



Office of General Services Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | customer.services@ogs.ny.gov | 518-474-6717

Solicitation (Revised March 4, 2020)

BID OPENING DATE: March 18, 2020 TIME: 11:00 A.M. EST INVITATION FOR BIDS NUMBER: 23185	TITLE: Group 23106 – STEM/STEAM AND SCIENCE LABORATORY EDUCATIONAL SUPPLIES AND EQUIPMENT Classification Codes: 14 & 44
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CONTRACT PERIOD:	Shall commence upon mailing or electronic communication of the final executed documents to the Contractor for a Period of Five Years
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DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.

Todd Kayser Contract Management Specialist 2 Telephone No. (518) 473-6469 E-mail address: todd.kayser@ogs.ny.gov	Todd Gardner Team Leader Telephone No. (518) 474-3540 E-mail address: todd.gardner@ogs.ny.gov
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Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>	NYS Vendor Identification Number: <i>(See New York State Vendor File Registration Clause)</i>
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Legal Business Name of Company Bidding:

D/B/A – Doing Business As (if applicable):
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Street	City	State	County	Zip Code
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E-mail Address:	Company Web Site:
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If applicable, place an "x" in the appropriate box(es) <i>(check all that apply)</i>			
<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business

If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE NOT BIDDING AT THIS TIME BECAUSE:

FOR PROCUREMENT SERVICES USE ONLY			
LITERATURE <input type="checkbox"/>	LETTER <input type="checkbox"/>	USB FLASH DRIVE <input type="checkbox"/>	# of Binders/Packages: _____
PURC. MEMO <input type="checkbox"/>	OTHER <input type="checkbox"/>	_____	Documented by: _____

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 120 days from the date of submission to the New York State (“NYS”) Office of General Services (“OGS”), or for such longer period as is set forth in the Invitation for Bids.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Invitation for Bids.
3. The Bidder has read and understands the provisions of the Invitation for Bids, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS’s procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at <https://ogs.ny.gov/acpl>.

The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Bidder referenced above and that he or she signed this Bidder Certification as the legally binding act of the Bidder.

Print Full Bidder Entity Name

By:

Signature of Person Authorized to
Legally Bind the Bidder

Print Name of Signatory

Print Title of Signatory

Date

RETURN THIS PAGE AS PART OF BID

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1. INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for STEM/STEAM and Science Laboratory Educational Supplies and Equipment as specified herein for all Authorized Users eligible to purchase through this Solicitation.

This Solicitation is being conducted as a non-competitive multiple award contract with periodic recruitment which will be done at the discretion of OGS. Bids will be accepted from STEM/STEAM and science laboratory supply companies meeting the minimum requirements. Contract awards will be made to responsive and responsible bidders who meet the minimum qualifications (See Section 2 *Bidder Qualifications*) and who are eligible for award (See Section 4 *Method of Award*).

The term of the resulting contracts will be for five years commencing on the date the first Contract is executed by OGS, and all Contracts shall be coterminous. If mutually agreed between OGS and the Contractor, the Contract may be extended under the same terms and conditions for up to one (1) year.

This Solicitation outlines the terms and conditions and all applicable information required for submitting a Bid. Bidders should pay strict attention to the Bid submission date and time to prevent disqualification. Bidders are strongly encouraged to read the language of this Solicitation thoroughly and to precisely follow the instructions included in the Solicitation and all attachments.

1.2 Scope

The scope of the contracts resulting from this Solicitation is to provide Authorized Users the ability to purchase STEM/STEAM and science laboratory educational supplies and equipment. Products offered through the resulting contracts are for use in a K-12 or college level educational setting. All product categories may include assembly, configuration, installation, and networking services which are not considered Public Works pursuant to Section 5.36 *Assembly/Configuration/Installation/Networking Services*.

The scope of this Solicitation does not include stand-alone equipment and products such as computers and peripherals, printers or copiers, furniture, industrial tools and supplies, audio visual products, medical equipment, assistive technology products, books, serials or arts and craft supplies unless those products are part of a contractor's general product offering and are to be utilized in conjunction with a contractor's STEM/STEAM or science laboratory based learning systems and curriculum. Industrial or commercial grade 3D printing equipment, robotics or drones that are not intended for an educational setting are also excluded. Installation services which are considered Public Works in accordance with New York State Labor Law are not permitted (see Section 5.36, *Assembly/Configuration/Installation/Networking Services*).

The Solicitation includes the Lots and product categories listed below.

Lot 1 – Non-Information Technology based STEM/STEAM or Science Laboratory Products

Products that **do not** have the ability to collect Data, examples of which include but are not limited to parts, tools, consumables, supplies, safety equipment, hands-on project materials and hard copy printed materials.

