Plaza  
Albany, NY 12242

Email: [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov)

Subject line: Formal Dispute – Attn: Director of Procurement Services

- b. The Formal Dispute must include:
  - i. Name, address, e-mail address and telephone numbers of the filer.
  - ii. Solicitation or Contract number.
  - iii. Detailed statement of the legal and factual grounds for the Formal Dispute, including a description of resulting prejudice to the filer.
  - iv. Copies of relevant documents.
  - v. Request for a ruling by the agency.
  - vi. Statement as to the form of relief requested.
  - vii. All information establishing that the filer is an Interested Party for the purpose of filing a Formal Dispute.
  - viii. All information establishing the timeliness of the Formal Dispute.

3. Formal Disputes concerning a solicitation shall be filed by an Interested Party (see II.B(1)(b)) with OGS no later than ten (10) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, Formal Disputes concerning the solicitation shall be filed with OGS at least twenty-four (24) hours before the time designated for receipt of bids.

4. Formal Disputes concerning a pending or awarded Contract must be filed within ten (10) business days by an Interested Party (see II.B(1)(c)) after the disputing party knew or should have known of the facts which form the basis of the Formal Dispute; however, a Formal Dispute may not be filed later than ten (10) business days after issuance of the Contract award.

5. Formal Disputes concerning the administration of the Contract after award (see II.B(1)(iv-vii)) must be filed within twenty (20) business days by an Interested Party (see II.B(1)(d)) after the disputing party knew or should have known of the facts which form the basis of the Dispute. However, if Contractor and Authorized User participate in the Informal Dispute Resolution Process, Formal Disputes concerning the administration of the Contract after award must be filed by Contractor within twenty (20) business days after the Contractor and Authorized User failed to reach resolution through the Informal Dispute Resolution Process set forth in Section II.A.

6. Agency Response

a. OGS will consider all information relevant to the Formal Dispute, and may, in its discretion, suspend, modify, or cancel the disputed procurement/Contract action prior to issuance of a Formal Dispute decision.

b. OGS reserves the right to require the filer to meet or participate in a conference call with OGS to discuss the Formal Dispute when, in its sole judgment, circumstances so warrant.

c. OGS reserves the right to waive or extend the time requirements for decisions and final determinations on appeals herein prescribed when, in its sole judgment, circumstances so warrant.

d. OGS reserves the right to consider or reject the merits of any Formal Dispute.

e. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the Formal Dispute.

7. Appeals

a. Should the filer be dissatisfied with the Formal Dispute determination, a written appeal may be filed with the Chief Procurement Officer, by mail or email, using the following contact information:

**Chief Procurement Officer**  
**Procurement Services**  
**A Division of the Office of General Services**  
38<sup>th</sup> Floor, Corning Tower  
Empire State Plaza  
Albany, NY 12242  
Email: [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov)  
Subject line: Appeal – Attn: Chief Procurement Officer

b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of Procurement Services shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.

- c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.
- d. An appeal of the decision of the Director of Procurement Services shall not include new facts and information unless requested in writing by the Chief Procurement Officer.
- e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

8. Legal Appeals

- a. Nothing contained in these provisions is intended to limit or impair the rights of any vendor or Contractor to seek and pursue remedies of law through the judicial process.

## 5.3 OGS Contract Documents

### 5.3.1 Contract Incorporation

The Contract between a Contractor and the State shall be comprised of a separate document executed by the Contractor and OGS incorporating; (i) Appendix A, Standard Clauses for New York State Contracts; (ii) Appendix B, General Specifications; (iii) portions of the successful Vendor's Submission; and (iv) portions of the Solicitation. Other documents may be identified by OGS for inclusion in the Contract during the course of the Solicitation process.

## 5.4 Conflict of Terms

See Section 7.1.

## 5.5 OGS Centralized Contract Start Date, Term and Extension

A Contract shall be deemed executed and created with the successful Contractor upon the OGS Commissioner's mailing or electronic communication to the address on the Bid/Contract of a fully executed Contract.

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent Periodic Recruitment. All OGS Centralized Contracts awarded as a result of this Periodic Recruitment shall be in effect from Contract Execution Date to September 8, 2018 with two (2) optional (3) three year extensions. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a contract extension processed under this section.

## 5.6 OGS Centralized Contract Modifications

OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.



- A. Updates to the OGS Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete products or services, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
- B. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
- C. All modifications proposed by Contractor, shall be processed in accordance with Appendix C - Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure.
- D. The form contained within Appendix C is subject to change at the sole discretion of OGS.
- E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §28.
- F. OGS reserves the right to change the processes set forth Attachments 5, 6, 7, 8, and 9, in the resultant contract in non-material and substantive ways without seeking a contract amendment.

## 5.7 Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address:

Solicitation #22772 Contract Administrator  
NYS Office of General Services  
Procurement Services  
38th Floor Corning Tower  
Empire State Plaza  
Albany, NY 12242

and (ii) if to Contractor, addressed to the Account Manager at the address identified in the Vendor's Submission. The Parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract.

All notices sent shall be effective upon actual receipt by the receiving party. The Contractor will be required to forward a copy of the official notice to an Authorized User that is associated with the subject of the notice.

