



# Bid Solicitation Information

## Subject: Bid Information for Periodic Recruitment

DATE: January 19, 2017

IFB/RFP: 22935 BID OPENING DATE | TIME: February 23, 2017 11:00AM ET

GROUP | TITLE: 72007 | Heavy Equipment Rental (Statewide)

### OGS DESIGNATED CONTACTS:

Primary Contact: Matthew Jones | CMS 1 | 518-474-4163 | [SSTIndustrial@ogs.ny.gov](mailto:SSTIndustrial@ogs.ny.gov)

Secondary Contact: Wendy Reitzel | CMS 3 | 518-473-5280 | [SSTIndustrial@ogs.ny.gov](mailto:SSTIndustrial@ogs.ny.gov)

### OGS DESIGNATED CONTACTS For MWBE Questions Only

Email Address: [MWBE@ogs.ny.gov](mailto:MWBE@ogs.ny.gov); Telephone No. (518) 486-9284

Primary Contact: Anuola Surgick Secondary Contact: Tryphina Ramsey Tertiary Contract: William Hill

Additional Contacts: Ashley Pallone, Lori Brodhead, Mariam Mehanna

### OGS DESIGNATED CONTACTS For INSURANCE Questions Only

Leighann Brown; Email Address: [ogs.sm.insrev@ogs.ny.gov](mailto:ogs.sm.insrev@ogs.ny.gov); Telephone No. (518) 457-6595

## 1. TO PROSPECTIVE BIDDERS:

The Office of General Services is establishing additional centralized contracts for the rental of Heavy Equipment under Award 22935.

- A. The resultant Contracts shall be for the Product Line and associated Ceiling Prices set forth in Appendix C: *Heavy Equipment Rental Contract Documents*, Number 5: *Contract Price List*.
- B. Heavy Equipment Rental shall be on an as-needed basis by Authorized Users via a competitive Rental Quote process (see Contract Template Section II.10 *Procurement Method*), with Rental provided, at a minimum, to Authorized User locations in the counties set forth in Appendix C: *Heavy Equipment Rental Contract Documents*, Number 1: *Contractor Information*.
- C. Purchase of Heavy Equipment shall not be permitted under the Contracts. This solicitation is intended for short term Rental (i.e., Daily, Weekly or Monthly). Long term leasing (e.g., six month or more Rental Period), shall not be permitted under the Contracts.
- D. This is a periodic recruitment solicitation. The initial Contracts under Award 22935 were awarded October 27, 2015. The Contracts awarded under this periodic recruitment Solicitation will be supplemental awards for Award 22935 – Heavy Equipment Rental.

The periodic recruitment period begins on the “Bid Opening / Begin date for periodic recruitment” date and ends on the “Closing date for periodic recruitment period” date indicated in Section 3 *Key Events/Dates*. Bids received during this periodic recruitment period shall be reviewed and processed in accordance with Section 6 *Method of Award of Contract*.

After this periodic recruitment period, additional bid submissions shall not be accepted by OGS until the next periodic recruitment period is advertised by OGS. It is anticipated that the next periodic

recruitment period shall begin one (1) calendar year from the "Closing date for periodic recruitment period" date indicated in Section 3 *Key Events/Dates*. OGS reserves the right to not advertise any additional periodic recruitment periods, to advertise a periodic recruitment that begins sooner than one (1) year from the "Closing date for periodic recruitment period" date indicated in Section 3 *Key Events/Dates*, and to offer additional periodic recruitment periods only to vendors that provide Heavy Equipment Rental to specific geographic area(s).

- E. In order to be eligible for contract award on the "Contract term begin for contracts (estimated)" date indicated in Section 3 *Key Events/Dates*, a Bidder must submit all required bid documents in accordance with Section 11 *Bid Submission Information*. The bid documents are available on the OGS website at <http://nyspro.ogs.ny.gov/content/finding-bid-opportunities>. Further information about Contract Scope, Solicitation Inquiries, Requirements for Contract Eligibility, and Bid Information and Requirements are included in this memo.

