

CONTRACT AWARD NOTIFICATION

Title	:	Group 12601 - CARDIAC RHYTHM MANAGEMENT, HEART VALVES AND VASCULAR SURGERY PRODUCTS (Statewide)
		Classification Code: 42
Award Number	:	21174
Contract Period	:	January 1, 2010 (Revised March 11, 2015)
Bid Opening Date	:	September 16, 2008
Date of Issue	:	January 29, 2010 – December 31, 2015
Specification Reference	:	As Incorporated In The Invitation for Bids
Contractor Information	:	Appears on Page 2 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Vivian Basile Title : Contract Management Specialist Phone : 518-474-0912 Fax : 518-474-8676 E-mail : Vivian.basile@ogs.ny.gov	Customer Services Phone : 518-474-6717 Fax : 518-474-2437 E-mail : customer.services@ogs.ny.gov

**Procurement Services values your input.
 Complete and return "Contract Performance Report" at end of document.**

Description

This contract award is for Cardiac Rhythm Management (CRM), Heart Valves and Vascular Surgery Products.

PR #21174

NOTE: See individual contract items to determine actual awardees.

<u>CONTRACT #</u>	<u>CONTRACTOR & ADDRESS</u>	<u>TELEPHONE #</u>	<u>FED.IDENT.#</u>
PC64832	BIOTRONIK, INC. 6024 Jean Rd. Lake Oswego, OR 97035 <u>NYS VENDOR ID #</u> 1000009555	800-547-0394 503-675-2157 Michelle J. Hull - Contracts Administrator Fax No.: 800-291-0470 503-675-2164 E-mail: michelle.hull@biotronik.com Website: www.biotronik.com	591508071
PC65898	BOSTON SCIENTIFIC CORPORATION 4100 Hamline Avenue North St. Paul, MN 55112-5798 <u>NYS VENDOR ID #</u> 1000053980	1-800-CARDIAC 1-800-(227-3422) 1-877-826-7487 TJ Manfuso Fax No.: 914-253-6001 E-mail: TJ.Manfuso@bsci.com Website: www.bostonscientific.com	042695240
PC64833	CRYOLIFE, INC. 1655 Roberts Blvd. NW Kennesaw, GA 30144 <u>NYS VENDOR ID #</u> 1000009567	800-438-8285 678-290-4320 Peg Fairbanks - Contract Administrator Fax No.: 770-590-3754 E-mail: fairbanks.peg@cryolife.com Website: www.cryolife.com	592417093
PC64835	MEDTRONIC USA, INC. 710 Medtronic Parkway Minneapolis, MN 55432 <u>NYS VENDOR ID #</u> 1000009303	973-658-1119 Joe Magliocco - Sr. Regional Contract Mgr. Fax No.: 973-316-9076 E-mail: joe.magliocco@medtronic.com Website: www.medtronic.com	411493213
PC64836	ST. JUDE MEDICAL S.C., INC. 6300 Bee Cave Road, Building Two, Suite 100 Austin, TX 78746 <u>NYS VENDOR ID #</u> 1000009305	512-732-7400 Dave Hendrick - VP, Corporate Accounts Fax No.: 818-256-8668 Website: www.sjm.com	411625029

Cash Discount, If Shown, Should be Given Special Attention.

INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
(See "Contract Payments" and "Electronic Payments" in this document.)

AGENCIES SHOULD NOTIFY THE PROCUREMENT SERVICES GROUP PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES GROUP.

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

(continued)

The Procurement Services Group supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

PRICE:

Price includes all customs duties and charges and is net, F.O.B. destination any point in New York State as designated by the ordering agency including tailgate delivery, unless otherwise noted in the contract award. In addition, upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause.

LOT I - CARDIAC RHYTHM MANAGEMENT (Statewide)

(Categories to include all ancillary products, leads, options and accessories where applicable.)

CONTRACTOR: BIOTRONIK, INC.