Table 1: Lot 1 Examples

Product Category	Examples (products that do not have the ability to collect Data)
3D Printing	3D printing tools, supplies and accessories used in educational programs: <ul style="list-style-type: none"> • 3D drawing pens or tools • Replacement parts • Consumables • Related accessories
Science Laboratory and Teaching Supplies	Science laboratory and teaching supplies used in grade, middle, high school or college level science laboratories: <ul style="list-style-type: none"> • Laboratory equipment • Laboratory tools • Supplies for experiments • Safety equipment • Related accessories
Robotics Kits and Parts	<ul style="list-style-type: none"> • Robotics parts • Robotic kits • Related tools and accessories
Drone Kits and Parts	<ul style="list-style-type: none"> • Drone parts • Drone kits • Related tools and accessories
STEM/STEAM and Science Laboratory Educational Materials	Packaged lesson plans, experiment sets or model kits that teach STEM/STEAM or science laboratory subject matter such as: <ul style="list-style-type: none"> • 3D Printing • Robotics or Drones • Virtual or Augmented Reality • Programming/coding/electronics • Building or engineering design • Physics, math, biology or chemistry • Environmental science • Renewable energy
Virtual and Augmented Reality Equipment and Supplies	Accessories or parts that are used in high school or college level virtual or augmented reality laboratories
Packaged Virtual Reality Products and Simulation Equipment	Accessories or parts used for either a virtual reality program or for simulation equipment

Lot 2 – Information Technology Based STEM/STEAM or Science Laboratory Products

Products that **do** have the ability to collect Data or that require the acceptance of product terms and conditions, examples of which include, but are not limited to, technology products that come with software or apps, technology products that collect Data, on-line or downloadable apps, stand-alone software, subscription based software products, cloud based technology products and products that require user registration.

Table 2: Lot 2 Examples

Product Category	Examples (Products that <u>do</u> have the ability to collect Data)
3D Printing	3D printing equipment and related software used in educational programs: <ul style="list-style-type: none"> • 3D Printers or scanners • 3D drawing pens or tools • Related software • Service plans • Extended warranties
Science Laboratory and Teaching Supplies	Science laboratory and teaching supplies used in grade, middle, high school or college level science laboratories
Robotics Kits and Parts	Robotic kits and related software used in educational programs: <ul style="list-style-type: none"> • Preassembled, programmable robotic kits • Related software
Drone Kits and Parts	Drone kits and related software used in educational programs: <ul style="list-style-type: none"> • Preassembled, programmable drone kits • Related software
STEM/STEAM and Science Laboratory Educational Materials	Packaged lesson plans, experiment sets or model kits that collect User Data and teach STEM/STEAM or science laboratory subject matter such as: <ul style="list-style-type: none"> • 3D Printing • Robotics or Drones • Virtual or Augmented Reality • Programming/coding/electronics • Building or engineering design • Physics, math, biology or chemistry • Environmental science • Renewable energy
Virtual and Augmented Reality Equipment and Supplies	Equipment and supplies, accessories and related software used in high school or college level virtual or augmented reality laboratories: <ul style="list-style-type: none"> • Virtual reality headsets • Hand, body, motion or voice controllers or trackers • Projection equipment • Cameras • Greenscreen equipment • Podcasting equipment • Related software
Packaged Virtual Reality Products and Simulation Equipment	Software or web-based virtual reality programs or simulation equipment that include a STEM/STEAM or science based educational component: <ul style="list-style-type: none"> • Virtual laboratories • Virtual learning platforms and classrooms • Flight or other simulation equipment that includes a STEM/STEAM educational component • Related software

Lot 2 Data Security and Privacy Mandates: Authorized User use of Lot 2 products or services offered by STEM/STEAM and science laboratory supply companies may be subject to various statutes and/or policies relating to the collection, use, and disposition of personally identifiable information. See Appendix D – ‘Data Security and Privacy Mandates’. As a result of such statutes and/or policies, Authorized User use of STEM/STEAM products or services may require vendors of Lot 2 products or services to comply with additional

terms and conditions relating to the collection, use, and disposition of personally identifiable information. Authorized Users will advise vendors of any such applicable statutes and/or policies prior to making a purchase under any contracts resulting from this Solicitation, and Vendor must comply with such statutes and/or policies as a condition of providing such products or services to the Authorized User.

1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The estimated dollar value of the award for this Solicitation, based on a survey of potential users, is estimated to be between \$2,000,000 and \$3,000,000 dollars annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

Numerous factors could cause the actual quantities of Products purchased under a Contract resulting from this Solicitation to vary substantially from the estimates in the Solicitation. Such factors include, but are not limited to, the following:

- Such Contracts may be non-exclusive Contracts.
- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.

Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this Solicitation.

1.4 Key Events/Dates

EVENT	DATE	TIME
IFB Release	February 4, 2020	N/A
Registration Deadline for Pre-Bid Conference	February 11, 2020	12:00 PM ET
Pre-Bid Conference	February 11, 2020	1:30 PM ET
Deadline for Submission of Intent to Bid	February 18, 2020	5:00 PM ET
Closing Date for Bidder Questions	February 18, 2020	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	February 25, 2020 (tentative)	N/A
Bid Opening / Due date for Bids	March 18, 2020	11:00 AM ET

1.5 Intent To Bid

A Bidder is requested to indicate its intent to bid by sending an e-mail titled "INTENT TO BID-[BIDDER NAME]" to todd.kayser@ogs.ny.gov on or before the date and time indicated in the *Key Events/Dates* section. The e-

mail should include the Bidder's company name and a contact name and contact information. The intent to bid is discretionary.

1.6 Pre-Bid Conference

A Pre-Bid conference will be held via Webinar at the time and date indicated in Section 1.4 *Key Events/Dates*. Bidder participation during the Pre-Bid Conference is not mandatory, but it is recommended that all Bidders participate in the Pre-Bid Conference. A Bidder should register for the Pre-Bid Conference Webinar by following the directions found below in Section 1.7 *WebEx Instructions* on or before the "Registration Deadline for Pre-Bid Conference Webinar" date indicated in Section 1.4 *Key Events/Dates*.