A Contract Template containing the contract terms and conditions is also provided on the OGS website at <http://nyspro.ogs.ny.gov/content/finding-bid-opportunities>. The Contract Template consists of the following documents:

1. Base Agreement
2. Appendix A: *Standard Clauses for New York State Contracts (January 2014)*
3. Appendix B: *General Specifications (May 2015)*
4. Appendix C: *Heavy Equipment Rental Contract Documents*:
  - a) Number 1: *Contractor Information*
  - b) Number 2: *Report of Contract Usage*
  - c) Number 3: *Insurance Requirements*
  - d) Number 4: *Contract Modification Procedure*
  - e) Number 5: *Contract Price List*
  - f) Number 6: *Rental Quote Forms*

## **2. CONTRACT PERIOD AND RENEWALS**

All Contracts awarded under solicitation 22935, including those executed during this and any subsequent periodic recruitment period, shall terminate simultaneously on October 26, 2018 (i.e., three (3) years from the date of OGS approval of the first Contract awarded). If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to two (2) additional years. The Contract renewal may be exercised on a month to month basis such as an additional three month, six month, twelve month, or 24 month period.

### **2.1 SHORT TERM EXTENSION**

In the event a replacement Contract has not been issued, the Contracts may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should a replacement Contract be issued in the interim.

**3. KEY EVENTS/DATES**

<b>EVENT</b>	<b>DATE</b>	<b>TIME</b>
Solicitation release	January 19, 2017	
Closing date for vendor inquiries	February 2, 2017	5:00 PM ET
OGS response to vendor inquiries (estimated)	February 14, 2017	5:00 PM ET
Bid Opening / Begin date for periodic recruitment period	February 23, 2017	11:00 AM ET
Contract term begin for new contracts (estimated)	April 6, 2017	
End date for periodic recruitment period	May 6, 2017	5:00 PM ET

**4. CONTRACT SCOPE:**

The resultant backdrop contracts shall be for the Contractor’s complete Product Line that meets the Contract definition of Heavy Equipment.

- A. Product Line shall mean a group of related Heavy Equipment offered for Rental by a single company in their usual course of business.
- B. Heavy Equipment shall refer to equipment which is intended for heavy work such as earthmoving, construction, lifting containers or materials, drilling holes in earth or rock, concrete or paving application or street sweeping (e.g., aerial lifts, large towable air compressors, generators and light towers, concrete saws, earth compactors and rollers, backhoes, motor graders, skid-steer loaders, bulldozers, wheel loaders, trenchers, utility tractors, excavators, forklifts, sweepers and utility vehicles), and other related attachments and equipment.

**5. ESTIMATED QUANTITIES**

The resulting Contract(s) are Indefinite Delivery, Indefinite Quantity (IDIQ) Contracts. The Contractor(s) must furnish all quantities or dollar values actually ordered. The anticipated dollar value contracts awarded under this solicitation, based on historical and anticipated needs, is approximately \$2,300,000.00 annually. The individual value of each Contract is indeterminate. See Appendix B §29 *Estimated/Specific Quantity Contracts* and §26 *Participation in Centralized Contracts*.

Numerous factors could cause the actual volume of Product purchased under the Contract to vary substantially. Such factors include, but are not limited to, the following:

- Such Contracts will be nonexclusive Contracts;
- There is no guarantee of volume 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.

In Procurement Services’ experience, depending on the price of a particular Product, the actual volume of purchases for that Product could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated

or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contract could vary substantially from the estimates provided in this solicitation.

**6. METHOD OF AWARD OF CONTRACT**

Award shall be made to the responsive and responsible Bidder(s) who meet the minimum requirements listed in Section 10 *Requirements for Contract Eligibility*, below. Because of the nature of the Products involved, and recognizing that no one Bidder will be able to supply all of the Products required by Authorized Users, award shall be made to more than one Bidder.