CONTRACT #: PC64832

<u>CATEGORY NUMBER</u>	<u>DESCRIPTION</u>	<u>DISCOUNT FROM LIST</u>
1.	Single & Dual Chambered Pacemakers	47.74% to 71.97%
3.	Cardiac Resynchronization Therapy (CRT) Products	40.50% to 76.63%
4.	Implantable Cardiac Devices (ICD's)	63.00% to 69.23%

(continued)

Price List Date: March 29, 2013
 Manufacturer: Biotronik, Inc.
 Warranty: 5 years
 Guaranteed Delivery: 2 Days A/R/O

Person to contact for expediting New York State contract orders:
 Name: Ryan Brown
 Title: Sales Order Entry
 Telephone Number: 503-387-2644
 Toll Free Telephone Number: 877-737-2010, Ext. 2644
 Fax Number: 888-345-0380
 Toll Free Fax Number: 888-345-0380
 E-Mail Address: ryan.brown@biotronik.com

Person to contact in the event of an emergency occurring after business hours or on weekend/holidays:
 Name: Joe DiLeo
 M-F, 8 am to 5 pm Pacific
 Title: Sales Representative
 Telephone Number: 646-872-0053
 Cellular Telephone Number: 646-872-0053
 E-Mail Address: joe.dileo@biotronik.com

Contractor will accept the New York State Procurement Card for orders up to \$15,000.00.

Contractor will honor orders for less than the minimum order of \$250.00 and shipping costs will be added in accordance with the "Minimum Order" clause.

LOT I - CARDIAC RHYTHM MANAGEMENT (Statewide)

(Categories to include all ancillary products, leads, options and accessories where applicable.)

CONTRACTOR: BOSTON SCIENTIFIC CORPORATION CONTRACT #: PC65898

<u>CATEGORY NUMBER</u>	<u>DESCRIPTION</u>	<u>DISCOUNT FROM LIST</u>
1.	Single & Dual Chambered Pacemakers	21.00% to 46.71%
3.	Cardiac Resynchronization Therapy (CRT) Products	5.25% to 57.52%
4.	Implantable Cardiac Devices (ICD's)	21.00% to 50.00%

Manufacturer: Guidant Sales Corporation
 Warranty:
 Guaranteed Delivery: 1-2 Days A/R/O

Person to contact for expediting New York State contract orders:
 Name: TJ Manfuso
 Title: Senior Regional Sales Manager - Long Island Region
 Telephone Number: 1-877-884-3721

(continued)

Toll Free Telephone Number (Pager): 1-800-227-3422 (1-800-CARDIAC)
 Fax Number: 914-253-6001

LOT I - CARDIAC RHYTHM MANAGEMENT (Statewide) (Cont'd)

Toll Free Fax Number:
 E-Mail Address: TJ.Manfuso@bsci.com

Person to contact in the event of an emergency occurring after business hours or on weekend/holidays:
 Name: TJ Manfuso
 M-F, 8 am to 5 pm Eastern
 Title: Senior Regional Sales Manager - Long Island Region
 Telephone Number (Pager): 1-800-227-3422 (1-800-CARDIAC)
 Cellular Telephone Number: 516-384-2141
 E-Mail Address: TJ.Manfuso@bsci.com

Contractor will accept the New York State Procurement Card for orders up to \$15,000.00.

Contractor will honor orders for less than the minimum order of \$250.00 and shipping costs will be added in accordance with the "Minimum Order" clause.

LOT I - CARDIAC RHYTHM MANAGEMENT (Statewide)

(Categories to include all ancillary products, leads, options and accessories where applicable.)

CONTRACTOR: MEDTRONIC, USA, INC. CONTRACT #: PC64835

<u>CATEGORY NUMBER</u>	<u>DESCRIPTION</u>	<u>DISCOUNT FROM LIST</u>
1.	Single & Dual Chambered Pacemakers	25.63% to 48.78%
3.	Cardiac Resynchronization Therapy (CRT) Products	8.75% to 17.72%
4.	Implantable Cardiac Devices (ICD's)	8.48% to 31.03%
5.	Monitoring System Products	10.65% to 10.67%

Manufacturer: Medtronic USA, Inc.
 Warranty:
 Guaranteed Delivery: Days A/R/O

Person to contact for expediting New York State contract orders:
 Name: Customer Services
 Toll Free Telephone Number: 800-222-0331
 Toll Free Fax Number: 800-647-6745

Person to contact in the event of an emergency occurring after business hours or on weekend/holidays:
 Name: Richard Russell
 Title: Sales Representative
 Mon.-Fri. 7:00 am - 7:00 pm
 Toll Free Telephone Number: 800-222-0331
 E-Mail Address: richard.joseph.russell@medtronic.com

(continued)

Contractor will honor orders for less than the minimum order of \$250.00 and shipping costs will be added in accordance with the "Minimum Order" clause.

