



# Invitation for Bids

<b>BID OPENING:</b> <b>DATE:</b> May 9, 2017 <b>TIME:</b> 11:00 A.M. EST <b>INVITATION FOR BIDS NUMBER:</b> 23054	<b>TITLE: Group 40061 – PROTECTIVE OUTERWEAR</b> <b>(Firefighting, Emergency/Rescue, and Safety) (Statewide)</b>  <b>Classification Codes: 46, 53</b>			
<b>CONTRACT PERIOD:</b> January 1, 2018 to December 31, 2023				
<b>DESIGNATED CONTACTS:</b> In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Invitation for Bids. All questions relating to this Invitation for Bids must be addressed to the Designated Contacts.				
<b>PRIMARY CONTACT</b> Neilene Rabideau Contract Management Specialist 1 Telephone: (518) 473-6518 Email: <a href="mailto:neilene.rabideau@ogs.ny.gov">neilene.rabideau@ogs.ny.gov</a>	<b>SECONDARY CONTACT</b> Joseph Better Contract Management Specialist 2 Telephone: (518) 474-7107 Email: <a href="mailto:joseph.better@ogs.ny.gov">joseph.better@ogs.ny.gov</a>			
<b>For MWBE Questions Only</b>	<b>For SDVOB Questions Only</b>			
Email Address: <a href="mailto:MWBE@ogs.ny.gov">MWBE@ogs.ny.gov</a>	Email Address: <a href="mailto:VeteransDevelopment@ogs.ny.gov">VeteransDevelopment@ogs.ny.gov</a>			
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<b>For INSURANCE Questions Only</b>				
Email Address: <a href="mailto:ogs.sm.insrev@ogs.ny.gov">ogs.sm.insrev@ogs.ny.gov</a>				
Robert Marriott (518) 473-6510	Kelly Smith (518) 473-0310	Leigh Brown (518) 457-6595		
<b>Bidder's Federal Tax Identification Number:</b> (Do Not Use Social Security Number)	<b>NYS Vendor Identification Number:</b> (See New York State Vendor File Registration Clause)			
Legal Business Name of Company Bidding:				
D/B/A – Doing Business As (if applicable):				
Street	City	State	County	Zip Code
E-mail Address:		Company Web Site:		
If applicable, place an "x" in the appropriate box(es) (check all that apply)				
<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:				
<b>FOR PROCUREMENT SERVICES USE ONLY</b>				
LITERATURE <input type="checkbox"/>	LETTER <input type="checkbox"/>	FLASH DRIVE <input type="checkbox"/>	OTHER <input type="checkbox"/>	# of Binders/Packages: _____
PURC. MEMO <input type="checkbox"/>	CD/DVD <input type="checkbox"/>	SDHC CARD <input type="checkbox"/>	_____	Documented by: _____

RETURN THIS PAGE AS PART OF BID OR NO BID

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**Bidder Certification and Affirmation**

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 60 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://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL\\_139j-k.asp](https://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp).

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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## **APPENDICES**

Appendix A – *Standard Clauses for NYS Contracts* (January 2014)

Appendix B – *General Specifications* (April 2016)

## **ATTACHMENTS**

Attachment 1 – *Pricing*

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 – *Authorized Dealer/Distributor Information*

Attachment 10 – *Manufacturer's Certificate*

Attachment 11 – *Required Proof of Sales Summary*

Attachment 12 – *Required Product Detailed Specifications*

Attachment 13 – *Contract Update Form*

## SECTION 1 INTRODUCTION

### 1.1 OVERVIEW

This Invitation for Bids (IFB) is issued by the New York State (“NYS”) Office of General Services (“OGS”). The purpose is to establish multiple statewide centralized Contracts for outerwear products with demonstrated protective value in firefighting, emergency/rescue or safety environments for use by New York State Agencies and Authorized Non-State Agencies Participating in Centralized Contracts set forth in Appendix B. The Contract(s) awarded shall be in effect for a term of five (5) years.

Bids shall be accepted only from established manufacturers or their authorized dealers/distributors. Award(s) shall be made by LOT to the lowest responsive and responsible Bidder(s) who are able to meet the terms and conditions of this IFB.

This IFB 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 IFB thoroughly and to precisely follow the instructions included in the IFB and all attachments.

OGS has established an overall goal of **30%** for MWBE participation, **15%** for Minority-Owned Business Enterprises (“MBE”) participation and **15%** for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of MBEs and WBEs).

### 1.2 SCOPE

The purpose of this IFB and resultant contracts is to provide all Authorized Users eligible to purchase through this IFB with a means of acquiring outerwear products of specialized protective value for use in Firefighting, Emergency/Rescue, or Safety environments. Products Bid shall be capable of withstanding such environments, and meet all necessary Federal standards applicable to the product's intended usage. Consideration will only be given to those outerwear products with demonstrated protective value limited to the following product sub-categories: Safety Shoes (various); Specialty Boots (various); Firefighting Turnout Gear, Firefighting Proximity Clothing, Wildland Clothing, Helmets, Gloves, Firefighting Boots; EMS/Search & Rescue Clothing. Bidder(s) shall provide the manufacturer(s) complete product lines for the sub-category(ies) offered.