OGS intends to award contracts simultaneously to all responsive and responsible Bidders that submitted bids by the “Bid Opening / Begin date for periodic recruitment period” date indicated in Section 3 *Key Events/Dates* on the “Contract term begin for new contracts (estimated)” date indicated in Section 3 *Key Events/Dates*. A Bidder responding to this solicitation is advised that each bid will undergo an initial administrative review for completeness. In order for a bid to be evaluated, it must include all required documents for a complete bid (see Section 11.2 *Bid Format and Content*). Upon completion of the administrative review, OGS will request any missing documentation from the Bidder, and will review all documents for completeness upon receipt of the missing documents. All required documents for a complete bid, as set forth in Section 11.2 *Bid Format and Content*, must be submitted and be completed to the satisfaction of OGS in order for the bid to be deemed responsive and eligible for Contract award on the “Contract term begin for new contracts (estimated)” date indicated in Section 3 *Key Events/Dates*.

Vendors that miss the “Bid Opening / Begin date for periodic recruitment period” date indicated in Section 3 *Key Events/Dates*, and Bidders that have not submitted all required documents for a complete bid, completed to the satisfaction of OGS, by the “Contract term begin for new contracts (estimated)” date indicated in Section 3 *Key Events/Dates*, may submit the required documents at any time prior to the “End Date for periodic Recruitment Period” indicated in Section 3 *Key Events/Dates*. Such submissions will be reviewed in the order in which they were received after submissions received by the “Bid Opening / Begin date for periodic recruitment period” date indicated in Section 3 *Key Events/Dates* have been processed, and will be awarded upon completion of the contract process, provided that all required documents have been submitted and are completed to the satisfaction of OGS by the “End Date for periodic Recruitment Period” indicated in Section 3 *Key Events/Dates*.

**7. SOLICITATION INQUIRIES / DESIGNATED CONTACTS**

OGS responses to bidder inquiries that were received during the initial recruitment period for Award 22935 are posted with this solicitation document at <http://nyspro.ogs.ny.gov/content/finding-bid-opportunities>.

All additional inquiries concerning this solicitation shall be addressed to the following Procurement Services Designated Contact(s):

Primary Contact: Matthew Jones, Contract Management Specialist Telephone No. (518) 474-4163 E-mail: <a href="mailto:SSTIndustrial@ogs.ny.gov">SSTIndustrial@ogs.ny.gov</a>	Secondary Contact: Wendy Reitzel, Team Leader Telephone No. (518) 473-5280 E-mail: <a href="mailto:SSTIndustrial@ogs.ny.gov">SSTIndustrial@ogs.ny.gov</a>
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<b>For MWBE Questions Only</b> (Email Address: <a href="mailto:MWBE@ogs.ny.gov">MWBE@ogs.ny.gov</a> ; Telephone No. (518) 486-9284)		
Primary Contact: Anuola Surgick	Secondary Contact: Tryphina Ramsey	Tertiary Contract: William Hill
Additional Contacts: Ashley Pallone, Lori Brodhead, Mariam Mehanna		

**For INSURANCE Questions Only**

Leighann Brown; Email Address: [ogs.sm.insrev@ogs.ny.gov](mailto:ogs.sm.insrev@ogs.ny.gov); Telephone No. (518) 457-6595

Submit all questions in writing using Attachment 3: *Inquiries Form*, citing the applicable solicitation document name and document section. The completed Attachment 3: *Inquiries Form* must be emailed to [SSTIndustrial@ogs.ny.gov](mailto:SSTIndustrial@ogs.ny.gov) by the “Closing date for vendor Inquiries” indicated in Section 3 *Key Events/Dates*. A Bidder is strongly encouraged to submit questions at the earliest convenience.

OGS reserves the right to also consider questions received after the official question and answer period has ended. To the extent that OGS elects to respond to questions submitted after the official question and answer period has ended, OGS shall distribute responses in the same manner as questions submitted by the “Closing Date for vendor inquiries” indicated in Section 3 *Key Events/Dates*.

You must register with the New York State Contract Reporter 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. Answers to all questions of a substantive nature will be provided to all registered vendors in the form of a question and answer document which will be posted and released through the New York State Contract Reporter site.

**8. PRE-BID CONFERENCE**

There will not be a Pre-Bid Conference for this periodic recruitment period.

**9. 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, is identified on the first page of this Solicitation and in the *MWBE Designated Contacts* and *Insurance Designated Contacts* sections. 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 these two statutes. Certain findings of non-responsibility can result in rejection for Contract award and, in the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at: <http://www.ogs.ny.gov/acpl/>.

