



# Solicitation Update #4

**Subject:** Summary of Changes to Solicitation 22772 – First Periodic Recruitment

**DATE:** May 2, 2016      **SOLICITATION #:** 22772      **GROUP #:** 73600

**DESCRIPTION:** Project Based Information Technology Consulting Services (Statewide)

**OGS DESIGNATED CONTACTS:** Mark Joly, Marc Kleinhenz, Donna Pszeniczny, Karen Fowler, Nancy Dougherty, Allison White, Daniel DeCamp | ITSPurchase@ogs.ny.gov

**PROPOSAL OPENING DATE & TIME:** May 19, 2016 @ 11:00AM

**SUBJECT:** Posting of Inquiry and Bid Deviation Responses, Updates to Solicitation, Inclusion of SDVOBs for Lot 1 Awards, Updates to MWBE Contract Requirements, New clause for Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance, Attachment 2 Financial Submission, Attachment 3 – Technical Submission, Attachment 6 –How to Use This Contract, Attachment 9 – Mini-Bid Participation, and Attachment 10- Submission Checklist.

**TO ALL VENDORS:**

This bid solicitation update provides the summary of changes to the corresponding documents. A redline/tracked changes version of the Solicitation document incorporating OGS changes, in addition to a final version, have been posted to the OGS Online Bid Calendar at the following link: <http://www.ogs.ny.gov/purchase/biddocument/22772prBid.asp>

Please carefully review the new final documents. Should there be a discrepancy among this Purchasing Memorandum, the redline/tracked changes version and the final version documents, all final versions take precedence over this memorandum.

**Revisions to Solicitation Document**

**Contents**

- The table of contents has been updated in its entirety to reflect all edits in the document.

**Section 1.1 Overview and Purpose of This Solicitation**

Page 6

- Updated Lot 1 to include certified NYS Service-Disabled Veteran-Owned Business (SDVOB).

Lot #	Award Lots (Based on Project Value)
Lot 1	Up to \$200,000

**Section 1.5 Definitions**

Page 10

- Updated the definitions for " Must" and "Shall".

Term	Definition
Must	<p><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></p> <p><u>Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative.</u></p>
Shall	<p><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></p> <p><u>Denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative.</u></p>

**Section 3.1 Minimum Qualifications**

Page 17 Minimum Qualification, Lot 1 \*\* defined

- Updated minimum qualifications in Lot 1 to include New York State Certified Service-Disabled Veteran-Owned Business.

\*\*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))

**Section 4.1.2 Electronic Vendor Submission**

Page 23

- Affirmative Statements was moved from Attachment 2 –Financial Submission to Attachment 3 – Technical Submission
  - "Attachment 2":
    - Cover Sheet
    - ~~Affirmative Statements~~
    - Vendor Price List Form
  - "Attachment 3":
    - Cover Sheet
    - ~~Affirmative Statements~~
    - All Lot Response Form(s) as applicable

**Section 4.1.3 Submission Checklist**

Page 24, First Paragraph

- Updated Attachment 10 reference

The chart that follows has been included as a separate document, Attachment ~~4410~~– Submission Checklist and should be completed and submitted with the Vendor Submission.

**Section 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**

Page 37

- Updated Entire Clause

~~4.5.15 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 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~~

**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. he Bidder further 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.

urther, 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).

#### **II.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.

#### **III.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.

#### **IV-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.

#### V.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.
- A-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>

**Section 5.22 Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance**  
Page 46

- Added Entire Clause

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.

## **Revisions to Attachments**

### **Attachment 2 - Financial Submission**

- Updated the following:
  - a. Affirmative Statements tab has been moved to Attachment 3 –Technical Submission.
  - b. Vendor Price List tab - Cells have been unlocked enabling manual sizing.

### **Attachment 3 – Technical Submission**

- Updated the following:
  - Lot 1, Lot 2 and Lot 3 Response tabs, cells have been unlocked enabling manual sizing.
  - Tab 2 - Affirmative Statements tab has been added and item # 2, includes:

Vendor affirms that it is a NYS Certified Service Disabled Veteran Owned Business enterprise or meets the definition of a New York State Services Disabled Veteran Owned Business in New York

State Executive Law Article 17-B, section 369-h (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)

- Lot 1 Response Form tab 5, has been updated to include SDVOBs as a contractor choice: NYS Certified Service Disabled Veteran Owned Business Enterprise? With a drop down menu
- Lot 1 Requirements on the Lot 1 Response Form, Requirements 1 & 2 have been updated to include: Vendor must either be a NYS Certified Minority or Woman Owned Business, NYS Certified Service Disabled Veteran Owned Business enterprise, or qualified as a NYS Small Business. Vendor must have at least two (2) years of continuous operation in the two (2) years prior to and including the Solicitation Release Date for the First Periodic Recruitment.