Products Bid must be for use while performing agency duties. Offerings of predominantly leisure, recreational or sports oriented will not be considered for award. The Bidder(s) is responsible to provide written explanation with supporting documentation that normal functionality of bid products fits the scope of this IFB.

ALL products are to be new, not remanufactured, not seconds, not surplus.

**Note: This IFB is NOT for EMS/Rescue/Fire station uniforms. Products for Chemical, Biological, Radiological, Nuclear and Explosive (CBRNE) and Assault Clothing, are not part of this IFB and will not be considered. General use items such as standard work gloves will not be considered. Due to adequate coverage from Preferred Sources and other contracts, hard hats and reflective vests will not be considered.**

NYS' determination of acceptable product lines shall be final and NYS reserve the right to eliminate products in a price list that are not considered relevant or are available from Preferred Sources (refer to “PREFERRED SOURCE PRODUCTS” clause herein).

Bids shall be accepted only from established manufacturers or their authorized dealers/distributors.

Award(s) shall be made by LOT to the lowest responsive and responsible Bidder(s) who are able to meet the terms and conditions of this IFB.

A LOT is comprised of a manufacturer's COMPLETE product line per sub-category. Bids must not be limited to a single product, incomplete, partial or selected products. Failure to supply the manufacturer's COMPLETE product line per sub-category will result in your Bid being considered non-responsive and your offer will no longer be considered for an award.

Discounts per LOT may be used to identify and establish low net prices for the purpose of ranking and evaluation.  
**ONE DISCOUNT IS ALLOWED PER LOT.**

### 1.3 ESTIMATED QUANTITIES

A Contract resulting from this IFB shall be Indefinite Delivery and Indefinite Quantity (IDIQ). 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 anticipated dollar value of the award for this IFB, based on historical purchases under previous awards, is approximately \$24,000,000.00 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 value of the Contracts resulting from this IFB to vary substantially from the historical value. 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/historical values provided in this IFB.

### 1.4 KEY EVENTS/DATES

<b><u>EVENT</u></b>	<b><u>DATE</u></b>	<b><u>TIME</u></b>
IFB Release	March 14, 2017	N/A
Closing Date for First Round of Bidder Questions	March 28, 2017	5:00 PM ET
OGS Procurement Services' Responses to First Round of Bidder Questions	April 6, 2017 (tentative)	N/A
Closing Date for Second Round of Bidder Questions	April 20, 2017	5:00 PM ET
OGS Procurement Services' Responses to Second Round of Bidder Questions	April 27, 2017 (tentative)	N/A
Bid Opening / Due date for Bids	May 9, 2017	11:00 AM ET
Contract Approval Date / Award Publish Date	January 1, 2018 (tentative)	N/A

### 1.5 BIDDER QUESTIONS

All questions regarding this IFB should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable IFB document name and document section. The completed form should be emailed to [neilene.rabideau@ogs.ny.gov](mailto:neilene.rabideau@ogs.ny.gov) by the date and time indicated in the *Key Events/Dates* section. 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.

If Bidder intends to submit a Bid that deviates from the requirements of the IFB 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.

#### 1.6 MWBE INTEREST IN PARTICIPATING WITH BIDDERS

If a New York State certified MWBE would like to indicate its interest in working with participating Bidders, please send an email entitled "IFB 23054 MWBE INTEREST [Your company name]" to [neilene.rabideau@ogs.ny.gov](mailto:neilene.rabideau@ogs.ny.gov) on or before the date and time indicated in *Key Events/Dates*. The email should include:

1. Company Name
2. Contact Name, Phone Number, Mailing Address, Email Address
3. Brief description of company type (for example "Company ABC is an Authorized Dealer for XYZ").
4. NYS Empire State Development Certification Type (Minority- and/or Women-Owned Business Enterprise)

A list of all NYS certified MWBEs who have expressed interest in this IFB through the timely submission of such email, will be included in a Purchasing Memorandum posted through the New York State Contract Reporter in accordance with the *New York State Contract Reporter* section.

#### 1.7 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/Core/docs/CertifiedNYS\\_SDVOB.pdf](https://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:** [https://www.ogs.ny.gov/Core/SDVOBA.asp?\\_sm\\_au\\_=iVVjF227tLtF4JJH](https://www.ogs.ny.gov/Core/SDVOBA.asp?_sm_au_=iVVjF227tLtF4JJH)

#### 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 email notifications regarding updates to the content or status of a particular ad, you must choose the option "send me notification updates on this," located in the lower right hand corner of the particular ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR. If you do not opt-in to receive notification updates regarding a particular ad, you will not receive email notifications regarding updates, including email 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 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: <https://www.ogs.ny.gov/acpl/>

#### 1.10 DEFINITIONS

Terms used in this Solicitation shall be defined in accordance with Appendix B, *Definitions*. In addition, the following definitions shall apply.

**"Bid"** shall refer to a Bidder's complete response to this Solicitation.

**"Bidder" or "Offeror" or "Offerer"** shall refer to any business entity who submits a response to this Solicitation. At the time that the Bidder executes a Contract with the State, a Bidder shall become a "Contractor". See also "Contractor".