LOT I - CARDIAC RHYTHM MANAGEMENT (Statewide)

(Categories to include all ancillary products, leads, options and accessories where applicable.)

CONTRACTOR: ST. JUDE MEDICAL S.C., INC. CONTRACT #: PC64836

<u>CATEGORY NUMBER</u>	<u>DESCRIPTION</u>	<u>DISCOUNT FROM LIST</u>
1.	Single & Dual Chambered Pacemakers	23.50% to 47.87%
3.	Cardiac Resynchronization Therapy (CRT) Products	36.50% to 48.69%
4.	Implantable Cardiac Devices (ICD's)	18.50% to 58.8%
5.	Monitoring System Products	15.50%

Manufacturer: St. Jude Medical
Warranty:
Guaranteed Delivery: 3 Days A/R/O

Person to contact for expediting New York State contract orders:
Name: Steve Nystedt
Title: CRM Sales Representative
Telephone Number: 201-681-2048
Fax Number: 201-262-0279
E-Mail Address: snystedt@sjm.com
Pager Number: 800-PACEICD

Person to contact in the event of an emergency occurring after business hours or on weekend/holidays:
Name: Steve Nystedt
Title: CRM Sales Representative
Telephone Number: 201-681-2048
Fax Number: 201-262-0279
E-Mail Address: snystedt@sjm.com
Pager Number: 800-PACEICD

Contractor will honor orders for less than the minimum order of \$250.00 and shipping costs will be added in accordance with the "Minimum Order" clause.

(continued)

LOT II - HEART VALVES & VASCULAR SURGERY PRODUCTS (Statewide)
 (Categories to include all ancillary products, leads, options and accessories where applicable.)

CONTRACTOR: CRYOLIFE, INC. CONTRACT #: PC64833

<u>CATEGORY NUMBER</u>	<u>DESCRIPTION</u>	<u>DISCOUNT FROM LIST</u>
2.	Biological Heart Valve Products	10%
3.	Vascular Surgery Products	10%

Manufacturer: Cryolife, Inc.
 Warranty:
 Guaranteed Delivery:

Person to contact for expediting New York State contract orders:
 Name: Gwen Kromer
 Title: Customer Service
 Telephone Number: 888-427- 9654, Ext. 1218
 Toll Free Telephone Number: 800-438-8285
 Fax Number: 770-590-3753
 E-Mail Address: kromer.gwen@cryolife.com

Person to contact in the event of an emergency occurring after business hours or on weekend/holidays:
 Name: Gwen Kromer
 Title: Customer Service
 Mon. - Fri. 7:30 am - 7:30 pm
 Customer may call Cryolife 24/7 - Phones are staffed.

LOT II - HEART VALVES & VASCULAR SURGERY PRODUCTS (Statewide) (Cont'd)

(Categories to include all ancillary products, leads, options and accessories where applicable.)

CONTRACTOR: ST. JUDE MEDICAL S.C., INC. CONTRACT#: PC64836

<u>CATEGORY NUMBER</u>	<u>DESCRIPTION</u>	<u>DISCOUNT FROM LIST</u>
1.	Mechanical Heart Valve Products	39.71%-46.56%
2.	Biological Heart Valve Products	58.83%-59.89%
3.	Vascular Surgery Products	20.50%-65.83%

Manufacturer: St. Jude Medical
 Warranty:

(continued)

Guaranteed Delivery: 3 Days A/R/O

Person to contact for expediting New York State contract orders:

Name: Steve Nystedt
Title: CRM Sales Representative
Telephone Number: 201-681-2048
Fax Number: 201-262-0279
E-Mail Address: snystedt@sjm.com
Pager Number: 800-PACEICD

Person to contact in the event of an emergency occurring after business hours or on weekend/holidays:

Name: Steve Nystedt
Title: CRM Sales Representative
Telephone Number: 201-681-2048
Fax Number: 201-262-0279
E-Mail Address: snystedt@sjm.com
Pager Number: 800-PACEICD

Contractor will honor orders for less than the minimum order of \$250.00 and shipping costs will be added in accordance with the "Minimum Order" clause.

REQUEST FOR CHANGE:

Any request by the agency or contractor regarding changes in any part of the contract must be made in writing to the Office of General Services, Procurement Services Group, prior to effectuation.