**10. REQUIREMENTS FOR CONTRACT ELIGIBILITY:**

This contract area is open to vendors that provide Heavy Equipment Rental that meet the following minimum qualifications:

- A. Are either registered with the NYS Department of State as an entity authorized to conduct business in New York State (registration may be confirmed at [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html)), or if not incorporated in New York State, can provide a Certificate of Good Standing from the applicable state where the business was formed or incorporated;
- B. Offer their complete Heavy Equipment Product Line for Rental;

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- C. Provide a Contract Pricelist with a Ceiling Price for Heavy Equipment Rental to be offered under the Contract.
1. "Contract Pricelist" shall refer to the Excel document, set forth in Appendix C: *Heavy Equipment Rental Contract Documents*, Number 5: *Contract Price List* which lists, among other things, a description of the Heavy Equipment available for Rental, a Ceiling Price for Daily, Weekly and Monthly Rental Periods, and Delivery Charge(s), for the Heavy Equipment available for Rental.
  2. "Ceiling Price" shall refer to a maximum price that a Contractor may charge an Authorized User for a service offered under the Contract. OGS reserves the right to reject Product from the Contract Pricelist that is determined, at the sole discretion of OGS, to have an unreasonably high Ceiling Price. Such determination shall be based on available industry Heavy Equipment Rental pricing guide(s) and comparison with Rental Prices offered by competitors in the same geographic area.
- D. Agree to, and are able to meet, the terms and conditions set forth in the Contract (see Contract Template); and
- E. Provide proof of insurance coverage requirements, as described in Contract Template, Appendix C: *Heavy Equipment Rental Contract Documents*, Number 3: *Insurance Requirements*, in accordance with Section 11.2 *Bid Format and Content*, and throughout the Contract term, as requested by Procurement Services.

## **11. BID SUBMISSION INFORMATION**

This Section, (i.e., 11.1 through 11.6), sets forth bid submittal information and instructions for this solicitation.

### **11.1 IMPORTANT NOTICE TO POTENTIAL BIDDERS**

A Bidder should take note of the following:

- A. Receipt of these bid documents by a vendor does not indicate that OGS Procurement Services has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on evaluation of bid submissions compared to the specific requirements and qualifications contained in these bid documents.
- B. To be considered responsive, a Bidder must submit a bid that satisfies and addresses all requirements stated in this solicitation by the "End Date for periodic Recruitment Period" indicated in Section 3 *Key Events/Dates*.
- C. The Commissioner of OGS will receive bids pursuant to the provisions of Article XI of the State Finance Law. All bids and accompanying documentation shall become the property of the State of New York and shall not be returned.
- D. If a Bidder wishes to submit more than one bid, such bid(s) are to be submitted separately and are to be listed as "alternate" bids. "Alternate" bids must satisfy and address all requirements stated in this solicitation, and will be evaluated as separate bids.
- E. Portions of the successful Bidder's bid shall be incorporated into a final Contract, executed by the Contractor and OGS. Therefore, the bid must be signed by a partner, corporate officer, or other person authorized to commit its firm to all provisions of this solicitation and its bid as submitted. Once the Contract resulting from this solicitation is executed and approved, it will be posted on the OGS website.

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## **11.2 BID FORMAT AND CONTENT**

This section sets forth bid format and content information for this solicitation.

- A. The complete bid for the backdrop contract consists of the following documents. All required documents for a complete bid must be submitted in the manner and format set forth below (i.e., **paper** or **electronic**) and be completed to the satisfaction of OGS in order for the bid to be deemed responsive and eligible for Contract award. Unless otherwise specified, only one (1) of each document is required for a complete bid submission. Multiple copies are not required.