Prospective Bidders may participate in the Pre-Bid Conference via Webinar. The Webinar call in number and website participation instructions will be provided to registered attendees prior to the Pre-Bid Conference. If technological issues arise during the Pre-Bid Conference, participants shall immediately email or call the designated contact. If the technological issues are attributable to the State and cannot be immediately resolved, the Pre-Bid Conference will be re-scheduled.

The purpose of the Pre-Bid Conference is to review Bid submission procedures related to the Solicitation. At the discretion of OGS, materials may be provided prior to the Pre-Bid Conference to the email address(es) submitted with registration. At the discretion of OGS, inquiries submitted either at or prior to the Pre-Bid Conference may be discussed by OGS at the Pre-Bid Conference, however any responses to inquiries made at the Pre-Bid Conference are not binding. Only the written responses in the official response to inquiries posted on the OGS website shall be binding.

1.7 WebEx Instructions

It is highly recommended that you or your organization register for this webinar, the webinar will be online only with an audio bridge.

To register for the webinar, the Bidder must:

1. Go to: <https://meetny.webex.com/meetny/j.php?RGID=raf4f980e57201657b60f94028471ec89>
2. Follow the instructions to register for the meeting.

IMPORTANT NOTICE: This WebEx service includes a feature that allows audio and any documents and other materials exchanged or viewed during the session to be recorded. By joining this session, you automatically consent to such recordings. If you do not consent to the recording, please do not join the session. Please note that any such recordings may be subject to Freedom of Information Law (FOIL) or discovery in the event of litigation.

To avoid technical difficulties during the webinar, it is highly recommended that Bidders test their WebEx connections prior to the webinar.

1.8 NYS Contract Reporter

Bidders 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 "bookmark the ad" on the upper right hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select "send me notification updates" option listed to the right of the 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 Bid being deemed non-responsive to the Solicitation.

1.9 Bidder Questions

All questions regarding this Solicitation should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to todd.kayser@ogs.ny.gov by the date and time indicated in Section 1.4 *Key Events/Dates*. Questions submitted after the deadline indicated may not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter (“NYSCR”). Your company must select the “opt-in” option within the Contract Reporter ad to receive notification updates of this Solicitation.

If Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the *Questions* period so that they may be given due consideration prior to the submission of Bids. See *Bid Deviations* for additional information.

1.10 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 Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting, on a governmental entity’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter 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, are identified on the first page of this Solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to State Finance Law §139-j and §139-k. 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 Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at: <https://www.ogs.ny.gov/acpl/>

1.11 Definitions

Capitalized terms used in this Solicitation shall be defined in accordance with Appendix B, Definitions, or as below.

“Analytic Derivatives” The outcome from Data Mining or other aggregated Data analysis techniques.

“Bid Deviation” shall refer to any variance submitted or proposed by a Bidder, which deviates from, adds extraneous terms to, conflicts with or offers an alternative to any term, condition, specification or requirement of the Solicitation.

“Business Day” shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

“Business Entity” Any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.

“Data” Any information, Analytic Derivatives, formula, algorithms, or other data collected by the Product(s). Data includes, but is not limited to, any of the foregoing that the Authorized User and/or Contractor (i) uploads to the Product, and/or (ii) creates and/or modifies using the Product. See also Analytic Derivatives.

“Data Categorization Study” shall refer to the process of risk assessment of Data. See also “High Risk Data”, “Moderate Risk Data” and “Low Risk Data”.

“Deeper Discount” means to offer an additional discount on items in Bidders catalog for various reasons. Deeper Discounts can also be used for Bidders to achieve multiple discount levels in their catalog pricing.

“Educational Agency” means a school district, board of cooperative educational services (BOCES), school, university or college located in the United States.

“Governmental Entity” shall refer to a federal, state, municipal entity, or tribal government located in the United States.

“High Risk Data” Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“High Impact Data”).

“Intellectual Property (IP)” Includes inventions, patents, Copyrights, trade secrets, trademarks, technical Data, industrial designs that are generally protected and proprietary.

“Low Risk Data” Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“Low Impact Data”).

“Manufacturer” An organization or Business Entity that creates, makes, programs, processes, or fabricates a Product that is branded, warranted, supported and maintained by that organization or Business Entity and which holds all IP rights of the Product.

“MWBE” shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-owned Business Enterprise.

“Moderate Risk Data” Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“Moderate Impact Data”).

“NYS Holidays” refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

“NYS Vendor ID” is a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

“Preferred Source Products” shall refer to those Products that have been approved in accordance with New York State Finance Law § 162.

“Preferred Source Program” shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to a state agencies, political subdivisions and public benefit corporations (including most public authorities).

“Procurement Services” shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSPro”) and Procurement Services Group (“PSG”).

“Request for Product Review (RFPR)” A process used to review a Product that collects Data in order to conduct a Data Categorization Study, determine insurance requirements, incorporate additional Authorized User terms and conditions and request the Contractor’s most competitive pricing.

“SDVOB” shall refer to a NYS-certified Service-Disabled Veteran-Owned Business

“STEM/STEAM” shall refer to an educational approach to learning that uses science, technology, engineering, the arts and mathematics as access points for guiding student inquiry, dialogue and critical thinking.