CONTRACT PAYMENTS:

Payments cannot be processed by State facilities until the contract products have been delivered in satisfactory condition or services have been satisfactorily performed. Payment will be based on any invoice used in the supplier's normal course of business. However, such invoice must contain sufficient data including but not limited to contract number, description of product or service, quantity, unit and price per unit as well as federal identification number.

State facilities are required to forward properly completed vouchers to the Office of the State Comptroller for audit and payment. All facilities are urged to process every completed voucher expeditiously giving particular attention to those involving cash discounts for prompt payment.

If the contract terms indicate political subdivisions and others authorized by law are allowed to participate, those entities are required to make payments directly to the contractor. Prior to processing such payment, the contractor may be required to complete the ordering non-State agency's own voucher form.

See "Contract Billings" in Appendix B, OGS General Specifications.

ELECTRONIC PAYMENTS:

The Office of the State Comptroller (OSC) offers an "electronic payment" option in lieu of issuing checks. To obtain an electronic payment authorization form visit the OSC website at www.osc.state.ny.us or contact them by e-mail at epunit@osc.state.ny.us or by phone at 518-474-4032.

NOTE TO CONTRACTOR:

This Contract Award Notification is not an order. Do not take any action under this contract except on the basis of purchase order(s) from the agency or agencies.

DEBRIEFING:

Contractors and bidders are accorded fair and equal treatment with respect to the opportunity for debriefing. OGS shall, upon request, provide a debriefing to any bidder or awarded contractor that responded to the IFB or RFP regarding the reason that the proposal or bid submitted by the

(continued)

unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder or awarded contractor within thirty days of posting of the contract award on the OGS website.

PREFERRED SOURCE PRODUCTS AND SERVICES:

Some products/services in this contract may be available from one or more preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled. Agencies are reminded to comply with the statutory requirements under Section 162 of the State Finance Law and the guidelines issued by the State Procurement Council to afford first priority to products and services available from preferred sources which meet your form, function and utility.

Contractors are required to include this notice in all price lists and contract updates.

OVERLAPPING CONTRACT ITEMS:

Products/services available in this contract may also be available from other New York State contracts. Agencies should select the most cost effective procurement alternative that meets their program requirements and maintain a procurement record documenting the basis for the selection.

PSG's DISPUTE RESOLUTION POLICY:

It is the policy of the Office of General Services' Procurement Services Group (PSG) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to PSG bid solicitations or contract awards. PSG encourages vendors to seek resolution of disputes through consultation with PSG staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of PSG's Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this document or through the OGS website (www.ogs.state.ny.us).

PROCUREMENT LOBBYING TERMINATION:

OGS reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer/bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, OGS may exercise its termination right by providing written notification to the Offerer/bidder in accordance with the written notification terms of this contract.

MERCURY-ADDED CONSUMER PRODUCTS:

Offerers are advised that effective January 1, 2005, Article 27, Title 21 of the Environmental Conservation Law bans the sale or distribution free of charge of fever thermometers containing mercury except by prescription written by a physician and bans the sale or distribution free of charge of elemental mercury other than for medical pre-encapsulated dental amalgam, research, or manufacturing purposes due to the hazardous waste concerns of mercury. The law further states that effective July 12, 2005, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Offerers are encouraged to contact the Department of Environmental Conservation, Bureau of Solid Waste, Reduction & Recycling at 518- 402-8705 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Offerers may also visit the Department's web site for additional information:
<http://www.dec.state.ny.us/website/dshw/redrecy/c145home.html>.

MINORITY AND WOMEN OWNED BUSINESS:

I. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value

(continued)

(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 other applicable federal, State or local laws.
- C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms 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 and/or a breach of 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.

II. Contract Goals

For purposes of this procurement, OGS conducted a comprehensive search and determined that this contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is however encouraged to make every good faith effort to promote and assist the participation of MWBEs who perform commercially useful functions on this Contract for the provision of services and materials. Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a MWBE must, where applicable and in accordance with any State Agency specifications, also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installing. A MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation.

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

III. Equal Employment Opportunity (EEO)

- A. Contractor shall comply with the following provisions of Article 15-A:
 - 1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - 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

(continued)

To ensure compliance with this Section, the Contractor shall submit Form EEO 100- Staffing Plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories. Contractor shall complete the Staffing plan form and submit it as part of their contract.