**"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.

**"Commissioner"** shall mean the Commissioner of the Office of General Services or duly authorized representative.

**"Contractor"** shall refer to any successful Bidder to whom a Contract has been awarded by the Commissioner.

**"F.O.B"** is acronym for Free on Board.

**"Issuing Office"** shall refer to the Office of General Services.

**"Invitation for Bids (IFB)"** shall refer to this document, and its appendices and attachments. Also see "Solicitation".

**"Lot"** is comprised of a manufacturer's COMPLETE product line per sub-category

**"May"** denotes the permissive in a contract clause or specification. Also see "Shall" and "Must".

**"Mfg"** is an abbreviation for manufacturer(s).

**"Must"** denotes the imperative in a contract clause or specification. Also see "Shall" and "May".

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

**"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”** shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

**“OGS”** is an acronym for New York State Office of General Services.

**“Preferred Source Products”** shall refer to those Products that have been approved in accordance with 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”).

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

**“Shall”** denotes the imperative in a contract clause or specification. Also see “Must” and “May”

**“Solicitation”** shall refer to this document, and its appendices and attachments. Also see “Invitation for Bids (IFB)”

**“The State”** shall refer to State of New York.

**“Unit”** shall be considered a product which can be used by itself (i.e., pair of shoes, pair of gloves, helmet, etc.).

### 1.11 APPENDICES AND ATTACHMENTS

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

Appendix A – *Standard Clauses for NYS Contracts* (January 2014)

Appendix B – *General Specifications* (April 2016)

Attachment 1 – *Pricing*

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 – *Authorized Dealer/Distributor Information*

Attachment 10 – *Manufacturer's Certificate*

Attachment 11 – *Required Proof of Sales Summary*

Attachment 12 – *Required Product Detailed Specifications*

Attachment 13 – *Contract Update Form*

### 1.12 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 **Invitation for Bids (IFB)**, including all appendices and attachments;
3. Appendix B, *General Specifications*;
4. Bidder's Bid.

## SECTION 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:

1. Bids will be accepted only from established manufacturers or their authorized dealers (See Attachment 10 – *MANUFACTURER'S CERTIFICATE*).
2. Bidder must demonstrate proof of minimum sales volume of \$150,000 dollars for the most recent calendar year (January 1 – December 31, 2016), for the offered manufacturer's product line to any public entity (e.g. GSA Schedule, NYS Contract, another state contract, sales to county, city, town, village). Required proof of sales may be demonstrated in the form of a summary of the total sales reported which will include purchasing entity's name, total amount of sales for purchasing entity, date of purchase (See Attachment 11 – *Required Proof of Sales Summary*). Sales made directly by the Manufacturer, Resellers, or a combination of both can be utilized to demonstrate compliance with this provision. Required proof of sales should be submitted at the time of Bid submission. Failure to submit proof of sales at the time of Bid submission may result in rejection of the Bid. OGS reserves the right to request additional documentation including copies of invoices/purchase orders/contracts, etc.
3. Bidder must maintain a business establishment capable of processing and shipping large numbers of orders (e.g., orders for over 100 units) to any ordering entity (Appendix B, §32, Product Delivery). A unit will be considered a product which can be used by itself (e.g., helmet, pair of boots, etc.).

OGS retains the right to request any additional information pertaining to the Bidder's ability and qualifications. This includes, but is not limited to the following:

- A. Satisfactory evidence that a Bidder has maintained an organization capable of performing the work specified herein in continuous operation for the past (3) years through submission of a Dun & Bradstreet Business Information Report or other equivalent evidence;
- B. Evidence of a business establishment with adequate inventories of the product(s) offered, and capacity to process and ship the volume of orders required by Authorized Users on a statewide basis. OGS may require a certificate from the bidder showing the number of years the bidder has been active in selling the products offered and the size and location of the inventories regularly maintained.
- C. References that demonstrate the ability of the Bidder to perform the work required of the resulting Contract;
- D. Documentation to demonstrate a Bidder's ability to meet the delivery requirements set forth in Appendix B, §32, Product Delivery; and
- E. OGS reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract.

### SECTION 3 SPECIFICATIONS

Product(s) Bid shall be capable of withstanding Firefighting, Emergency/Rescue, or Safety environments, and meet all Federal standards applicable to the product's intended use. The Bidder will submit with its Bid offer, detailed specifications information (via literature and by providing a link to website where specification can be found), on the product to be furnished (Attachment 12 – *Required Product Detailed Specifications*). Failure to submit any of the data may result in rejection of the Bid. The State reserves the right to request any additional information deemed necessary for the proper evaluation of Bid offer.

OGS Procurement Services may require additional documentation to determine that Bidder's offer meets the detail specification. The Bidder will be given a date by which the requested documents must be provided. If the Bidder fails to submit the documentation, your Bid may be considered non-responsive. If Bidder is unable to meet the deadline set forth, the Bidder must request an extension in writing prior to the given deadline. Upon review, OGS will either provide a new deadline or consider Bidder non-responsive and Bidder's offer will no longer be considered for an award.

### SECTION 4 BID SUBMISSIONS

#### 4.1 PERFORMANCE AND BID BONDS

There are no bonds for this Contract. In accordance with Appendix B, *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 is required at any time during the term of the resulting Contract.

#### 4.2 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.

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 ([https://www.osc.state.ny.us/vendors/forms/ac3237s\\_fe.pdf](https://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 email 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://www.osc.state.ny.us/vendor\\_management](https://www.osc.state.ny.us/vendor_management)

#### 4.3 FORMAT AND CONTENT 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 rejected, except as provided by Appendix B, *Late Bids*. Any Bid pricing or portions thereof submitted on CD or 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.