1.12 Appendices and Attachments

The following appendices and attachments, attached hereto, are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

Appendix A – Standard Clauses for NYS Contracts (October 2019)

Appendix B – General Specifications (April 2016)

Appendix C – Contract Modification Procedure

Appendix D – Data Security and Privacy Mandates

Attachment 1 – Pricing (Revised March 4, 2020)

Attachment 2 – NYS Required Certifications

Attachment 3 – Encouraging Use of NYS Businesses

Attachment 4 – Insurance Requirements

Attachment 5 – Bidder Information Questionnaire

Attachment 6 – Bidder Submission Checklist

Attachment 7 – Bidder Questions Form

Attachment 8 – Report of Contract Usage

Attachment 9 – Verifiable Sales (Revised March 4, 2020)

Attachment 10 – Contractor and Reseller/Distributor Information Form

Attachment 11 – How To Use

Attachment 12 – Request for Product Review (RFPR) Template

1.13 Conflict of Terms

Conflicts among the documents shall be resolved in the following order of precedence:

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Solicitation;
3. Appendix B, General Specifications;
4. All other appendices and attachments to the Solicitation;

2. BIDDER QUALIFICATIONS

Bidder is advised that the State’s intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required. Procurement Services retains the right to request any additional information pertaining to the Bidder’s ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work. A Bidder shall meet the following qualifications:

A Bidder shall meet the following requirements regarding its qualifications:

1. The Bidder must have maintained an organization, in continuous operation, for a minimum of three (3) years immediately preceding the bid opening date selling STEM/STEAM or Science Laboratory related educational supplies or services;
2. The Bidder must have verifiable sales of at least \$100,000 of products described in Section 1.2 *Scope* to either Governmental Entities or Educational Agencies in each of the three (3) years immediately preceding the bid opening date (See Section 2.1 *Verifiable Sales*);
3. For Lot 2 'Information Technology Based STEM/STEAM or Science Laboratory Products, the Bidder must be the Manufacturer of the Products being bid.

2.1 Verifiable Sales

To demonstrate that the Bidder meets the verifiable sales requirement, Bidder shall utilize Attachment 9 - *Verifiable Sales (Revised March 4, 2020)*, which summarizes the Government Entity or Educational Agency, invoice date, invoice number, and invoice total and shall provide copies of the invoices listed in the attachment for verification purposes.

In order to meet the verifiable sales requirements, the invoices must be in the Bidders' name. However, if a Manufacturer has no verifiable sales to any Government Entity or Educational Agency, but sells its products only through Resellers to Government Entities or Educational Agencies, then that Manufacturer may use those Reseller invoices to demonstrate verifiable sales. In Attachment 9 – *Verifiable Sales* the Manufacturer will attest they have no direct government sales and sell through Resellers to Government Entities. Invoices from a Manufacturer's authorized Resellers will be accepted only if the Manufacturer is identified on the invoice. The Manufacturer's name must be printed on the invoice.

Bidder is to utilize the individual tabs in the attachment (Invoice List Year 1, Year 2 & Year 3) to document invoices for each of the three years immediately preceding the bid opening date. The minimum number of invoices needed to meet requirements should be provided.

Each invoice must contain or be accompanied by the following information.

1. Bidder or reseller's Name
2. Name of Government Entity or Educational Agency
3. Item description(s)
4. Item amount(s)
5. Invoice date
6. Invoice number
7. Invoice total

Failure to provide this information may result in a request for clarification and may delay review of Bidder's Submission and possibly result in a non-responsive finding.

Where the invoice references items other than those included in Section 1.2 *Scope*, the Bidder must provide a detailed breakdown with the invoice outlining which products are included in Section 1.2. Sales for items not described in Section 1.2 *Scope* will not be accepted.

Attachment 9 – *Verifiable Sales (Revised March 4, 2020)* as per Section 2 *Bidder Qualifications* must be signed by a person authorized to bind the bidder who must attest that:

1. Sales meet the minimum requirements;
2. Sales were to Government Entities or Educational Agencies (Section 1.11 *Definitions*);
3. All qualifying invoice totals have been collected; and
4. Any detailed breakdown submitted with an invoice is accurate.

All required information contained in verifiable sales documentation should be free of restrictions on confidentiality or claims of confidentiality. OGS will not enter into a Non-Disclosure Agreement (NDA) for Bidders who assert that information contained in their verifiable sales documentation is confidential.

OGS may, in its sole discretion, request additional information regarding Attachment 9 – *Verifiable Sales*, including any information contained on the submitted invoices and/or sales reports.

3. BID SUBMISSION

3.1 Performance and Bid Bonds

There are no bonds for this Contract. 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 is required at any time during the term of the resulting Contract.

3.2 NYS Vendor File Registration

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder and any authorized resellers 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 to each of your authorized resellers (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables a vendor 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 Bidder is already registered in the New York State Vendor File, the Bidder must enter its 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. (The Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.)

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf and submit the form to OGS in advance of Bid submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if an authorized reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their 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: <https://osc.state.ny.us/vendors/>

3.3 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Section 1.9 *Bidder Questions*, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

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

Extraneous terms submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

3.4 Format of Bid Submission

The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be handled in accordance with Appendix B, *Late Bids*. Any Bid pricing or portions thereof submitted on USB flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder.

Situations susceptible to Disqualification may include:

- E-mail or facsimile Bid submissions are not acceptable, and
- Absent Price Pages (Attachment 1 *Pricing* are not acceptable.)

It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up location. Only completed files (in the specified format) should be saved to a USB flash drive for submittal.