**Attachment 6 –How to Use This Contract**

- Updated the following:
  - a. Section 1.2 Lot Values
    - Updated Lot 1 to include certified NYS Service-Disabled Veteran-Owned Business (SDVOB).

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

**Attachment 9 – Mini-Bid Participation Interest**

- Updated the following:
  - a. First Chart
    - Updated Lot 1 to include certified NYS Service-Disabled Veteran-Owned Business (SDVOB).

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

b. Second Chart - Project Information

**Lot Being Solicited:**  Lot 1 (up to \$200,000) limited to MBE, WBE, SDVOB, and SB  
 Lot 2 (\$200,001–\$7,500,000)  Lot 3 (\$7,500,001 – \$25,000,000)

## **Attachment 10-Submission Checklist**

- Updated the following:
  - a. Item # 5 - Completed Attachment ~~44-10~~ – Submission Checklist (this document)
  - b. Item # 10 – ~~Affirmative Statements~~ was removed
  - c. Item # 11 – ~~Affirmative Statements~~ was added



# Solicitation Update #3

## Subject: Contractor's Insurance Requirements First Periodic Recruitment

DATE: May 2, 2016 SOLICITATION/AWARD#: 22772 GROUP #: 73600

DESCRIPTION: Project Based Information Technology Consulting Services (Statewide)

DESIGNATED CONTACTS FOR FIRST PERIODIC RECRUITMENT: Mark Joly, Marc Kleinhenz, Donna Pszeniczny, Karen Fowler, Nancy Dougherty, Allison White, Daniel DeCamp| ITSProcurement@ogs.ny.gov

### To All Current Contractors, Authorized Users, and Prospective Contractors:

This Bulletin makes clear that the requirement that insurance coverage be primary and non-contributory does not apply to Technology Errors and Omissions, Crime, Workers' Compensation, and Disability Benefits Insurance coverages.

The Insurance Requirements for Project Based Information Technology Consulting Services provide as follows:

**Primary Coverage.** All insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Vendor/Contractor's insurance.

This requirement is found in Appendix H of the First Periodic Recruitment Solicitation, Section A(4); Amendment # 1 to the Original Contract, Section A(4), for all current Contractors; and, the substance of the requirement is also found in Section 4.16.1(A)(4) of the Original Contract for all current Contractors who have not yet executed Amendment # 1.

However, this requirement does not apply to the Technology Errors and Omissions, Crime, Workers' Compensation, and Disability Benefits Insurance coverages because there is no legal effect to these particular coverages being primary and non-contributory based on the nature of the coverages. Moreover, as an industry standard, insurers do not or cannot provide primary and non-contributory Technology Errors and Omissions, Crime, Workers' Compensation, and Disability Benefits Insurance coverages. Thus, this requirement is a nullity with respect to these particular coverages.



# General Information Bulletin

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**Subject:** Summary of Changes to Solicitation 22772 – First Periodic Recruitment – Update #2

**DATE:** April 27, 2016      **SOLICITATION #:** 22772      **GROUP #:** 73600

**DESCRIPTION:** Project Based Information Technology Consulting Services (Statewide)

**OGS DESIGNATED CONTACTS:** Mark Joly, Marc Kleinhenz, Donna Pszeniczny, Karen Fowler, Nancy Dougherty, Allison White, Daniel DeCamp| ITSProcurement@ogs.ny.gov

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**PROPOSAL OPENING DATE & TIME:** May 19, 2016 @ 11:00 AM

**TO ALL VENDORS:**

Due to the volume of submissions received during the Inquiry Period, OGS will be unable to post responses to these inquiries on April 27, 2016, as originally anticipated. Responses will be posted to the OGS Bid Calendar as soon as they are available.

The OGS Bid Calendar is available at the below link:

<https://nyspro.ogs.ny.gov/content/finding-bid-opportunities>

The Bid Documents for this Periodic Recruitment are available at the below link:

<http://www.ogs.ny.gov/purchase/biddocument/22772prBid.asp>





### Section 2.9 Solicitation Documents

- Section 2.9 Solicitation Documents has been updated to accurately reflect the correct name and number of two of the listed attachments, with deletions indicated in crossed out, red font and additions indicated in red, underlined font:

## **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 - ~~Enhancement Request Template~~ No Cost Change Request Template*
- *Attachment 8 - ~~No Cost Change Request Template~~ Enhancement Request Template*
- *Attachment 9 - Mini-Bid Participation Interest Template*
- *Attachment 10 - Submission Checklist*
- *Attachment 11 - Insurance Checklist*

### Section 7.3 No Cost Change Request

Section 7.3 No Cost Change Request has been updated to accurately reflect the correct name and number of the associated attachment, with deletions indicated in crossed out, red font and additions indicated in red, underlined font:

## **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~~9 - 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*