Email or facsimile Bid submissions 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. Only completed files (in the specified format) should be saved to a CD or flash drive.

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 this IFB may be considered non-responsive and may be rejected.

#### **Requirements for Attachment 1 – Pricing in Electronic Format (Microsoft Excel, NOT LOCKED);**

- a) Do not change the spreadsheet structure. Any changes may result in rejection of Bids.
- b) Only MS EXCEL format for the required electronic copy will be accepted.

##### 4.3.1 CONTENT

**Each bulleted item should be saved in its own file, properly marked as to its contents and saved to one (1) CD or Flash Drive. A complete Bid consists of ONE copy of each of the following in the format listed (Note: all Excel documents must NOT be locked or password protected by Bidder):**

1. CD or flash drive containing:
  - a. Completed Pages 1 and 2 of the IFB (signed and scanned) (PDF);
  - b. Signed Purchase Memorandums or Addendums for Solicitation, including answers to Bidder's inquiries (PDF);
  - c. Completed Attachment 1 – *Pricing* (Excel);
  - d. Completed Attachment 2 – *NYS Required Certifications* with original ink signatures (PDF);
  - e. Completed Attachment 3 – *Encouraging Use of NYS Businesses in Contract Performance* (PDF);
  - f. Proof of Compliance with Workers' Compensation Coverage and Disability Benefits Requirements as specified in Attachment 4 – *Insurance Requirements* (PDF);
  - g. Completed Attachment 5 – *Bidder Information Questionnaire* (2 worksheets) (Excel);
  - h. Completed Attachment 6 – *Bidder Submission Checklist* (Excel);
  - i. Completed Attachment 9 – *Authorized Dealer/Distributor Information* (required if the Bidder IS the Manufacturer) (Word)
  - j. Completed and signed Attachment 10 – *Manufacturer's Certificate* (required if the Bidder is NOT the Manufacturer)) (PDF)
  - k. Attachment 11 – *Required Proof of Sales Summary* (Excel)
  - l. Attachment 12 – *Required Detailed Product Specifications* (via literature and by providing a link to website where specification can be found)
  - m. Completed ST-220CA, Contractor Certification, notarized with original ink signatures (PDF);
  - n. Completed MWBE 100, MWBE Utilization Plan (if applicable) (PDF);
  - o. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF);
  - p. Completed Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF).
  - q. Manufacturer's Nationally Published Price List (Excel)
2. Original paper versions of each of the following (to be placed in a loose leaf binder and tabbed):

- a. Completed Pages 1 and 2 of the IFB with original ink signatures;
- b. Signed Purchase Memorandums or Addendums for Solicitation, including answers to Bidder's inquiries.
- c. Completed Attachment 1 – *Pricing* (Excel);
- d. Completed Attachment 2 – *NYS Required Certifications* with original ink signatures;
- e. Completed Attachment 3 – *Encouraging Use of NYS Businesses in Contract Performance*;
- f. Proof of Compliance with Workers' Compensation Coverage and Disability Benefits Requirements as specified in Attachment 4 – *Insurance Requirements*;
- g. Completed Attachment 5 – *Bidder Information Questionnaire* (2 worksheets);
- h. Completed Attachment 6 – *Bidder Submission Checklist*;
- i. Completed Attachment 9 – *Authorized Dealer/Distributor Information* (if applicable)
- j. Completed and signed Attachment 10 – *Manufacturer's Certificate* (if applicable)
- k. Attachment 11 – *Required Proof of Sales Summary*
- l. Attachment 12 - *Detailed Product Specifications* (via literature)
- m. Completed ST-220CA, Contractor Certification, notarized with original ink signatures;
- n. Completed MWBE 100, MWBE Utilization Plan (if applicable);
- o. Completed Form EEO100, Equal Employment Opportunity Staffing Plan;
- p. Completed Standard Vendor Responsibility Questionnaire (with original ink signature) or Certification that Questionnaire has been completed online.

Attachment 7, Attachment 8, and Attachment 13 do not need to be returned with your Bid. Do not return copies of Appendix A and B with your Bid.

Discrepancies between paper copies and CD or flash drive submissions of the documents required in both formats, the electronic (CD or flash drive) copy shall take precedence over the paper copy.

Any indicators or messages built into the attachments are for 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 IFB requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the IFB requirements.

Receipt of Bid does not indicate that OGS has pre-determined a company's qualifications to receive a Contract award. Such determination shall be based on the evaluation of a Bid compared to the specific requirements and qualifications contained within this IFB and attachments.

In the event a Bidder may need to submit amendments to their Bid prior to the Bid Submission Deadline, any amended pages submitted by a Bidder to be incorporated into the Bid, should show the date of the revision and indicate the portion of the page being changed. One (1) Hard Copy of amended page(s) and a new CD or Flash Drive should be submitted indicating the date of revision.

#### 4.3.2 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 #23054)
3. Bid Opening Date and Time **May 9, 2017 at 11:00 AM EST**
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.

#### 4.3.3 BID DELIVERY

Bids shall be delivered to the following address on or before **May 9, 2017 11:00 a.m. EST**:

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.