- C. Form EEO 101 - Workforce Employment Utilization Report ("Workforce Report")
Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- D. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

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

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:

New York State political subdivisions and others authorized by New York State law may participate in 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. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<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 Procurement Services Group's Customer Services at 518-474-6717.

EXTENSION OF USE:

These contracts may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

MINIMUM ORDER:

Minimum order is \$250.00.

Contractor may elect to honor orders for less than the minimum order. For such orders, at the contractor's option, shipping costs from the contractor's address (as stated in bid) may be added to invoice with a copy of the freight bill. Shipping costs are to be prepaid by contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the order by the agency.

CANCELLATION FOR CONVENIENCE:

The State of New York retains the right to cancel this contract, in whole or in part without reason provided that the Contractor is given at least sixty (60) days notice of its intent to cancel. This provision

(continued)

should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Agency agreements, which are subject to the same 60 day discretionary cancellation or cancellation for cause by the respective user Agencies.

CONTRACT UPDATES - ADDITION AND DELETION PRODUCTS:

The contract prices may be subject to increase or decrease during the contract period in accordance with changes which may be made by the manufacturer in their established, nationally distributed price list or published catalog. Catalog or price lists may indicate increases or decreases in pricing, but the percentage discount originally accepted for award shall not be decreased during the contract period. Discounts can always be increased.

New products will be considered for inclusion provided they are pertinent to the Awarded Lot description and offered to the State at the same Lot discount or greater, terms and conditions as in the original bid.

Product changes to Contract are addressed in the following manner. In order to expedite processing of a change request that involves more than one specified category below, each request should be submitted separately to OGS.

a.) **AUTO ADDS / DELETIONS** – “Auto Adds/Deletions” are Contract changes and updates made in accordance with the previously approved Contract pricing formula; e.g., a “discount from list” or pricing based on an approved GSA-based price Schedule. “Auto Adds/Deletions” include: i) adding new products within the established, previously approved pricing structure, ii) lowering pricing for Products previously incorporated under the Contract, and iii) deleting Products previously incorporated under the Contract. Contractor shall forward the updated Contract price list to OGS for prior approval before changes (additions or deletions) are made to the Contract. Contractor may not supply new product offerings until after receipt of OGS approval.

While price decreases (ii) may take effect at any time, Contractor shall provide to OGS new updated price lists. For category (iii) Auto Deletions, Contractor must supply documentation supporting the unavailability of the product to the US market. Contractor should note, however, that all “Auto Adds” or Deletions approved by OGS are subject to a post audit by the Office of the State Comptroller.

b.) **REGULAR ADD** - “Regular Adds” are requests for i) price increases for Products incorporated under the Contract for other than previously approved pricing structure, and ii) addition of new products to the Contract which do not fall under the previously established price structure or discounts for Product types previously approved under the Contract. Regular Adds include but are not limited to newly added manufacturer’s product lines, re-bundled Products or Services, etc. Regular Adds must be submitted to OGS for prior approval, and must be accompanied by a justification of reasonableness of price. Regular Adds are subject to pre-audit by the Comptroller. If approved, OGS staff will notify Contractor in writing. Contractor may not supply new product offerings until after receipt of OGS approval of the “Regular Add.” When Contract pricing is based on GSA prices, the revised prices or prices of new Products must reflect current GSA prices adjusted as necessary for any additional discounts.

c.) **SPECIAL ADD** – Contract changes and updates that do not fall within either of the above categories will be processed as “Special Adds”. Special Adds are changes that are not specifically covered by the terms of the Contract but inclusion is found to be in the best interest of the State. Contractor must provide a justification of reasonableness of the prices offered and a statement explaining why it is in the best interest of the State to approve the new Products. Special Adds are subject to pre-audit by the Office of the State Comptroller. If approved, OGS staff will notify Contractor in writing. Contractor may not supply new offerings until after receipt of OGS approval of the “Special Add.”

DISCOUNTS:

(continued)

Percentage discount(s) offered are to be based on suggested standard pricing as described in the catalog and/or related price list. The percentage discount offered to customer agencies may be increased at any time. Discounts may be greater, but in no instance may they be lower, than the awarded discount for the entire term of the contract.

VOLUME DISCOUNTS:

Volume discounts may be applied per purchase order and/or cumulatively per customer agency per year. Volume discounts shall be defined and applied as follows: Purchase order volume discounts shall be additional discount(s) applied to individual purchase orders over a specified dollar amount (Option I). Cumulative or aggregated volume discount(s) shall be an additional discount(s) applied to purchases from individual agencies based on aggregated dollar volumes per year (Option II). It is the ordering agency's responsibility to track and monitor the sales volume to ensure they are receiving the appropriate volume discount(s).