Written notice of any alleged breach by one party to the other shall provide specific facts, circumstances and grounds upon which the breach is being declared.

## **5.8 Performance of Services**

### **5.8.1 Contractor Obligations**

The Contractor is responsible for fully meeting all Contract obligations set forth in the OGS Centralized Contract and for providing services in accordance with the Contract or any Authorized User Agreement, Statement of Work or Purchase Order.

### **5.8.2 Subcontracting**

The following requirements shall supplement the requirements of Appendix B, § 42 and 44:

1. The Contractor shall not in any way be relieved of any responsibility under the Contract by any subcontract. The Contractor shall be solely responsible to the State and Authorized User for the acts or defaults of its Subcontractor(s) and of such Subcontractors' officers, agents, and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract. Any Deliverable provided or furnished by a Subcontractor shall be deemed for purposes of the Contract to be provided or furnished by the Contractor.
2. The Contractor shall inform each Subcontractor fully and completely of all provisions and requirements of the Contract, including (1) those relating either directly or indirectly to the Deliverables to be provided and the materials to be furnished or Services provided pursuant to its respective subcontract, (2) to maintain and protect against any unauthorized disclosure of records with respect to work performed under the subcontract in the same manner as required of the Contractor, (3) those relating to the State's rights to audit records and (4) to cooperate with any investigation, audit, or other inquiry related to the Contract or any litigation relating thereto. Contractor agrees that every such subcontract shall expressly stipulate that all labor performed and materials furnished pursuant thereto shall strictly comply with the requirements of the Contract and that no subcontract shall impair the rights of the State or Authorized User or create any contractual relationship between the Subcontractor and the State or Authorized User.
3. The Contractor shall pay all Subcontractors for and on account of Services and/or Deliverables provided by such Subcontractors in accordance with the terms of their respective subcontracts. If and when required by the State or Authorized User, the Contractor shall submit satisfactory evidence that it has made such payment.
4. The Contractor shall require that the Subcontractor must pass through all terms and conditions of the Contract, including but not limited to Appendix A, to any lower tier subcontractors.

### **5.8.3 Location of Services Performed**

All services provided under the resultant Contract(s) and as requested in any Authorized User Agreement shall only be performed within the continental United States (CONUS). Notwithstanding Appendix B Section 28 Modification of Contract Terms, there shall be no exceptions proposed by a Contractor or considered by an Authorized User under the resultant OGS Centralized Contract and Contract process.

## 5.9 Removal of Records from Premises

Where performance of the Contract involves use by the Contractor (or the Contractor's subsidiaries, affiliates, partners, agents or subcontractors) of Authorized User owned or licensed papers, files, computer disks or other electronic storage devices, data or records at Authorized User facilities or offices, or via remote access, the Contractor (or the Contractor's subsidiaries, affiliates, partners, agents or subcontractors) shall not remotely access, modify, delete, copy or remove such Records without the prior written approval of the Authorized User. In no case, with or without the written approval of the Authorized User, can the Authorized User data be accessed, moved or sent outside the continental United States.

## 5.10 Contractor Staff

All employees of the Contractor, or of its subcontractors, who perform Project Based IT Consulting Services under the resulting Authorized User Agreement, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services under the Contract on behalf of Contractor shall, in performing the Services, comply with all applicable Federal, State, and local laws concerning employment in the United States.

The following requirements shall apply in addition to the requirements of Appendix B, paragraph 42, unless otherwise agreed to by the Authorized User:

### 5.10.1 Staffing Changes

1. Any staffing represented as key personnel are anticipated to fulfill the entire duration of the assignment per the Authorized User Agreement. If staffing changes are required for any of the key personnel on the project prior to the completion of his or her assignment period, the Contractor shall first, before proceeding with such removal, consult with and seek the approval of the Authorized User. If, after said consultation, it is mutually agreed that such removal shall take place, the Contractor shall provide the resumes of two (2) or more potential replacements with similar or better qualifications for the Authorized User review and approval within five (5) business days, or as otherwise agreed to by the Authorized User.

The newly-assigned Contractor staff must have qualifications as good as or better than those of the replaced staff. At the commencement of the transition period, the departing staff and the new staff will work together to develop a written transition plan to transition the responsibilities. The Authorized User reserves the right to approve this transition plan.

2. The Authorized User shall also have the right in its reasonable discretion to request removal of a Contractor Staff member at any time, and the Contractor must provide the resumes of two (2) or more potential replacements with similar or better qualifications for the Authorized User's review and approval within five (5) business days, or as otherwise agreed to by the Authorized User.
3. Where Contractor Staff ceases work for reasons beyond the control of the Contractor, the Contractor must immediately notify the Authorized User and provide the resumes of two (2) or more potential replacements with similar or better qualifications for the Authorized User's review and approval within five (5) business days, or as otherwise agreed to by the Authorized User.

- a) Reasons beyond the control of the Contractor shall be defined as: (i) death of the Contractor Staff member; (ii) disability or illness; (iii) Contractor Staff member resigns his or her position; (iv) termination for cause by the Contractor; (v) military service or (vi) any other reason deemed acceptable by the Authorized User.
  - b) The provisions of this section do not preclude any Contractor Staff member from reasonable sick leave or annual leave.
4. Upon the Authorized User's approval, replacement staff will become project staff and will be subject to the terms and conditions of the Contract and Authorized User Agreement.