#### 4.3.4 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.

#### 4.4 NYS REQUIRED CERTIFICATIONS

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

#### 4.5 PRODUCT LITERATURE TO BE FURNISHED WITH BID

Bidder shall submit with its Bid detailed specifications, Product literature, and all necessary data on the Product to be furnished ("Product literature") (See Section 3-Specifications). If the Product offered differs from the Product literature, such differences must be explained in detail. Failure to submit any of the Product literature may result in rejection of the Bid. The State reserves the right to request any additional information deemed necessary for the proper evaluation of Bids.

#### 4.6 MANUFACTURER'S CERTIFICATE

Bids will be accepted only from established manufacturers or their authorized dealers. Through completion and submission of the Manufacturer's Certificate, the manufacturer guarantees that the Bidder is an authorized dealer and has agreed to supply the Bidder with all quantities of Products required by the Bidder in fulfillment of its obligations under any resultant Contract with the State. Bidders shall use the certificate attached to this IFB to document this level of support (see Attachment 10 – *Manufacturer's Certificate*).

The Manufacturer's Certificate is to be forwarded by the Bidder to its proposed manufacturer for completion, and returned to the Bidder for inclusion with its Bid. The Commissioner reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract. See Appendix B, *Participation in Centralized Contracts and Employees, Subcontractors, and Agents*.

#### 4.7 BID DEVIATIONS

Bids must conform to the terms set forth in the IFB. As set forth in Section 1.6 *Bidder Questions*, if Bidder intends to submit a Bid that deviates from the requirements of the IFB 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.

#### **4.8 BID OPENING RESULTS**

Procurement Services posts Bid information on the OGS web page. The web page makes selected information available about 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://nyspro.ogs.ny.gov/nyspro-bid-openings>

#### **4.9 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.

#### **4.10 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 IFB;
- B. Withdraw the IFB at any time at the sole discretion of the State;
- C. Make an award under the IFB in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the IFB;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the IFB 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 IFB 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 IFB 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 IFB;
- 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 IFB;
- 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. Make no award for any LOT, 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.

- T. 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.

#### 4.11 INCORPORATION

The provisions of this IFB shall be incorporated into the resulting contracts awarded and approved by OGS. The award letter shall indicate the LOT(s) awarded and require the contractor to sign attesting their agreement. The contractor shall then return said letter to OGS for final approval and execution.

## SECTION 5 METHOD OF AWARD

### 5.1 METHOD OF AWARD

Award shall be made by the lowest Bid per LOT to a responsive and responsible Bidder. A LOT is comprised of a manufacturer's COMPLETE product line per sub-category. Discounts per LOT may be used to identify and establish low net prices for the purpose of ranking and evaluation. **ONE DISCOUNT IS ALLOWED PER LOT.** Note: NYS recognizes that a manufacturer may have several product lines per sub-category. Each manufacturer's product line per sub-category is considered a separate LOT and will be considered for award.

The State reserves the right to reject an obviously unbalanced Bid or to make "NO AWARD" on items if individual Bid prices are deemed to be unbalanced or excessive or if an error in the IFB becomes evident. The determination of an unbalanced Bid shall be at the sole discretion of the State.

The Bidder(s) with the lowest price Bid, who meets the Administrative and Technical criteria listed below will be considered for an award.

#### 5.1.1 EVALUATION PROCESS

- After the Bid opening, each Bidder's offer per LOT, will be ranked, lowest to highest, based on net price offered for the 1-10 unit(s) level. Discounts may be used to identify and establish low net prices for the purposes of ranking and evaluating. Only ONE contract award shall be made for each LOT.
- The evaluation for the Administrative and Technical steps will begin with the Bidder who has the lowest net price Bid for each LOT. The Bidder for the lowest net price Bid for the LOT that meets the Administrative Screening, will then proceed to the Technical Evaluation. If the low Bidder meets the Administrative Screening and Technical steps for the LOT, then no further review of the remaining Bidders for that LOT will be conducted. If the low Bidder fails, then the same steps will be conducted with the Bidder who has the second lowest net price Bid for the LOT. This process will continue until a Bidder for each LOT passes both the Administrative Screening and Technical steps.
- The Administrative Bid Screening will screen Bids for completeness and conformance with requirements for Bid submission as specified in A. MANDATORY REQUIREMENTS FOR ADMINISTRATIVE PROPOSAL REQUIREMENTS. Bids that do not meet the Administrative requirements as set forth in the Solicitation may be deemed non-responsive and be given no further consideration.

#### A. MANDATORY REQUIREMENTS FOR ADMINISTRATIVE PROPOSAL REQUIREMENTS

In order to be eligible for consideration under this IFB, a Bidder must affirm its agreement to comply with the following requirements:

1. Section 2. BIDDER QUALIFICATIONS. Such affirmations are set forth in Attachment 5 – *Bidder Information Questionnaire* on the tab entitled "Solicitation Specific Questions":
2. Section 6.19, Insurance. Such affirmations are set forth in Attachment 5 – *Bidder Information Questionnaire* on the tab entitled "Solicitation Specific Questions":
3. Agreement to all reporting requirements in accordance with Section 6.20, Report of Contract Usage.
4. Section 6.21, Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment

Opportunities for Minority Group Members and Women. Such affirmations are set forth in Attachment 5 – *Bidder Information Questionnaire* on the tab entitled “Solicitation Specific Questions”:

- The Technical Evaluation will be based on requirements set forth in Attachment 5 – *Bidder Information Questionnaire*. Failure to meet any mandatory specifications found in this IFB may result in a Bidder’s removal from further consideration.