DELIVERY:

Delivery is expressed in number of calendar days required to make delivery after receipt of a purchase order.

Product is required as soon as possible.

Delivery shall be made in accordance with instructions on Purchase Order from each agency. If there is a discrepancy between the purchase order and what is listed on the contract, it is the contractor's obligation to seek clarification from the ordering agency and, if applicable, from the Office of General Services, Procurement Services Group.

ESTIMATED QUANTITIES:

The historical dollar value of all contracts issued under the previous award was approximately \$14,000,000.00 annually. However, each contract shall be for the quantities or dollar values actually ordered during the contract period. The individual value of each contract is indeterminate and will depend upon the number of contracts issued and the competitiveness of the pricing offered. Agencies will be encouraged to purchase from contractors who offer the supplies, services, and pricing that best meet their needs in the most practical and economical manner. See "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" in Appendix B, OGS General Specifications.

CONTRACT PERIOD AND RENEWALS:

It is the intention of the State to enter into a contract for a term of five (5) years as stated herein except that the commencement and termination dates appearing on the Invitation for Bids may be adjusted forward unilaterally by the State for any resulting contract for up to two calendar months, by indicating such change on the Contract Award Notification.

The contract dates may be adjusted forward beyond two months only with the approval of the successful bidder. If, however, the bidder is not willing to accept an adjustment of the contract dates beyond the two month period, the State reserves the right to proceed with an award to another bidder.

The contract prices may be subject to increase or decrease during the contract period in accordance with changes which may be made by the manufacturer in their established, nationally distributed price list or published catalog. Catalog or price lists may indicate increases or decreases in pricing, but the percentage discount originally accepted for award shall not be decreased during the contract period. Discounts can always be increased.

SHORT TERM EXTENSION:

In the event the replacement contract has not been issued, any contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one month upon notice to the contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

(continued)

CONTRACT MIGRATION:

State Agencies or any other authorized user holding individual contracts with contractors under this centralized contract shall be able to migrate to this contract award with the same contractor, effective on the contract begin date (retroactively, if applicable). Migration by an agency or any other authorized user to the centralized contract shall not operate to diminish, alter or extinguish any right that the agency or other authorized user otherwise had under the terms and conditions of their original contract.

WARRANTIES:

See "Warranties" in Appendix B, OGS General Specifications.

RESERVATION:

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An "unanticipated excessive purchase" is defined as an unexpected order for a contract product(s) totaling more than \$30,000.00.

EPA ENERGY STAR PROGRAM:

The Federal EPA, in cooperation with manufacturers, continues a program to foster the manufacture of energy efficient equipment. New York State fully supports this effort and requires all products offered to comply with EPA Energy Star guidelines for energy efficiency. The State may discontinue use of and/or delete from contract selected products as mandated by any NYS energy legislation that is enacted during the term of this contract. The contractor shall have no recourse with the State for such discontinuance/deletion.

PRICE SHEETS AND CATALOGS:

Contractor shall be required to furnish, without charge, catalog and price lists identical to those accepted with their bid, including any changes (additions, deletions, etc.) pursuant to the contract, to authorized users which request them. Catalogs and price lists provided must reflect all products excluded from the resultant contract either through the omission of those portions or by obvious indications within the catalogs and price lists.

Catalogs and price lists may be furnished in either hard-copy or electronic format. If available in both formats, they shall be furnished in the format preferred by the requesting authorized user. Upon request the contractor shall assist authorized users in the use of catalogs and price lists.

INSTRUCTION MANUALS:

Simultaneous with delivery, the contractor(s) shall furnish to the authorized user a complete instruction manual for the product and for each component supplied. The manual shall include complete instructions for unpacking, inspecting, installing, adjusting, aligning, and operating the product, together with layout and interconnection diagrams, schematic and wiring diagrams, preventive and corrective maintenance procedures, and complete parts lists, manufacturer's catalog numbers, and ordering information, if applicable.