If the Authorized User does not approve one of the proposed replacement candidates, the Contractor must provide additional candidates for the Authorized User's review within five (5) business days or as otherwise agreed to by the Authorized User. The Authorized User shall not unreasonably withhold approval of replacement candidates.

If the Authorized User still does not find a proposed replacement acceptable, the Authorized User reserves the right to suspend activities under the Authorized User Agreement.

#### 5.10.2 Contractor Staff Conduct

1. For reasons of safety and public policy, in any Contract resulting from this procurement, the use of illegal drugs and/or alcoholic beverages by the Contractor or its agents, employees, partners or Subcontractors shall not be permitted while performing any phase of the work herein specified.
2. The State and Authorized User will not be liable for any expense incurred by the Contractor or its agents, employees, partners or Subcontractors for any parking or towing fees or as a consequence of any traffic infraction or parking violations attributable to Contractor or its agents, employees, partners or Subcontractors.

#### 5.11 Employee Information Required to be Reported by Certain Consultant Contractors and Service Contractors

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning Contract Employees working under State Agency service and consulting Contracts. State Agency consultant Contracts are defined as "Contracts entered into by a state Agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*" ("covered consultant Contract" or "covered consultant services"). The amendments also require that certain Contract Employee information be provided to the state Agency awarding such Contracts, OSC, DOB and CS. The effective date of these amendments was June 19, 2006. The requirements will apply to the covered Contracts awarded on and after such date.

To meet these requirements, the Contractor agrees to complete:

**A. Form A - Contractor's Planned Employment Form**, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information.

**B. Form B - Contractor's Annual Employment Report**. Throughout the term of the Contract by May 15<sup>th</sup> of each year the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract.

For each covered consultant Contract in effect at any time between the preceding April 1<sup>st</sup> through March 31<sup>st</sup> fiscal year or for the period of time such Contract was in effect during such prior State fiscal year Contractor reports the:

1. Total number of Employees employed to provide the consultant services, by employment category.
2. Total number of hours worked by such Employees.
3. Total compensation paid to all Employees that performed consultant services under such Contract.\*

**\*NOTE:** The information to be reported is applicable only to those Employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to Employees of Subcontractors who perform any part of the service Contract or any part of the covered consultant Contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an Employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information to The Department of Civil Service (CS) and OSC as designated below:

**Department of Civil Service**  
Alfred E. Smith State Office Building  
Albany, NY 12239

**Office of the State Comptroller**  
Bureau of Contracts  
110 State St., 11<sup>th</sup> Floor  
Albany, New York  
Attn: Consultant Reporting  
Fax: (518) 474-8030 or (518) 473-8808

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual Employee names or social security numbers are set forth on a document, the State Agency making such disclosure is obligated to redact both the name and social security number prior to disclosure. Further information is available in Section XI.18.C of the Office of the State Comptroller's Guide to Financial Operations (<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>), "Consultant Disclosure Legislation."

### **INSTRUCTIONS FOR COMPLETING FORM A AND B:**

Form A and Form B should be completed for Contracts for consulting services in accordance with Section XI.18.C of the Office of the State Comptroller's Guide to Financial Operations (<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>), "Consultant Disclosure Legislation," and the following:

- A. Form A - Contractor's Planned Employment Form** (available from and submitted to the using Agency, if necessary.) (Form AC-3271-S: <http://www.osc.state.ny.us/agencies/forms/index.htm>)
- B. Form B - Contractor's Annual Employment Report** (to be completed by May 15th of each year for each consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year and submitted to the CS, OSC and procuring Agency.) (Form AC-3272-S: <http://www.osc.state.ny.us/agencies/forms/index.htm>)

**Scope of Contract:** choose a general classification of the single category that best fits the predominate nature of the services provided under the Contract.

**Employment Category:** enter the specific occupation(s), as listed in the O\*NET occupational classification system, which best describes the Employees providing services under the Contract.

*(Note: Access the O\*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at [online.onetcenter.org](http://online.onetcenter.org) to find a list of occupations.)*

**Number of Employees:** enter the total number of Employees in the employment category employed to provide services under the Contract during the report period, including part time Employees and Employees of subcontractors.

**Number of Hours:** enter the total number of hours worked during the report period by the Employees in the employment category.

**Amount Payable under the Contract:** enter the total amount paid by the State to the State Contractor under the Contract, for work by the Employees in the employment category, for services provided during the report period.

## 5.12 Confidentiality and Privacy Policies and Laws

The Contractor shall comply to the extent applicable with all State and Authorized User policies regarding compliance with various confidentiality and privacy laws, rules and regulations, including but not limited to the Family Educational Rights and Privacy Act (FERPA), the Health Insurance and Portability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH).

Contractor shall cooperate in executing a written confidentiality agreement under FERPA and/or a Business Associate Agreement (HIPAA/HITECH) upon request by the State or any Authorized User.

## 5.13 Federal Funding

For an Authorized User using Federal funds, Contractor shall cooperate in adding to the Authorized User Agreement any Federal funding contract clauses necessary for the Authorized User's Project. An Authorized User shall identify to Contractor, as a condition of using this Contract and during the Mini-Bid process, whether Federal funds will be utilized for the Project.