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation may be considered non-responsive and may be rejected.

3.5 Proposal Content

A complete Bid consists of the following:

1. One (1) USB flash drive containing:
 - a. Pages 1 and 2 of the Solicitation (signed and scanned) (PDF);
 - b. Completed Attachment 1 – Pricing (must be submitted as an Excel file) (Revised March 4, 2020);
 - c. Price lists or invoices from all Government Entities or Educational Agencies used to establish reasonableness of price (searchable PDF);
 - d. Completed Attachment 2 – NYS Required Certifications with original ink signatures (PDF);
 - e. Completed Attachment 3 – Encouraging Use of NYS Businesses (PDF);
 - f. Proof of compliance with Attachment 4 – Insurance Requirements (PDF);
 - g. Completed Attachment 5 – Bidder Information Questionnaire (Excel);
 - h. Completed Attachment 6 – Bidder Submission Checklist (Excel);
 - i. Completed Attachment 9 – Verifiable Sales (Excel) with copies of supporting invoices (PDF) (Revised March 4, 2020);
 - j. Completed Attachment 10 – Contractor and Reseller/Distributor Information Form (Word);
 - k. Completed ST-220CA, Contractor Certification, notarized with original ink signatures (PDF);
 - l. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF);
 - m. Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF).
2. Original paper versions of each of the following (to be placed in a loose-leaf binder and tabbed):
 - a. Pages 1 and 2 of the Solicitation with original ink signatures;
 - b. Completed Attachment 2 – NYS Required Certifications with original ink signatures;
 - c. Completed Attachment 3 – Encouraging Use of NYS Businesses;
 - d. Proof of compliance with Attachment 4 – Insurance Requirements;
 - e. Completed Attachment 5 – Bidder Information Questionnaire;
 - f. Completed Attachment 6 – Bidder Submission Checklist;
 - g. Completed Attachment 9 – Verifiable Sales with original ink signatures (Revised March 4, 2020);
 - h. Completed Attachment 10 – Contractor and Reseller/Distributor Information Form;
 - i. Completed ST-220CA, Contractor Certification, notarized with original ink signatures;
 - j. Completed Form EEO100, Equal Employment Opportunity Staffing Plan;
 - k. Standard Vendor Responsibility Questionnaire (completed and signed) or Certification that Questionnaire has been completed online.

Also, please note that in the case of discrepancies between paper copies and USB flash drive submissions of the documents required in both formats, the electronic USB flash drive copy shall take precedence over the paper copy.

A Bidder 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 Bidders 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. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.

3.6 Bid Envelopes and Packages

All Bids should have a label on the outside of the envelope or package itemizing the following information:

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation number (IFB #23185)
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

Failure to complete all information on the Bid envelope and/or package may necessitate the opening of the Bid prior to the scheduled Bid opening.

3.7 Bid Delivery

Bids shall be delivered to the following address on or before 11:00 a.m. ET, on or before the Bid opening date as stated in Section 1.4 *Key Events/Dates*:

State of New York Executive Department
Office of General Services
Procurement Services
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the clock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid opening. Late Bids shall be rejected, except as provided in Appendix B, *Late Bids*. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

3.8 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the information desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services receptionist at (518) 474-6262 at least 24 hours prior to the visit. Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services receptionist. The receptionist will register the visitor at that time but delays may occur. Building access procedures may change or be modified at any time.

3.9 NYS Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 2 – *NYS Required Certifications*) with its Bid.

3.10 Electronic Bid Opening Results

OGS Procurement Services posts Bid information on the OGS Procurement Services web page. The web page makes available the list of bidders that responded to the Solicitation. Such information is anticipated to be available online within two business days after the Bid opening.

The Bid Opening Results Page is available at: <https://ogs.ny.gov/procurement/bid-opening-results-0>.

3.11 NYS Reserved Rights

New York State reserves the right, in its sole discretion, to:

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. 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 Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State; and
- T. Conduct Contract negotiations with -the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, region, or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, or lots.
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing.
- W. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

3.12 Incorporation

Portions of the successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. A final Contract will be formalized either through a

separate contract document or through a contract award letter incorporating the Bid, each having its own provision governing conflict of terms.

3.13 Bid Liability

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the production of a Bid or for any work performed prior to the formal execution of a Contract.

4. METHOD OF AWARD

4.1 Method of Award

Award shall be made to all responsive and responsible Bidders who meet minimum qualifications per Section 2 *Bidder Qualifications* and pass a Reasonableness of Price evaluation (See Section 4.2 *Reasonableness of Price*).

4.2 Reasonableness of Price

Reasonableness of price will be determined by comparing the New York State Contract Price to the comparable Government Entity or Educational Agency contract price or Government Entity or Educational Agency invoice price. The Bidder must offer OGS the same or better net price than those provided to other Government Entities or Educational Agencies. Bidder may use multiple comparable contracts or invoices to establish reasonableness of price. Bidder must offer a product category discount that is greater than zero.

Bidder will provide pricing information in Attachment 1 – *Pricing (Revised March 4, 2020)*. Bidder must provide copies of the contract price lists or invoices used to establish reasonableness of price. If the New York State Contract Price is greater than the comparable contract or invoice price, the Bidder must provide a written explanation on the Bidder's letterhead that is acceptable to OGS in order to establish the reasonableness of price. Failure to provide either a New York State Contract Price that is less than or equal to the comparable contract or invoice price or an acceptable explanation may result in the pricing being found unreasonable and that item being rejected.