**Note: A Contract Template is posted with the solicitation documents on the OGS website at <http://nyspro.ogs.ny.gov/content/finding-bid-opportunities>. Do not submit the Contract Template with your bid. The Contract Template is intended to familiarize Bidders with the terms and conditions that will be included in the resultant Contracts from this solicitation. The Contract Template is not the final Contract. Portions of the Contract Template that are blank shall be completed by OGS based on the Bidder's submission and tentative awardees will be provided with a final Contract for execution by the Bidder and OGS.**

1. Standard Vendor Responsibility Questionnaire (SVRQ). See Section 18 *New York State Vendor Responsibility Questionnaire for Profit Business Entity*.
  - a. Online **electronic** completion of the SVRQ on the OSC website, with a Certification Date no more than six (6) months prior to the bid opening date,  
OR
  - b. A **paper** version of the SVRQ, completed and with original ink signature and notarized no more than six (6) months prior to the bid opening date.

Forms are available on the OSC website at the link below. Click on "VendRep System" for information about completing the SVRQ online, or "Forms" to download the "Non-Construction, For-Profit" paper version. For assistance with the form, click on "Get Help."

2. NY State Taxation and Finance forms ST-220-CA and ST-220-TD. A **paper** version of form ST-220-CA, completed and with original ink signature, and notarized. *Note: Form ST-220-TD, completed and with original ink signature, and notarized, must be submitted directly to the NYS Tax Department (see Section 19 Tax Law §5-A)*. Forms are available on the Tax Department website here: [https://www.tax.ny.gov/forms/form\\_number\\_order\\_st\\_y.htm](https://www.tax.ny.gov/forms/form_number_order_st_y.htm) (see ST-220-CA (Fill-in) and ST-220-TD (Fill-in));
3. Form EEO-100. A **paper** version of form EEO-100 (Equal Employment Opportunity Staffing Plan), completed and with original ink signature (See Section 21 *Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State Certified Minority- and Women-owned Business Enterprises*). The form is available on the OGS website here: <http://www.ogs.ny.gov/MWBE/Docs/EEO100.docx>;
4. Form MWBE 100. A **paper** version of form MWBE 100 (Utilization Plan), completed and with original ink signature (See Section 21 *Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State Certified Minority- and Women-owned Business Enterprises*). The form is available on the OGS website here: <http://www.ogs.ny.gov/MWBE/Docs/MWBE100.docx>.
5. Proof of Insurance (General and Automobile Liability). An **electronic** version of proof of compliance with general and automobile liability insurance requirements, as specified in Contract Template, Appendix C: *Heavy Equipment Rental Contract Documents*, Number 3: *Insurance Requirements*. Please review the documents prior to submittal to ensure that the documents



conform to all requirements set forth in Appendix C: *Heavy Equipment Rental Contract Documents*, Number 3: *Insurance Requirements*, including:

- a) ACORD Certificate of Liability Insurance that includes:
    - 1) The full legal company name of the Bidder in the "Insured" box;
    - 2) The company name and NAIC number of the insurer(s) affording coverage;
    - 3) Policy expiration dates that are current; and
    - 4) The New York State Office of General Services, Procurement Services, 38th Floor, Corning Tower, Albany, New York 12242 listed as the Certificate Holder.
  - b) An additional insured endorsement (submit a separate endorsement document), applicable to all insurance that is either (1) a blanket additional insured endorsement, or (2) names "The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation as an Authorized User and their officers, agents, and employees" as the additional insured.
6. Proof of Insurance (Workers' Comp). An **electronic** version of proof of compliance (e.g., NYS form C-105-2 or U-26.3 or CE-200) with NYS Workers Compensation insurance requirements, as specified in Contract Template Appendix C: *Heavy Equipment Rental Contract Documents*, Number 3: *Insurance Requirements*. Instructions on how to obtain the forms are available on the Workers' Compensation Board website at <http://www.wcb.ny.gov/content/onlineforms/obtainC105.jsp> and [http://www.wcb.ny.gov/content/ebiz/wc\\_db\\_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp)
7. Proof of Insurance (Disability). An **electronic** version of proof of compliance (e.g. NYS form DB-120.1 or CE-200) with NYS Disability insurance requirements, as specified in Contract Template Appendix C: *Heavy Equipment Rental Contract Documents*, Number 3: *Insurance Requirements*. Instructions on how to obtain the forms are available on the Workers' Compensation Board website at <http://www.wcb.ny.gov/content/onlineforms/obtainDB120-1.jsp> and [http://www.wcb.ny.gov/content/ebiz/wc\\_db\\_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp);
8. Attachment 1: Bid Documents (Paper). A **paper** version of each section in Attachment 1: *Bid Documents (Paper)*, completed and with original ink signature, where applicable. This attachment includes the four (4) sections listed below.
- a) Section A: *Cover Sheet and Acknowledgements*, completed and with original ink signature, and notarized;
  - b) Section B: *New York State Required Certifications*, completed and with original ink signature; and
  - c) Section C: *Encouraging Use of New York State Businesses*, completed, and with a list of NYS Businesses to be used in the performance of this Contract, if applicable;
9. Attachment 2: Bid Documents (Electronic). An **electronic** version of Attachment 2: *Bid Documents (Electronic)*, completed. This attachment includes the five (5) sections listed below. **Note: Do not submit a PDF version of this document. Do not split the individual tabs contained in this attachment into a separate Excel document for each section;**
- a) Section A: *Bid Submittal Checklist*;
  - b) Section B: *General Questions*;
  - c) Section C: *Rental Area*;
  - d) Section D: *Equipment Offered*; and
  - e) Section E: *Contract Pricelist*.