## 5.14 Insurance Requirements

A Vendor is required to submit proof of all required insurance with its Vendor submission as detailed in Appendix H - Vendor Insurance Requirements.

The Contractor shall maintain in force at all times during the terms of the resultant Contract, policies of insurance pursuant to the requirements outlined in Appendix H – Vendor Insurance Requirements. Evidence of renewal or replacement policies of insurance with terms no less favorable to OGS than the expiring policies shall be delivered to OGS in the manner required for service of notice in Appendix H - Vendor Insurance Requirements. Vendor shall affirm its agreement to obtain all required contract-specific insurance in Attachment 1 – Administrative Attachment.

Failure to submit may result in a Vendor Submission being considered non-responsive and Vendor ineligible for Contract Award.

## ~~5.15 Contractor Requirements And Procedures For Business Participation Opportunities For New York State Certified Minority- And Women-Owned Business Enterprises And Equal Employment Opportunities For Minority Group Members And Women~~

### ~~NEW YORK STATE LAW~~

## 5.15 Contractor Requirements And Procedures For Equal Employment And Business Participation Opportunities For Minority Group Members And New York State Certified Minority- And Women-Owned Business Enterprises

### I. Policy Statement

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

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

### ~~REQUIREMENTS FOR CONTRACTOR COMPLIANCE WITH AUTHORIZED USER MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION GOALS~~

~~New York State Executive Law Article 15-A requires that OGS provide opportunities for the maximum feasible participation of New York State certified minority- and women-owned business enterprises (MWBEs) in the performance of OGS Centralized Contracts. OGS has determined that the overall MWBE participation rate for MWBEs on the contracts resulting from this solicitation shall be 20% of the State Agency and Authority (as defined in New York State Executive Law §310 and hereinafter referred to as "State Agency") spend. When a State Agency issues a competitive solicitation under the contracts resulting from this solicitation, the State Agency shall establish separate goals for participation of MWBEs, equal to or greater than 20%, and shall seek submittal of an MWBE utilization plan from contractors. As a condition of award of a contract resulting from this solicitation, the Contractor agrees to be bound by a State Agency's implementation of the provisions of Article 15-A of the New York State Executive Law, including but not limited to, the submission of a utilization plan, in the acquisition. State~~

~~Agencies will seek an overall 20% or greater MWBE participation rate based on all acquisitions made throughout the term of the contracts awarded hereunder.~~

~~Additionally, OGS strongly encourages all minority and women-owned companies to submit a Vendor Submission in response to this solicitation. Also, OGS encourages those minority and women-owned companies that are not certified by the Empire State Development Division of Minority and Women's Business Development, to become certified at their earliest opportunity. Information regarding the certification process can be viewed at: <http://esd.ny.gov/MWBE/Certification.html>.~~

~~To locate MWBEs, the Directory of Certified Businesses can be viewed at: <https://ny.newnycontracts.com/frontend/diversityusers.asp>.~~

## **EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

By submission of a bid

### **II. General Provisions**

- ~~A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.~~
- ~~B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State Certified minority- and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or Vendor Submission in response to this solicitation, the Bidder/other applicable federal, State or local laws.~~
- ~~C. The Contractor agrees with all of the further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms and conditions of Appendix A including Clause 12 or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.~~
- ~~D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section and/or enforcement proceedings as allowed by the Contract.~~

### **III. Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it Opportunity (EEO)**

- ~~A. Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of real property and improvements thereon the foregoing, to be~~



performed for, or rendered or furnished to the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, ~~equal opportunity~~ EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination, and rates of pay or other forms of compensation. This requirement does not apply to: ~~-(i) the performance of work, goods, or the provision of services or any other activity that is~~ unrelated to, separate or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy.

B. Form EEO 100 - Staffing Plan.

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

C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)

1. The Contractor shall submit to OGS upon request, and shall require each of its subcontractors to submit, a workforce utilization Form EEO-101-Commodities and Services to OGS to report on form EEO 101, identifying the actual workforce actually utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO\_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
2. Separate forms shall be completed by Contractor and any subcontractor.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract if known Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor’s total workforce during the subject time frame, not limited to work specifically performed under the Contract.

~~Further, pursuant to Article 15 of the Executive Law (also known as~~

D. Contractor shall comply with the provisions of the Human Rights Law) and, all other State and federal statutory and constitutional non-discrimination provisions, the Contractor and sub-

~~contractors will subcontractors shall~~ not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex ~~(including gender expression)~~, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

#### IV. Contract Goals

- A. OGS hereby establishes an overall goal of 20% for MWBE participation, \_\_\_ % for Minority-Owned Business Enterprises (“MBE”) participation and \_\_\_ % for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses and Community Relations. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

#### V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE, and performance dates of each component of the Contract that the Bidder intends to be performed by a MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

C. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt.

D. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

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

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

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

## **VI. Request for Waiver**

A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Businesses and Community Relations for guidance.

B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time

during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

## **VII. Required Good Faith Efforts**

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

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

## **VIII. Monthly MWBE Contractor Compliance Report**

A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.