REPORT OF CONTRACT PURCHASES:

Contractor shall furnish a report containing both state agency and authorized non-state agency contract purchases no later than forty-five (45) days after the close of each calendar quarter. 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. Contractors shall verify if each alternate vendor is a NYS Certified Minority (MBE) or Women (WBE) Owned Businesses. Contractors shall verify such status through the Empire State Development Minority and Women Owned Businesses Database web site at: <http://205.232.252.35/>.

(continued)

A separate report shall be provided in the following format for each authorized distribution channel. The sales report form is forwarded to each contractor at time of award for completion in accordance with the contract terms and conditions:

<u>Item/ SubItem Number</u>	<u>Product or Catalog Nu mber</u>	<u>Product/ Service Description</u>	<u>Total Quantity Shipped to State Agencies</u>	<u>Total Quantity Shipped to Authorized Non-State Agencies</u>	<u>Total \$ Value</u>
					\$
				Grand Total	\$

The report is to be submitted to the Office of General Services, Procurement Services Group, Tower Bldg., Empire State Plaza, Albany, NY 12242, to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the Group Number, the Award Number, Contract Number, sales period, and contractor's (or other authorized agent) name. The outlined sales report is the minimum information required. Additional related sales information, such as monthly reports, and/or detailed user purchases may be required and must be supplied upon request.

EMERGENCY PURCHASING:

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or that the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of products or services, the Commissioner reserves the right to obtain such products or services from any source, including but not limited to this contract, as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for products or services procured from other sources pursuant to this paragraph.

"OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT:

Purchases of the products included in the Invitation For Bids and related Contract Award Notification are subject to the "OGS or Less" provisions of Section 163.3.a.v., Article XI, of the New York State Finance Law. This means that State agencies can purchase products from sources other than the contractor provided that such products are substantially similar in form, function or utility to the products herein and are:

1. lower in price
-and/or-
2. available under terms which are more economically efficient to the State agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State contractor an opportunity to match the non-contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit. State agencies should refer to Procurement Council Bulletin "OGS or Less Purchases" for complete procedural and reporting requirements.

DIESEL EMISSION REDUCTION ACT OF 2006 (NEW REQUIREMENT OF LAW):

On February 12, 2007 the Diesel Emissions Reduction Act took effect as law (the "Law"). Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL") it is now a

(continued)

requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. They need to be operated exclusively on ULSD by February 12, 2007. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

As a contract vendor the Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities. Thirty-three percent (33%) of affected vehicles must have BART by December 31, 2008, sixty-six percent (66%) by December 31, 2009 and one-hundred percent (100%) by December 31, 2010. The Law provides a list of exempted vehicles. Regulations currently being drafted will provide further guidance as to the effects of the Law on contract vendors using heavy duty diesel vehicles on behalf of the State. The Law also permits waivers of ULSD and BART under limited circumstances at the discretion of the Commissioner of Environmental Conservation. The Law will also require reporting from State agencies and from contract vendors in affected contracts.

Therefore, the bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the bidder.

PERIODIC RECRUITMENT:

The State reserves the right to consider additional vendors for award on manufacturer's lines or categories that are not covered on the awards; starting approximately one year from the contract award beginning date and at yearly intervals during the course of the contract or at any time determined by the State to be in its best interest. Single/or Sole Source vendors shall be required to submit this original bid document which may include an addendum containing additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bids shall be evaluated under the same terms and conditions as stated herein; with an additional requirement that the vendor provide information that they are the sole/single source for the equipment offered. Once awarded a contract, a vendor may not resubmit a bid on an awarded line for future consideration until a new Invitation for Bids is issued.

For addition of Non-Single/non-Sole Source suppliers (brands for which competition exists) upon receipt of suitable "proof of sales" and the requirements stated herein during the interim of the contract period if it is found that new product lines or categories are required by our NYS contract end users, the State reserves the right to bid for those products and add the newly awarded product to this contract.

(continued)

**State of New York
Office of General Services
PROCUREMENT SERVICES
Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

Contract No.: _____ **Contractor:** _____

Describe Product* Provided (Include Item No., if available): _____

***Note:** "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments: _____

 _____ (over)

Agency: _____ Prepared by: _____

Address: _____ Title: _____

_____ Date: _____

_____ Phone: _____

_____ E-mail: _____

Please detach or photocopy this form & return by FAX to 518-474-2437 or mail to:

OGS PROCUREMENT SERVICES
 Customer Services, 38th Floor
 Corning 2nd Tower - Empire State Plaza
 Albany, New York 12242

* * * * *