Bidders who currently hold a New York State OGS Contract(s) must offer the same or better net price of an offered Item in such Contract(s). Bidder to provide current Contract information in Attachment 5 – '*Bidder Information Questionnaire*'. OGS reserves the right to request further information to make a determination of price reasonableness, such as copies of other Government Entity or Educational Agency contracts.

All monetary values will be rounded to 2 decimal points (e.g., \$557.2340 shall be rounded to \$557.23).

4.3 Periodic Recruitment

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for categories covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial

Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

4.4 Procurement Instructions for Authorized Users

Authorized Users should refer to Attachment 11 *How to Use* and Attachment 12 *Request for Product Review (RFPR) Template* for specific procurement instructions. OGS reserves the right to unilaterally make revisions, changes, additions and/or updates to the 'How to Use' and 'Request for Product Review (RFPR) Template' without processing a formal amendment and/or modification.

4.5 Notification of Award

Tentative Contract award(s) shall consist of written notice to that effect by OGS to a selected Bidder, who shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible.

Non-awardees will also be notified that their Bid was not selected for award.

5. TERMS AND CONDITIONS

5.1 Contract Term and Extensions

The Contract will be in effect for a term of five years. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*).

All OGS Centralized Contracts resulting from this Solicitation shall have a coterminous end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for one year, in increments as deemed to be in the best interest of the State. 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 offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

The Contract term provided for in this section shall extend 6 months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

5.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a 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 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

5.3 Price

5.3.1 Price

Pricing will be collected using Attachment 1 – *Pricing* (Revised March 4, 2020) in accordance with the Instructions tab listed within Attachment 1. Bidder must offer discount(s) by category for the products listed in Attachment 1 from their regularly distributed catalog(s) in effect at the time of the bid opening. Bidders may also offer a Deeper Discount for individual products in order to customize pricing.

Price includes all customs, tariffs, delivery charges and is F.O.B. destination any point in New York State, for orders, as designated by the ordering agency. (see Section 5.11 *Product Delivery*)

In addition, upon mutual agreement, delivery locations may be expanded per the “Extension of Use” clause (see Section 5.29 *Extension of Use*). Contractor’s pricing will be posted to the OGS website.

Discounts quoted are to be firm for the entire period of the contract, and no discount reductions will be allowed at any time. Discount increases are permitted at any time (see Section 5.4 *Pricelist Updates*).

Bidders are encouraged to offer their best possible pricing through the bid format offered. However, once awarded a contract, contractors may negotiate better pricing with customers either on an individual or statewide basis at any time throughout the contract period. (See “BEST PRICING OFFER” clause which follows).

5.3.2 Best Pricing Offer

Price decreases shall take effect automatically during the contract term and apply to orders submitted subsequent to the effective dates of applicable price decreases as follows:

1. Commercial Price List reductions: Per Section 5.4 *Pricelist Updates* where the NYS Net Prices are based on a discount from the contractor's list prices and the contractor reduces its pricing to its customers or to similarly situated government customers during the contract term; or
2. Special Offers/Promotions - General: Where the contractor generally offers more advantageous special price promotions, or special discount pricing to customers during the contract term, and the maximum price or discount associated with such offer or promotion is better than the discount or price otherwise available under this contract, such better price or discount shall apply for similar quantity transaction for the life of the general offer or promotion.
3. Special Offers/ Promotions-Specific: Contractor may offer an Authorized User competitive pricing which is lower than the Net NYS Price set forth herein at any time during the contract period and such lower pricing shall not be applied as a global price reduction under the contract pursuant to the foregoing paragraph.

5.3.3 Volume Discounts

Bidders may offer volume discounts. Volume discounts may be applied per order. The bidder shall indicate the basis for applying the volume discount on the bid document form. Volume discounts shall be defined and applied as follows: Volume discounts shall be additional discounts applied to individual orders over a specified dollar amount.

5.4 Pricelist Updates

Contractor may update their pricelist as follows:

23185s (Revised March 4, 2020)

The Contractor shall hold pricing for one year from the start date of the contract. Contract prices may be changed on the first anniversary of the contract start date and annually thereafter. OGS, at its discretion, may request price changes at any time, if it is in the best interest of the State. It is the State's intent to publish on the OGS website each Contractor's price list.

Requests for price adjustments and new items shall be submitted 30 days prior to the anniversary date of the Bid Opening and annually thereafter. Requests from Contractor(s) for price increases at any other time will not be granted unless approved by OGS. The Contractor shall provide OGS with one electronic copy of the updated pricing. No Price Updates will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or any other documentation that is required under the resulting contract.

The discount offered on any new Products added to pricelists shall be no lower than the minimum established product category discount. Contractors shall submit their updated pricelist to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves the right to request copies of existing contracts, price lists or invoices to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

In connection with any Contract pricelist update, OGS reserves the right to:

Request additional information;
Reject Contract updates;
Remove Products from Contracts;
Remove Products from Contract updates; and
Request additional discounts for new or existing Products.

In addition, OGS reserves the right to remove products from the Contractor's pricelist at any time.

All approved pricelist updates shall apply prospectively upon approval by OGS. All percentage discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract.

5.5 Pricelist Format

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2016 or lower version) spreadsheet on USB flash drive or via e-mail to the OGS Procurement Services contract administrator. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

- Price increases;
- Price decreases;
- Products being added; and
- Products being deleted.