B. When a Contractor receives a payment from a State agency or Authorized User following a purchase from an OGS Procurement Services contract, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "Introduction to the System for Vendors" and "Contract Compliance Reporting - Vendor Training" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>

D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "Account Lookup" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "Change Info." It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "Request New User." When identifying the person responsible, please add "- MWBE Contact" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "Contact Us & Support" then "Technical Support" on the NYSCS website.

E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29<sup>th</sup> floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

#### **IX. Breach of Contract and Liquidated Damages**

A. In accordance with Executive Law Section 316-a and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and

the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.

B. Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

C. If, after Contractor has been afforded due process to respond to the allegation that it willfully or intentionally failed to comply with the MWBE participation goals, OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by the OGS, Contractor shall pay such liquidated damages to the OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law, in which event the liquidated damages shall be payable if the Director renders a decision in favor of the OGS.

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

## **5.16 Administrative and Reporting Requirements**

The Contractor shall provide the following reports to OGS at the following e-mail address: PBITS.Contractors@ogs.ny.gov

Failure to submit reports on a timely basis may result in contract cancellation and designation of Contractor as non-responsible. OGS and the Contractor agree that OGS reserves the right to amend the data elements collected in these reports in its sole discretion. Such amendments shall not be substantive in nature and shall reflect information relevant to monitoring the expenditures under the Contract.

### **5.16.1 Report of Contract Purchases**

Contractor shall furnish quarterly reports containing total sales for both State Agency and other Authorized User contract purchases no later than thirty (30) days after the close of each calendar quarter using the form set out in Appendix E, Report of Contract Purchases.

In addition to Contractor direct sales, Contractor shall submit sales information for all resellers, dealers, distributors or other authorized distribution channels, where such contract sales are provided by other than the Contractor. A separate report shall be provided for each authorized distribution channel. Contractors shall verify if each alternate vendor is a NYS certified minority- or women- owned business (MBE or WBE, respectively). Contractors shall verify such status through the Empire State Development minority- and women-owned businesses database at: <https://ny.newnycontracts.com/frontend/diversityusers.asp>.

The required reporting elements are provided by OGS in Appendix E, Report of Contract Purchase. Reports will consist of an itemized report of all services provided and invoiced, shall be forwarded

electronically in Excel (.xls or .xlsx) Format to the OGS Centralized Contract Administrator containing the information requested within the attachment workbook.

If appropriate means are integrated into the NYS Statewide Financial System (SFS) Portal to allow direct input of the required reporting information, submission of the Report of Contract Purchases will migrate to that venue and the Contractor will follow the reporting format established within the SFS Vendor Portal. Announcement of any such new capability and reporting requirement will be made via a purchasing memorandum which will be forwarded to Contractor.

### 5.16.2 Updated Certification of Required Insurances

As insurance coverage is traditionally of a term nature, it is the Contractor's responsibility to maintain not just the appropriate insurance coverages, but also their filed certifications with OGS. The Contractor shall furnish to the State up to date certifications of coverages for all insurance requirements per Appendix H– Vendor Insurance Requirements.

## 5.17 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Vendors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>

## 5.18 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See "Participation in Centralized Contracts" in Appendix B, OGS General Specifications.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<http://www.ogs.state.ny.us/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Customer Services at 518-474-6717.

## 5.19 Accessibility of Web-Based Information and Applications

For State Agency Authorized User Acquisitions: Any web-based information and applications development, or programming delivered pursuant to the contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as follows:

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

## 5.20 Price Adjustments for OGS Centralized Contracts

Periodic price adjustments will occur no more than twice per year on a schedule to be established solely by OGS. Pricing offered shall be fixed for the first twelve (12) months of the Contract term. Such price increases will only apply to the OGS Centralized Contracts and shall not be applied retroactively to Authorized User Agreements or any Mini-bids already submitted to an Authorized User.

### 5.20.1 Price Decreases

Price decreases may be made at any time. Additionally, some price decreases shall be calculated in accordance with Appendix B, Clause 17, Pricing.

### 5.20.2 Price Increases

This Section applies to pricing not Benchmarked to GSA Supply Schedule. Additionally, where pricing submitted for Services is not benchmarked to an approved GSA Supply Schedule:

**a. Price Increase Requests:** Subsequent to the first twelve (12) months of the Contract term and in accordance with the schedule for price adjustments established by OGS, Contractor may request an increase in the pricing contained in Attachment 2 – Financial Submission by submitting an update request based on the change in pricing level as contained in Appendix C to the OGS Contract Administrator. With any price increase request, in addition to the requirements contained in Appendix C, the Contractor must certify in writing that the price change for the Product(s) is the same as or better than the pricing in its U.S. Commercial Price List, and that Contractor documents the request to the satisfaction of the State. Should the Contractor not have a U.S. Commercial Price List, it must include a copy of the government contract containing the job titles and rates that are to be adjusted. In no case may the pricing adjustment conflict with the Escalation Cap in Section 5.21.2 (b).

**b. Escalation Cap:** Such adjustment shall in no event exceed the lesser of two (2%) percent of the Contractor's current NYS pricing as found in the OGS Centralized Contract or the percent increase in the latest copy of the "National Consumer Price Index for All Urban Consumers (CPI-



U),” as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. In no event can prices exceed the Contractor’s published U.S. Commercial List price.