Equal Employment Opportunities for Minority Group Members and Women. Such affirmations are set forth in Attachment 5 – *Bidder Information Questionnaire* on the tab entitled “Solicitation Specific Questions.”

## 5.2 PROCUREMENT INSTRUCTIONS FOR AUTHORIZED USERS

The resultant Contracts will be issued under a multiple award structure. Authorized Users shall procure Products that best meet their form, function, and utility requirements.

Before proceeding with their purchase, Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law, particularly § 162, regarding commodities/services provided by preferred source suppliers.

## 5.3 NOTIFICATION OF AWARD

Successful Bidders shall be advised by OGS in accordance with Appendix B, *Contract Creation/Execution*. Tentative award of the Contract 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.

For a Bidder who is awarded more than one LOT, a single Contract will be issued.

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

# SECTION 6 TERMS AND CONDITIONS

## 6.1 CONTRACT TERM AND EXTENSIONS

The Contract will be in effect for a term of up to five (5) 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 IFB shall have a co-terminus end date. At the State’s option, the Contract may be extended for up to one (1) additional 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*.

## 6.2 SHORT TERM EXTENSION

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Renewal*. 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.

## 6.3 PRICE

Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State, for orders, as designated by the ordering agency including Inside Delivery.

In addition, upon mutual agreement, delivery locations may be expanded per the “Extension of Use” clause.

**ONLY ONE DISCOUNT PERCENTAGE IS ALLOWED PER MANUFACTURER’S PRODUCT LINE FOR EACH SUB-CATEGORY.**

Pricing will be collected using Attachment 1 – *Pricing* in accordance with the Instructions tab listed within Attachment 1. Bidder will submit pricing information on Attachment 1 – *Pricing* under Sub-Category and Manufacturer's Product Line bid. Failure to submit Attachment 1 - *Pricing* may result in rejection of a Bid. Bidder shall also supply a current copy of the manufacturer's nationally published pricelist(s) in its original format detailing current List Prices relevant to the Products the Bidder is proposing. Failure to submit a copy of the manufacturer's nationally published pricelist(s) in its original format may result in rejection of a Bid. In no event shall NYS Net Price in Attachment 1 - *Pricing* exceed the manufacturer's nationally published pricelist. If NYS Net Prices are based on a GSA Schedule or NASPO ValuePoint Contract, the GSA or NASPO ValuePoint pricing should also be submitted with the Bid.

The Bidder will offer pricing to NYS that is the same or better than pricing provided in a current contract to governmental entities (other NYS contracts, GSA, Veteran's Administration, Department of Defense or other state governments).

Price reasonableness will be determined by comparing the pricing offered to NYS with the Comparable Governmental Contract Price for each LOT.

If the Bidder is unable to provide pricing to NYS that is the same or better than current contract pricing given to other governmental entities, Bidder must provide a brief explanation in Attachment 5 – *Bidder Information Questionnaire*, "Solicitation Specific Questions." It is within OGS's discretion to determine whether the pricing and explanation provided by Bidder are reasonable. OGS reserves the right to request further information to make a determination of price reasonableness, such as copies of other governmental contracts.

Once awarded a Contract, the percentage discount offered to Authorized Users may, at the Contractor's option, be increased based on individual orders. Discounts may be greater, but in no instance may they be lower than the awarded discount. All Contract List and Net Prices shall be rounded to two decimals in the resultant Contract.

#### **GSA PRICING**

Where NYS net pricing is equal to or better than an approved GSA Supply Schedule:

1. Associated Discounts: The State is entitled to all associated discounts enumerated in the GSA Supply Schedule (including, but not limited to, discounts for additional sites and volume discounts), as well as any other pricing or discount terms as are expressly enumerated in the NYS Contract or GSA schedule, when calculating the NYS Net Price; and
2. Industrial Funding Fee: GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee." ("IFF")

Where bidder/contractor is offering NYS discounts and net pricing equal to or lower than GSA, both the percent discount(s) and net prices of all products must reflect current GSA prices without the Industrial Funding Fee (IFF) Included. Both the Discount and Net Pricing must reflect the removal of this amount (e.g. for net pricing, multiplying GSA net pricing by .9925%).

#### **6.4 PRICE UPDATES**

Contractor may update their pricelist as follows:

Commencing with the first anniversary date of the Bid Opening, and annually thereafter, the Contractor may update the pricelist to reflect Contractor price changes.

Requests for price increases 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.

The Contractor shall provide OGS with one electronic copy of the manufacturer's nationally published price list, one electronic copy NYS net price list, Contract Update Form (Attachment 13), and cover letter written on standard company letterhead for the request. 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.

Contractors shall be permitted to reduce their pricing any time during the contract term.

Auto-adds: Contractors shall be permitted to add new products and/or delete obsolete products on a quarterly basis during the contract term. Contractors shall be permitted to add and/or delete authorized dealers/distributors any time during the contract term (See Section 6.30)

The discount offered on any new Products added to pricelists shall be no lower than the minimum established LOT 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.