- B. Bidder is required to submit any document listed above in Paragraph A that is not submitted with the initial bid submission upon Procurement Services' written request for such document(s). Failure to submit a document upon Procurement Services' written request for such document(s) will delay award of the resultant Contract, and may render the bid non-responsive and result in the disqualification of the bid. Failure to submit all required documents, completed to the satisfaction of OGS by the "End Date for periodic Recruitment Period" indicated in Section 3 *Key Events/Dates*, shall result in the bid being deemed non-responsive and shall result in the disqualification of the bid. See Section 6 *Method of Award of Contract*
- C. Each bid shall include the **paper** and **electronic** documents specified above in Paragraph A.
1. **Paper** documents shall include original signatures and notary, where applicable. Documents should be submitted bound in a binder or by some other method (e.g., through the use of a three-hole report cover). Spiral binding is not desired by the State.
  2. **Electronic** media files should be submitted via email to [SSTIndustrial@ogs.ny.gov](mailto:SSTIndustrial@ogs.ny.gov). Each email should reference the business name of the Bidder and solicitation number 22935 in the email subject line. Submission on CD-ROM, DVD or flash drive is also acceptable.
- D. In the case of discrepancies between the paper and the electronic media submission the electronic media submission shall take precedence over the paper submission.
- E. Bidder is responsible for ensuring that the most recently updated version of all required documents has been submitted. Any updated versions released after the initial bid release date will be posted at <http://nyspro.ogs.ny.gov/content/finding-bid-opportunities> and announced through the New York State Contract Reporter site. A Bidder that submits an outdated version of a bid document will be required to resubmit the document using the most recent version.

### **11.3 BID DEVIATIONS**

If your bid differs from the specifications, explain such deviation(s) or qualification(s); and if necessary, attach a separate sheet. See Appendix B §6 *Extraneous Terms*.

### **11.4 BID DELIVERY**

Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to OGS prior to the date of the bid opening. LATE BIDS for the backdrop Contracts for award 22935 will only be reviewed after bids received by the "Bid Opening / Begin date for periodic recruitment period" date indicated in Section 3 *Key Events/Dates* have been processed. Email bid submissions for items required at the time of bid opening are not acceptable and shall not be considered.

#### **Bid Envelopes and Packages**

An envelope and/or package containing a bid shall be clearly marked "**BID ENCLOSED**" and must state the **Bid Number, Bid Opening Date, and Time**. Failure to complete all information on the bid envelope and/or packages may necessitate the premature opening of the bid and may compromise confidentiality. Bids shall be delivered to:

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

### FAX Transmittals

Facsimile transmittals are NOT acceptable for this solicitation.

### Hand Deliveries

Bidders must allow extra time to comply with the building access procedures in effect at the Empire State Plaza when hand delivering bids or using deliveries by independent courier services. Bidders assume all risks for timely, properly submitted deliveries.