**c. Effective Date of Increase:** Price increases shall be effective upon final approval by the State, and may not be posted on the pricelist prior to receipt of final approval.

### 5.20.3 GSA Benchmarked Pricing

Additionally, where the NYS Net Price is based upon an approved GSA Supply Schedule:

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

**b. Industrial Funding Fee:** GSA pricing incorporates a sum referred to as the “GSA Industrial Funding Fee” (IFF). The NYS Net Price shall be calculated by reducing the published GSA price, after the discounts, if any, set forth in paragraph (1) above, downward by the amount of the Industrial Funding Fee, currently set at 0.75%. Therefore, as an example, the NYS Net Price shall be calculated by multiplying 0.9925 times the GSA price.

**c. Pricing Increase Requests:** Subsequent to the first twelve (12) months of the Contract term and in accordance with the schedule for price adjustments established by OGS, Contractor may request an increase in the pricing contained in Centralized Contract by submitting an update request based on the change in pricing level as contained in Appendix C to the OGS Contract Administrator. With any price increase request, in addition to the requirements contained in Appendix C, the Contractor must certify in writing that the price change for the Services is the same as its pricing in its GSA Supply Schedule, and that Contractor documents the request to the satisfaction of the State.

**d. Effective Date of Increase:** Price increases shall be effective upon final approval by the State, and may not be posted by Contractor prior to receipt of final approval.

### 5.21 Performance/Bid Bond and Letter Of Credit

There are no bonds required for the Contract resulting from this Solicitation. In accordance with Appendix B §45 Performance/Bid Bond, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the initial term, or any renewal term, for the resulting Contract and Authorized User Agreements.

### 5.22 Use Of Service-Disabled Veteran-Owned Business Enterprises In Contract Performance

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily

identified on the directory of certified businesses at [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf).

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

## **6 Authorized User Overview and Mini-Bid Process**

Project Based IT Consulting Services Contracts enable Authorized Users to use a competitive Mini-bid Process to acquire Services on an as-needed basis, for qualified IT Projects.

Project Based IT Consulting Services may include, but will not be limited to projects requiring: Analysis, data classification, design, development, testing, quality assurance, security and associated training for Information Technology based applications.

An Authorized User Agreement for Project Based IT Consulting Services will be governed first by the terms and conditions specified in the OGS Centralized Contract and second by terms and conditions added to the Authorized User Statement of Work. Additional terms and conditions may not conflict with or modify the terms and conditions of the OGS Centralized Contract.

NYS Executive Agencies must adhere to all internal processes and approvals including, as required, approval from NYS Office of Information Technology Services. Other Authorized Users must adhere to their own internal processes and approvals.

### **6.1 Authorized User's Statement of Work**

A competitive Mini-Bid is required for every transaction under this Centralized Contract. An Authorized User must prepare a detailed Statement of Work using the Mini-Bid template. The Authorized User must distribute the Mini-Bid to all qualified Vendors per Lot(s) (unless a Vendor has removed itself from consideration via the Attachment 9 - Mini-Bid Participation Interest Template).

The following terms and conditions shall apply to each Mini-Bid issued by an Authorized User:

- An Authorized User may require the execution of unique forms, such as Confidentiality Non-Disclosure agreements; and
- An Authorized User is required to make tentative award and non-award notifications to all Contractors who submitted a response to the Mini-Bid.

Additionally, the minimum time, excluding the date of release, between issuance of the Mini-Bid by the Authorized User to the Mini-Bid Opening is as follows:

- Lot 1 Mini-Bids: Five (5) Business Days
- Lot 2 Mini-Bids: Ten (10) Business Days
- Lot 3 Mini-Bids: Fifteen (15) Business Days

An Authorized User should take into consideration the level of complexity associated with the Mini-Bid procurement and should allow sufficient time in the schedule included in the Mini-Bid to permit interested Contractors to prepare and submit a thorough response.

When applicable, the Statement of Work document should include the following information in sufficient detail:

1. Project objectives
2. Project plans and timelines
3. Project Deliverables and their acceptance criteria
4. Project approach and methodology
5. Project resource requirements (key personnel)
6. Anticipated project duration (projected start and end dates and overall duration)
7. Expectations for delivery of work products (Deliverables)
8. Expectations for documentation, reports, invoicing, and Knowledge Transfer, etc.
9. Requirements for status reporting and meetings (form, content and frequency)
10. Performance specifications (vendor and system)
11. Work-site/location and provisions
12. Any Downstream Prohibition(s) – whether the engagement may result in the contractor gaining information which may raise level playing field issues in a future procurement and result in the inability of such contractor to participate in a future procurement

#### 6.1.1 Fixed-Price

An Authorized User Agreement shall be awarded on a fixed-price basis only. As such, the Contractor shall complete all project Deliverables indicated in the final negotiated Authorized User Agreement, without any increase in cost to the Authorized User. If the Contractor resources required to complete such work are more than the Contractor agreed to in the Mini-Bid, these additional resources must be provided to the Authorized User at no additional cost.