5.6 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, *Savings/Force Majeure*.

Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 business days written notice mailed to the Contractor.

5.7 Ordering

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

5.8 Purchasing Card Orders

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, *Purchasing Card*), also referred to as the Procurement Card, the Contractor shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.

5.9 Minimum Order

Shipped Products will have a minimum order of \$50.00 and shall be ordered in the Contractor's standard unit of measure packaging unless noted otherwise in each Contractor's Information page. Contractor may elect to honor orders for less than the minimum order, however no additional charges shall be allowed.

5.10 Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/nys-vendors>

5.11 Product Delivery

Delivery of all Contract Products shall be made in accordance with Appendix B, *Product Delivery and Shipping/Receipt of Product*.

5.12 Product Returns and Exchanges

In addition to the provisions of Appendix B, *Title and Risk of Loss, Product Substitution, and Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within 10 business days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund, is made in such fashion, the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

5.13 Contract Administration

The Bidder shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Bidder shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Bidder shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in Attachment 5 – *Bidder Information Questionnaire*. Contractor must notify OGS within five Business Days if its Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

5.14 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. Contractors 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. Additional information may be found at: <https://ogs.ny.gov/procurement/emarketplace>

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 may be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

5.15 Ordering

Contractor shall be capable of accepting orders manually, via facsimile, and, electronically via email. As an option, Contractor may also accept orders electronically via the Internet through a web-based ordering system. Contractor shall be required to provide written quotes to Authorized Users who request them prior to placing an order, which quote details the SKU corresponding with the approved product list, List Price, discount, and Net Price, as applicable.

The web-based ordering system, if offered, shall allow Authorized Users to enter orders and have full order inquiry capabilities. All orders (manual, fax, electronic) shall reference requisition and/or purchase order number as required. If offering a web-based ordering system, the Bidder represents and warrants that it is the sole owner of the software product used for its ordering system, or, if not the owner, has received all proper authorizations from the owner to license the software product, and has the full right and power to grant the rights contained in any Contract resulting from this Invitation for Bids and as described further in Appendix B. Bidder further warrants and represents that the software product is of original development, and/or that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person/company.

The web-based ordering system*, if offered, shall be capable of processing, controlling, documenting, and reporting on the following minimum data elements:

- Contractor Name and Address
- Agency/Facility/Political Subdivision, etc.
- Contract Number • Purchase Order/Requisition Numbers
- Contact (individual placing order) • SKU/PN & Product Description
- Net Price
- Extended and Total Amounts

*Comparable systems meeting the intent of the specifications may be considered. If offering a web-based ordering system, the Contractor shall provide any necessary software (excluding communication software) and training guides/manuals or online support in the use of the web-based ordering system at no additional cost to all Authorized Users capable of placing orders electronically. Samples of software and training guides/manuals may be required. If requested, Bidder must demonstrate its system at an Albany, NY area location designated by the State.

5.16 Accessibility of Web-Based Information and Applications Policy

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities. The following language is incorporated into any Contract resulting from this Solicitation:

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. Quality assurance testing may be conducted by the State and the results of such testing, if performed, must be

satisfactory to the State before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.

5.17 Americans with Disabilities Act (ADA)

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidder is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not mandatory for Bidder to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

5.18 Mandatory Participation in the eMarketplace

The State has implemented an eProcurement application that supports the requisitioning process for Authorized Users including State Agencies to procure Products. This application provides catalog capabilities. All Lot 1 Contractors and all Lot 2 Contractors shall participate in the NYS eMarketplace, a website where all Authorized Users of New York State centralized contracts can shop for products from centralized contracts and Preferred Sources. Additional information may be found at: <https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>.

There are no fees required for a Contractor's mandatory participation in the catalog site development or management of "hosted" or "punchout" catalogs. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the Statewide Financial System and other Authorized Users can access the catalog site to fulfill orders directly.

In addition to catalog development and management, Contractors will have the option to integrate their purchasing systems with Proactis, the eMarketplace vendor. Integration will be at the sole expense of the Contractor.

The eMarketplace can be used by all Authorized Users of NYS centralized contracts. It can be accessed through the Statewide Financial System or directly through Proactis by Authorized Users who do not use SFS.

5.19 N.Y. State Finance Law § 139-l

Pursuant to N.Y. State Finance Law § 139-l, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-l, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, OGS may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

The certification required above can be found on Attachment 2 – *NYS Required Certifications*, which Bidder must submit with its bid.

5.20 Insurance

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements*.

5.21 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* twice each year for the periods covering November 1st through April 30th and May 1st through October 30th. The report shall include total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, and shall be submitted no later than May 15th for the period of November 1st through April 30th and November 15th for the period of May 1st through October 30th. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the report.

Contractors shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBs), small business enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

5.22 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR"), the New York State Office of General Services ("OGS") is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises ("MWBs") and the employment of minority group members and women in the performance of OGS contracts.

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 and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for 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. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of 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, 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 or the provision of services or any other activity that is unrelated, 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. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 – Staffing Plan [Staffing Plans are only required if the Contract has a value in excess of \$250,000.00. If less than \$250,000.00, remove the below text and replace with “RESERVED” and you must delete this note!]

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS 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.

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

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce 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 all subcontractors.

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 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.

D. Contractor shall comply with the provisions of the Human Rights Law and 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.

IV. Contract Goals

A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. 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.