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

Price lists will be reviewed for reasonableness and if compliant, OGS will approve and issue a memorandum notifying contract users of the update. Contractors are urged to allow at least 30 days for price list approvals. After approval from OGS, updates to a contractor's price schedule will become a part of the contract.

The Contractor shall provide contract users with the current OGS approved price lists upon request at no charge. Any items/products/lots in the price list not awarded by OGS must be removed before being supplied to contract user.

#### **6.4.1 PRICELIST FORMAT**

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2013 or lower version) spreadsheet either on CD or thumb drive or via email 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 should separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts) the following:

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

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.

#### **6.4.2 COVER LETTERS**

All Contract pricelist updates shall be accompanied by a cover letter describing the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA Schedule or NASPO ValuePoint Contract pricing update, to add/delete Products, to add/delete dealers/distributors, etc.).

### **6.5 BEST PRICING OFFER**

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

### **6.6 VOLUME DISCOUNTS**

Bidder may offer volume discounts. Volume discounts shall be defined and applied as follows: Purchase order volume discounts shall be additional discounts applied to individual purchase orders over a specified dollar amount or based upon exceeding threshold quantities of an individual items. Cumulative agency volume discounts shall be additional discounts applied to all future orders made by an individual agency once an established volume has been met by that agency. Cumulative statewide volume discounts shall be additional discounts applied to all future orders for all state and non-state orders once an established volume has been met under a contract.

The Bidder should state the parameters for applying the volume discount(s) and state the volume discount(s) offered in the spaces provided on the “Financial Offer” sheet in Attachment 1- Pricing.

Volume discounts will not be considered in determining the low Bid.

#### **6.7 PROMPT PAYMENT DISCOUNTS**

Bidder may offer prompt payment discounts. Bidder shall state the prompt payment discount(s) offered in the space provided on the “General Questions” sheet in Attachment 5 – *Bidder Information Questionnaire*.

While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied.

#### **6.8 NYS PROCUREMENT CARD DISCOUNT**

Bidder may offer NYS Procurement Card discounts. Bidder should state the discount offered when using the NYS Procurement Card in the space provided on the “General Questions” sheet in Attachment 5 – *Bidder Information Questionnaire*. Bidder may offer Procurement Card discounts at the transaction level.

NYS Procurement Card Discount will not be considered in determining the low Bid.

#### **6.9 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, email, 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).

#### **6.10 MINIMUM ORDER**

There is no minimum order for this Contract.

#### **6.11 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 (PCXXXX)
- 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/content/vendor-information>.

#### 6.12 PRODUCT DELIVERY

Delivery shall be expressed on the "Financial Offer" in Attachment 1 – Pricing, in number of calendar days required to make delivery after receipt of a purchase order to any ordering entity.

Product is required as soon as possible.

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

##### Shipping Dates and Delivery Time

- All correspondence on shipping dates and delivery time shall be directed to the authorized user's contact person.
- Contractor shall provide written acknowledgement of orders within five (5) business days after receipt of order and shall also provide anticipated shipping date.
- If shipment will not be made within the anticipated delivery timeframe, the contractor is required to notify the authorized user in writing at least two weeks prior to the latest date of the original delivery obligation. This notification must include the reasons for the delay and a revised anticipated ship date. The authorized user may request the contractor to provide documentation to support the reason for the shipping delay. Failure to supply timely written notification of delay to the authorized user or should the reason for the delay not be acceptable to the authorized user, appropriate contract default proceedings may be initiated.

#### 6.13 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, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

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.

##### 6.13.1 DISCREPANCIES

The Contractor(s) shall resolve all order and invoice discrepancies (e.g., shortages, incorrect item received, etc.) within five (5) business days from notification.

##### 6.13.2 PRODUCT RETURNS BECAUSE OF QUALITY PROBLEMS

Upon written notification by the Authorized User to the Contractor, products determined to have quality problems, be outdated or damaged, etc., shall be picked up by the Contractor within ten (10) business days after notification with no restocking fee. The Authorized User shall elect whether to receive a replacement product or a credit/refund for the full purchase price. The Authorized User must conduct its inspection, and notify the Contractor within 30 calendar days of delivery. If a defect is not identified within 30 calendar days after delivery, the Authorized User may be required to contact the manufacturer directly. Contractor shall provide an Authorized User with the manufacturer's contact number.

Products that are compromised due to incident involvement shall be the responsibility of the ordering entity to replace. Contractors are responsible for replacement products consistent with the terms of the offered manufacturer(s) warranties.

#### 6.13.3 PRODUCT RETURNS BECAUSE OF AUTHORIZED USER ERROR

Standard stock products ordered in error by Authorized User must be returned for credit within 30 days of receipt. Product must be in resalable condition (original container, unused).

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.

#### 6.14 UNANTICIPATED EXCESSIVE PURCHASE

The State reserves the right to negotiate lower pricing, or to advertise for Bids, for any unanticipated excessive purchase.

#### 6.15 CONTRACT ADMINISTRATION

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 should notify OGS within five Business Days if it's 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 email to the OGS Contract Management Specialist.