## 7 Authorized User Terms and Conditions

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The terms and conditions set forth in this section are expressly incorporated in, and applicable to, the Authorized User Agreement resulting from this Solicitation. The following sections are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

### 7.1 Mini-Bid Transactional Order of Precedence

Conflicts of terms and conditions shall be resolved in the following order of precedence:

- A. Appendix A, Standard Clauses for New York State Contracts;
- B. The Contract executed by Contractor and OGS;

- C. Appendix B, General Specifications January 2015 22772 Project Based Information Technology Consulting (Statewide);
- D. Other Appendices; and
- E. Authorized User Agreements or purchases made between an Authorized User and the Contractor.

## **7.2 Contract Survival**

The starting date for each Authorized User Agreement will vary but shall not exceed three (3) years in duration. Authorized User Agreements fully executed prior to the expiration of the OGS Centralized Contract shall survive the expiration date of the OGS Centralized Contract, if applicable, based on the term of the Authorized User Agreement.

## **7.3 No Cost Change Request**

The Authorized User reserves the right to reasonably amend a Fixed-Price Deliverable, provided the amendment does not materially change the Scope of the Deliverable, without a cost increase. Although the Authorized User has endeavored to identify many tasks associated with a Fixed-Price Deliverable (Tasks), additional Tasks which can reasonably be anticipated to carry out the Deliverable shall be within the scope of the Deliverable, and shall not result in a cost increase. An Authorized User shall use Attachment 7 - No Cost Change Request Template to reflect such modifications.

Written approval of the No-Cost Change Request is required from both the Authorized User and the Contractor.

## **7.4 Enhancement Budget**

Enhancements refer to additional functionality and deliverables unknown to the Authorized User at the time of Mini-Bid release. An Authorized User is permitted to include an enhancement budget, as specified in the Mini-Bid (up to 10%). The total cost of the project including the enhancement budget shall not exceed the Lot threshold from which the award was made. An Authorized User shall use Attachment 8 – Enhancement Request Template to reflect such modifications.

Mini-Bid/Statement of Work documents will define specific criteria and method of reimbursement for the Enhancement budget.

Written approval of an Enhancement budget request is required from both the Authorized User and the Contractor.

## **7.5 Contractor Responsibilities**

### **7.5.1 Project Organization Chart**

As part of the Mini-Bid, the Authorized User may require the Contractor to develop and submit a proposed project organization chart. The project organization chart should identify all the proposed key personnel of each team component and how the team will be managed. If required, the project organization chart must include both Contractor and State staff roles if identified in the Mini-Bid.

### **7.5.2 Eligibility to Work**

The Contractor must ascertain and validate that all proposed staff resources, including all employees, subcontractors and agents, (hereinafter “Contractor Staff Member”), are either U.S. citizens or non-U.S. citizens.

1. Where the Contractor Staff Member is a U.S. citizen, the Contractor must identify the proposed individual Contractor Staff with, at a minimum, the first and last name of the individual Contractor Staff Member as it appears on his/her Driver’s License, Non-Driver’s Identification Card, or other accepted forms of government identification.
2. Where the Contractor Staff Member is not a U.S. citizen, the Contractor shall identify such to the Authorized User. The Contractor must identify if the proposed individual Contractor Staff Member will be working under a H1-B or other Visa during the time of the placement. The Contractor must identify the proposed individual Contractor Staff Member with, at a minimum, the first and last name of the individual Contractor Staff Member as it appears on his/her Visa and/or Passport. No other names or derivations may be used.
3. The Contractor must retain all necessary paperwork throughout the length of each individual Contractor Staff Member’s engagement with an Authorized User.
4. The Contractor is responsible for ensuring that all Contractor Staff Members retain the authorization to legally work in the United States throughout the term of the engagement.
5. H-1B costs are not allowed under this Contract and Authorized Users will not affirm employment for immigration purposes. Any foreign employees retained through this Contract shall be the employee of the Contractor and not the Authorized User. Based on the scope of the Project, the Authorized User may require that all staff must be citizens of the United States, and if so, Authorized User must indicate in the Mini-Bid.

### **7.5.3 Additional Requirements from Authorized Users**

An Authorized User may have distinct requirements that must be met by all individuals employed by or working for the Authorized User. The Contractor’s Staff Members will be expected to comply with these requirements as a condition of the placement.

1. An Authorized User may at its discretion request additional background checks to be conducted, including, but not limited to, finger-printing and the signing of a confidentiality and/or non-disclosure agreements.
2. An Authorized User may conduct its own background checks at the expense of the Authorized User.
3. An Authorized User may require individual Contractor Staff Members to provide photo identification such as a NYS Driver’s License, Non-Driver’s Identification Card, Passport, etc. in order to receive a State Identification card used for entrance into the Authorized User’s building and/or facilities.

### **7.6 Authorized User Engagement Requirements**

1. All Authorized User Agreements shall be no longer than three (3) years in duration.
2. Contractor Staff Members must adhere to workplace rules of the Authorized User. This includes, but is not limited to, the following: building access procedures, computer/phone usage guidelines, and other agency policies (such as Drug-free Workplace Policy Statement, Workplace Violence Policy, and smoking policy).