## **11.5 IMPORTANT BUILDING ACCESS PROCEDURES**

To access the Corning Tower, all visitors must check in by presenting photo identification at the Information Desk.

A Bidder who elects to deliver its bid is encouraged to pre-register for building access by contacting the Procurement Services receptionist at 518-474-6262 at least 24 hours prior to the bid submission date.

Visitors who are registered can check in directly with the Information Desk. Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services Receptionist. The Receptionist will register the visitor at that time but delays may occur. Bidders who intend to deliver bids or conduct Procurement Services business should allow extra time to comply with these procedures. Building Access procedures may change or be modified at any time. Note: Bids not received within Procurement Services, or the OGS Mailroom, by the time and date shown on the front page of the bid document will be considered late.

## **11.6 ELECTRONIC BID OPENING RESULTS**

Procurement Services posts bid results on the OGS/Procurement Services web page. The web page shall make available copies of the Attachment 1: *Bid Documents (Paper)*, Section A: *Cover Sheet* received by Procurement Services from each Bidder for this solicitation. Such information is anticipated to be available online within two (2) business days after the bid opening.

The Bid Opening Results Page is available at: <http://nyspro.ogs.ny.gov/nyspro-bid-openings>.

## **12. NOTIFICATION OF AWARD**

Successful Bidder(s) shall be advised by OGS in accordance with Appendix B §24 *Contract Creation/Execution*. OGS also distributes email notification to registered Authorized Users announcing the resultant contract award(s). The email includes a hyperlink to the posted award on the OGS website and is sent via the OGS Purchaser Notification Service (PNS) to registered Authorized Users. Authorized Users may register for the PNS at the following URL address: <http://ogs.ny.gov/PNS/default.asp> under Classification Code 22 and 72. All subsequent contract updates are also sent out via the PNS. Authorized Users of the contract submit Purchase Orders or other such order documents directly to the Contractor. See Appendix B §31 *Purchase Orders*.

## **13. DEBRIEFING**

Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by OGS that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

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**14. 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 (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

**14.1 EXTENSION OF USE COMMITMENT**

The Contractor agrees to honor all orders from State Agencies, political subdivisions and others authorized by law (see Section 14 *Extension of Use*) which are in compliance with the pricing, terms, and conditions set forth in the resulting Contract document.

Any unilateral limitations/restrictions imposed by the Contractor on eligible Authorized Users will be grounds for rejection of the Bid or cancellation of the Contract.

**15. OVERLAPPING CONTRACT ITEMS**

Product available in the resultant Contracts under Award 22935 may also be available from other New York State Awards. 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.

**16. PERFORMANCE AND BID BONDS**

There are no bonds required for the Contract resulting from this solicitation. In accordance with Appendix B §44 *Performance/Bid Bond*, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the initial term, or any renewal term, for the resulting Contract.

**17. NEW YORK STATE VENDOR FILE REGISTRATION**

Prior to being awarded a contract pursuant to this solicitation, the Bidder(s) and any designated 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 Vendor IDs will be assigned to each of your authorized resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage certain vendor information in one central location for all transactions related to the State of New York.

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

If the Bidder is not currently registered in the Vendor File, Bidder must request assignment of a Vendor ID number from OGS. Complete the OSC Substitute W-9 Form ([http://www.osc.state.ny.us/vendors/forms/ac3237s\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf)) and submit the form to OGS in advance of your Bid. Please send this document to the Designated Contact in the solicitation. In addition, if an authorized reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form

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([http://www.osc.state.ny.us/vendors/forms/ac3237s\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf)) should be completed by each designated authorized reseller and submitted to OGS. The OGS will initiate the vendor registration process for all Bidders and their authorized resellers. Once the process is initiated, registrants will receive an email identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the vendor file please visit the following website:

[http://www.osc.state.ny.us/vendor\\_management/](http://www.osc.state.ny.us/vendor_management/).

### **18. NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY**

- A. 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 that 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 following link at the Office of the State Comptroller (OSC) website: [http://osc.state.ny.us/vendrep/info\\_vrsystem.htm](http://osc.state.ny.us/vendrep/info_vrsystem.htm). 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 the paper questionnaire can access this form and associated definitions via the OSC website at: [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

In order to assist the State in determining the responsibility of the 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.