#### 6.16 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://nyspro.ogs.ny.gov/content/nys-emarketplace-1>

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

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

#### 6.17 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*.

#### 6.18 REPORT OF CONTRACT USAGE

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized dealers and distributors, *no later than 15 days after the close of each calendar quarter*. 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 *quarterly* report.

Contractors shall specify if any authorized 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 email 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 sales information may be required by OGS and must be supplied upon request. Failure to submit timely reports may negatively affect Contractor's responsibility status and may result in Contract suspension/cancellation.

#### 6.19 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NYS 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

- 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, 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 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 **30%** for MWBE participation, **15%** for Minority-Owned Business Enterprises ("MBE") participation and **15%** 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.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address:  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR §§ 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women-Owned 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:** <https://www.ogs.ny.gov/MWBE/Forms.asp>

**6.20 WARRANTY**

Bidder shall provide the manufacturer's standard warranty information to the Authorized User and such warranty shall not conflict with Appendix B, Clause 54. If during this warranty period, such faults develop, the unit or part affected is to be replaced without any cost to the Authorized User including any charges for parts, labor and transportation

Where accessories are to be supplied, they must be compatible with the rest of the equipment.

The manufacturer shall provide written instruction for proper care, handling, storage and cleaning procedures with each product, where applicable.

**6.21 RECALLS**

The Contractor shall immediately notify the OGS Procurement Services of any recalls pertaining to contract items.

**6.22 PRODUCT END-OF-LIFE DISPOSAL/RECYCLING**

If available, Bidder(s) is to provide an overview of the manufacturer(s) established recycling and/or disposal program. At the request of the ordering entity, the bidder is to provide written instructions on how to use this program.

**6.23 DIESEL EMISSION REDUCTION ACT**

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the "Law"), it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra-low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by Contractors "on behalf of" State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

**6.24 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.

The State has made the effort to identify products that may be available from other OGS Contracts to assist contract users in their procurement efforts. TABLE 1: Preferred Sources and/or NYS Contract Overlaps herein is a tool but, it is not intended to capture every instance at award or when contract offerings are updated. At time of purchase it is incumbent upon the contract user to review other contracts in an effort to identify overlapping contract items and comply with all applicable requirements and guidelines.

<b>Categories Represented in Contracts Under Group 40061</b>	<b>TABLE 1: Preferred Sources and/or NYS Contract Overlap →</b>	<b>NYSPSP</b>	<b>NYSID</b>	<b>NYS Group 38232 - Hazardous Incident Response Equip. (HIRE) (Stwd.)</b>	<b>NYS Group 39000 - Industrial &amp; Comm. Supplies &amp; Equip. (Stwd.)</b>
Firefighter Suits (Turnouts)				X	
Fire Boots				X	X
Fire, Safety Gloves (NYSPSP, NYSID, & Gr. 39000 Safety Gloves Only)		X	X	X	X
Firefighter Helmets				X	
Safety Footwear				X	X
Safety, Search & Rescue, Wildland Apparel (NYSPSP & NYSID Safety Apparel Only)		X	X	X	X
EMS Clothing & Boots (NYSID Boots only)			X	X	

## 6.25 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.

## 6.26 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 [https://www.osc.state.ny.us/vendrep/vendor\\_index.htm](https://www.osc.state.ny.us/vendrep/vendor_index.htm) or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

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 <https://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 [https://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](https://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.

#### **6.27 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](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](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.



## 6.28 “OGS OR LESS” GUIDELINES

Purchases of the Products included in the Solicitation and resulting Contract are subject to the “OGS or Less” provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two business days prior to purchase. In addition, purchases made under “OGS or Less” flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

## 6.29 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://www.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.

## 6.30 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.

## 6.31 RESELLERS

“**Reseller**” shall refer to alternate distribution sources (distributors or dealers) for a manufacturer that are authorized and designated by said manufacturer, subject to approval by New York State.

### A. 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, limit the number of resellers, 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. the State reserves the right to request Contractor disclosure of all general categories of qualifying criteria;
3. those qualifying criteria met by the Reseller must be identified in Reseller designations Attachment 9 – *Authorized Dealer/Distributor Information* at the time that Reseller approval is requested; and,
4. Immediate 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.

**B. 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 9 – *Authorized Dealer/Distributor Information*. Contractor shall also specify whether orders must be placed directly with Contractor, or may be placed directly with designated Resellers.

**C. 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 quarterly 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.

**D. 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.

**6.32 CONTRACT ADVERTISING**

In addition to the requirements set forth in Appendix B, *Advertising Results*, any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to an awarded Contract must be reviewed and approved by OGS prior to issuance. Contractor also cannot use, for any purpose, the New York State of Opportunity registered trademark or the State coat of arms without prior approval from the State.

**6.33 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.

**6.34 TRAFFIC INFRACTIONS**

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

**6.35 INSTRUCTION MANUALS**

The Contractor should assist the using agency with obtaining the most appropriate equipment for the agency's needs. This may include verbal information, printed literature, demonstration or samples. The extent of involvement should be commensurate with purchase size and complexity.

The manufacturer or their designated representative shall provide measurement and fitting or whatever assistance is feasible (i.e., sizing sheets) upon request.

At the time of delivery, Contractor shall provide written instruction for proper care, handling, storage and cleaning procedures for the Product and for each component supplied, as applicable, to the Authorized User.