3. The Authorized User shall define the manner in which it requests Knowledge Transfer to occur from the Contractor's Project team to the Authorized User's staff.
4. The Authorized User shall indicate a change in working hours at the Authorized User building and/or facilities where appropriate and not previously specified during the requisition process.
5. Contractor and any subcontractors must work cooperatively with Authorized User staff and with other vendors working at Authorized User sites.
6. Professional workplace conduct and attire will be expected at all times.
7. All services performed for an Authorized User shall only be performed within the continental United States. An Authorized User is expressly prohibited from granting any and all exceptions to this clause.

## **7.7 Deliverables for an Authorized User Agreement (Transaction)**

Deliverables must be identified, as a measure of progress in the Authorized User Agreement. A Deliverable as a bulk number of hours is not permissible under the OGS Centralized Contract.

## **7.8 Retainage**

As part of the Mini-Bid, 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. This retainage may be reduced as described in the Mini-Bid, when the Contractor substantially reduces the time required from the timeframes negotiated between the Authorized User and the Contractor for the completion and acceptance of a Deliverable.

## **7.9 Reasonableness of Price**

An Authorized User will be required to demonstrate reasonableness of price for each project as part of the evaluation prior to the execution of an Authorized User Agreement. The Contractor's OGS Centralized Contract includes a NYS Contract pricelist, which was assessed to determine that the "Not-to-Exceed" hourly rates offered to New York State are at or below the Not-To-Exceed hourly rates offered to other Government customers.

In accordance with Appendix B section 32, OGS encourages an Authorized User to negotiate for better pricing than is listed on the NYS Contract pricelist, as the total hourly rates established by OGS Centralized Contracts are Not-to-Exceed total hourly rates. An Authorized User must follow the internal procurement guidelines of their organization and obtain all required control agency approvals when purchasing from OGS Centralized Contracts.

## **7.10 Travel, Meals and Lodging**

When provided for in the Mini-Bid and resultant Authorized User Agreement, the Authorized Users may reimburse travel expenses. All rules and regulations associated with this travel can be found at <http://osc.state.ny.us/agencies/travel/travel.htm>. In no case will any travel reimbursement be paid that exceeds these rates. All travel will be paid in conjunction with a deliverable specified within the Authorized User Agreement and must be billed with that associated Invoice with receipts attached.

The Contractor shall receive prior approval from the Authorized User for any travel that occurs during the term of an Authorized User Agreement. Parking fees and/or parking tickets may not be paid by an Authorized User.

Unless otherwise specified in writing by the Authorized User, a vehicle will not be provided by Authorized User to the Contractor for travel. Therefore, the Contractor will be responsible for ensuring that the Contractor has access to an appropriate vehicle (e.g., personal vehicle or rental vehicle) or common carrier with which to carry out any necessary travel.

For the Contractor to obtain reimbursement for the use of a rental vehicle, such use must be justified as the most cost-effective mode of transportation under the circumstances (including consideration of the most effective use of time).

The Contractor shall provide evidence of three (3) written or telephone price quotes, and the paid invoice must detail the type of vehicle rented, miles traveled, license plate number, and time of pickup and return. The Contractor is responsible for keeping adequate records to substantiate any claims for reimbursement, by personnel for travel in performance of the services.

## **7.11 Payment Schedule**

Except as provided in Section 7.10 Travel, Meals and Lodging, payments will only be made based on Deliverables outlined within the Authorized User Agreement. Any invoice not related directly to a completed deliverable will be rejected. Any charge included on the invoice without backup documentation as specified in the Authorized User Agreement (travel receipts, etc.) may be removed. Any outstanding charges un-invoiced or removed from the invoice must be submitted/resubmitted within 120 Calendar days or may not be reimbursed.

Each Deliverable may contain a retainage allotment as specified within the Authorized User Agreement. Each invoice is to include a detailed and itemized list of all retainage withholds that are in place since the activation of the Authorized User Agreement.

Payment schedule shall be based on the final Authorized User Agreement as negotiated by the Authorized User and Contractor. Payment is only to be made after the deliverable within the Authorized User Agreement is accepted by the Authorized User. A Contractor is encouraged to submit no more than one invoice per month. Invoices must include cumulative retainage holdback. Invoices submitted to an Authorized User must include backup documentation as defined in the negotiated Authorized User Agreement.

## **7.12 Mini-Bid Dispute Resolution Process**

If the Authorized User does not have a dispute resolution policy, please refer to OSC or OGS dispute resolution policy for guidance in creating a policy.

In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result through negotiation.

In the event that the Contractor and the Authorized User are unable to resolve a conflict through negotiation, then both parties will comply with the Authorized User's stated dispute resolution policy which must be included as part of the Authorized User Agreement.

If the conflict is still unresolved, please refer to Section 5.2.II.A.3 for guidance.

## **7.13 Mini-Bid Proposal Validity**

All Contractor responses to Authorized User Mini-Bids must remain open and valid for at least 60 days from the Mini-Bid opening date, unless the time for awarding the Authorized User Agreement is extended by mutual consent of the Authorized User and the Contractor. A Vendor's Mini-Bid response shall continue to remain an effective offer, firm and irrevocable, subsequent to such 60 day period until either tentative award of the Authorized User Agreement by the Authorized User is made or withdrawal of the Contractor response in writing by the Vendor. Tentative award of the Authorized User Agreement shall consist of written notice to that effect by an Authorized User to a successful Contractor, who shall thereupon be obligated to execute a formal Authorized User Agreement.