B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of 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, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") 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.

V. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/MWBE>

5.23 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at:
<https://ogs.ny.gov/Veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/>

5.24 Overlapping Contract Products

Products available under the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

5.25 Preferred Source Products

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in the resultant Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

5.26 NYS Vendor Responsibility

OGS conducts a review of prospective Contractors (“Bidders”) to provide reasonable assurances that the Bidder 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 Bidder’s responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State’s execution of the Contract will be contingent upon the State’s determination that the Bidder is responsible, and that the State will be relying upon the Bidder’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 Bidder 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 at <http://www.osc.state.ny.us/vendors/index.htm> or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the *NYS Vendor File Registration* section. 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/contactbuss.htm>. Bidders opting to complete and submit 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.

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

The Bidder 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, 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, 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 issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that 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 at the Contractor’s expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS 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.

5.27 NYS Tax Law Section 5-a

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to 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 is 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 Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor 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 with questions or visit the DTF web site at <https://www.tax.ny.gov/> for additional information.

5.28 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 Appendix B, *Participation in Centralized Contracts*. 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 (<https://online.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

5.29 Extension of Use

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York 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.

5.30 Resellers

A. Definitions

Reseller is a company or individual (merchant) that purchases goods or services with the intention of selling them rather than consuming or using them. Also known as Value Added Reseller (VAR) or channel partner. Resellers must be eligible to quote statewide, independently and lower than manufacturer (Contract)

pricing for procurements under resulting Contracts. Reseller must also be able to accept orders, invoice and receive payment for Products.

B. Conditions of Reseller Participation

Resellers must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Resellers and their participation under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that:

1. such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. those qualifying criteria met by the Reseller must be identified in Reseller designations (See Attachment 10 *Contractor/Reseller Information Form*) at the time that Reseller approval is requested; and,
4. immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order.

C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 10 *Contractor/Reseller Information Form*. Contractor shall also specify whether orders must be placed directly with Contractor, or may be placed directly with designated Resellers.

D. Responsibility for Reporting/Performance

Contractor shall be fully liable for a Reseller's performance and compliance with all Contract terms and conditions. Product purchased through a Reseller must be reported by Contractor in the required six month sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor's sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User's Contract activity with the Reseller.

E. Applicability of Contract Terms

Product ordered directly through Resellers shall be limited to Products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

5.31 New Accounts

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references.

5.32 Centralized Contract Modifications

- A. 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.
- B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, 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.
- C. 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.
- D. 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. 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, *Modification of Contract Terms*.

5.33 Compliance with Federal, State and Local Regulations

The Contractor shall comply with all State and Authorized User policies regarding compliance with various confidentiality and privacy laws, rules and regulations. As part of such compliance, Contractor shall execute written confidentiality/non-disclosure agreements as requested by the State or an Authorized User. Upon request by the Authorized User, Contractor will provide verification of compliance with specific Federal, State and local regulations, laws and IT standards with which the Authorized User is required to comply. See, Appendix D Data Security and Privacy Mandates.

5.34 Instruction Manuals

At the time of delivery, Contractor shall provide a complete instruction manual for the Product and for each component supplied, as applicable, to the Authorized User.

5.35 Licensing Terms and Conditions

An Authorized User looking to acquire Products under a Contract resulting from this Solicitation must review the contractual terms and conditions. The Authorized User must ask the Contractor if "click through", "shrink wrap" or other pass-through or licensing/subscription terms and conditions are present, and if so, the Authorized User is responsible for reviewing and approving such terms and conditions prior to ordering the Products and services. If the terms and conditions are not acceptable to the Authorized User, it is the responsibility of such Authorized User to negotiate any needed amendments. ***Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.***

5.36 Assembly/Configuration/Installation/Networking Services

Assembly/Configuration/Installation Services may include moving materials and equipment to its final location, uncrating, assembling, adjusting, connecting to the network and leaving free-standing equipment ready to operate to the full extent of its design capabilities. These services do not include any installation that is considered Public Works under the New York State Labor Law. See Appendix B, §37, *Installation*, for terms applicable to installation. These services may include, but are not limited to, the following:

1. System setup (e.g., key operator orientation, system parameters);
2. System enhancement (e.g., memory upgrades, network interfaces);
3. Network set up, including but not limited to, applying network settings, and verification of network functionality;
4. Software installation; and
5. Hardware verification (including appropriate tests and diagnostics to ensure proper Product operation).

Installation work which is considered Public Works in accordance with the New York State Labor Law is **excluded** from purchase under this Contract. 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 and any resulting Contracts do not authorize installation where the equipment becomes a permanent part of the building structure, or is otherwise incorporated into the fabric of the building (e.g., installation on a wall, ceiling or floor in a fixed location, or affixed by hard-wiring or plumbing). See Appendix B, *Prevailing Wage Rates - Public Works and Building Services Contracts*. For questions about whether a proposed installation constitutes public work, please contact the New York State Department of Labor’s Bureau of Public Work District Office in your area. A listing of district offices and contact information is available at: www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm.

5.37 Removal of Records from Premises

Contractor shall not remove any documents, papers, files, or Data (records), whether in hard copy or electronic form, from the premises of an Authorized User or from electronic storage media used by the Authorized User without prior written approval of the Authorized User. In addition, Contractor shall not, remotely or otherwise, access, modify, copy, destroy, or delete such records without prior written approval of the Authorized User.