- B. 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 or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

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

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

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

#### **19. TAX LAW §5-A**

Section 5-a of the Tax Law requires certain contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to the NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State 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 OGS certifying that the Contractor filed the ST-220-TD with NYS Department of Taxation and Finance (DTF). Note: NYS Department of Taxation and Finance receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. 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.

Website links to the Contractor certification forms and instructions are provided below. Form No. ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with DTF.

Forms are available on the Tax Department website here:

[https://www.tax.ny.gov/forms/form\\_number\\_order\\_st\\_y.htm](https://www.tax.ny.gov/forms/form_number_order_st_y.htm) (see ST-220-CA (Fill-in) and ST-220-TD (Fill-in));

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

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**20. NEW YORK STATE REQUIRED CERTIFICATIONS**

A Bidder is required to submit the signed New York State Required Certifications (Attachment 1: *Administrative Submittal (Paper)*, Section B: *New York State Required Certifications*). Failure to submit this document may result in a Bid being considered non-responsive and may result in a bid being rejected.

**21. 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 (“MWBES”) and the employment of minority group members and women in the performance of OGS contracts.

**II. General Provisions**

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.

- A. 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.
- B. 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, liquidated damages pursuant to clause IX of this section, and/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**

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](mailto: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 conviction and prior arrest.

**IV. Contract Goals**

- A.** OGS hereby establishes an overall goal of 10% for MWBE participation, 5% for Minority-Owned Business Enterprises ("MBE") participation and 5% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and/or WBE participation for subcontracting and supplies acquired under the Contract.

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- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR §§ 140–45. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women-Owned Business Enterprises. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

#### V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, and the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder’s bid/proposal as being non-responsive under the following circumstances:
- (a) If a Bidder fails to submit an MWBE Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or

- (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

## VI. Request for Waiver

- A. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Business Enterprises for guidance.**
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports, determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals

## VII. Required Good Faith Efforts

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

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, 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.

### VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System – Vendor training**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>.
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "**Account Lookup**" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "**Change Info.**" It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "**Request New User.**" When identifying the person responsible, please add "- **MWBE Contact**" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "**Contact Us & Support**" then "**Technical Support**" on the NYSCS website.

- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29<sup>th</sup> Floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages provisions in clause IX below.

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

- A. Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

#### **X. 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:** <http://www.ogs.ny.gov/MWBE/Forms.asp>

#### **22. 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: [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf)

Bidder/Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

**ALL FORMS ARE AVAILABLE AT:** [http://ogs.ny.gov/Core/SDVOBA.asp?\\_sm\\_au\\_=-iVVjF227tLtF4JJH](http://ogs.ny.gov/Core/SDVOBA.asp?_sm_au_=-iVVjF227tLtF4JJH)

### **23. 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 §26 *Participation in Centralized Contracts*.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services Customer Services at 518-474-6717.

### **24. NEW YORK STATE PROCUREMENT RIGHTS**

New York State hereby reserves the right to:

- A. Reject any or all bids received in response to this solicitation;
- B. Withdraw the solicitation at any time, at the Agency's sole discretion;
- 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 bids;
- F. Prior to the Bid opening, amend the solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- G. Prior to the Bid opening, direct Bidders to submit solicitation 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 specifications 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 the Bidder responding to this solicitation within the solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidders' 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, optionally, in other specified circumstances as detailed in the solicitation requirements;



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- P. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of ninety (90) calendar days from the Bid opening;
  - Q. Use bid information obtained through site visits, management interviews, and the state's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the solicitation; and
  - R. OGS reserves the right to use an on-line process, such as reverse auction, to make acquisitions under the resulting contracts. Bidder agrees that if awarded a Contract, it will participate in the on-line process established by OGS.

**25. CONFLICT OF TERMS AND CONDITIONS.**

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

- A. Appendix A, *Standard Clauses for New York State Contracts* (January 2014);
- B. The Bid Solicitation Information Document;
- C. The Contract Template;
- D. Appendix B, *General Specifications* (May 2015); and
- E. Other Appendices and attachments.