

**Group 40061 – PROTECTIVE OUTERWEAR (Firefighting, Emergency/Rescue, and Safety) (Statewide)**  
**BID INQUIRIES AND RESPONSES #2**

Solicitation Document Name	Document Section (Number & Name)	Question	Answer
IFB Main Document	1.1 Overview	MWBE goal of 30%- there is only one WBE listed on this solicitation. If we are unable to meet this goal do we still need to submit the MWBE utilization plan and the request for waiver?	Yes and documentation of "good faith effort" pursuant to 5 NYCRR § 142.8 . OGS received interest from one WBE company for IFB 23054. However, there may be more MWBE companies that didn't respond to this solicitation. The OGS MWBE Office may be able to assist Bidders/Contractors in meeting IFB 23054 MWBE goals.
IFB Main Document	1.4 Key Events/Dates and 1.5 Bidder Questions	Will there be an opportunity to submit a third round of questions if further clarification is needed after responses are received to the second round of questions?	No, please see Section 1.4 KEY EVENTS/DATES.
IFB Main Document	1.4 Key Events/Dates	Will you please extend the bid due date by at least two weeks to allow sufficient time to complete all of the requirements outlined in the bid?	No, please see Section 1.4 KEY EVENTS/DATES.
IFB Main Document	6.5 Best Pricing Offer	Every deal stands on its own. Guaranteeing the best prices is not something we can agree to.	OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).
IFB Main Document	6.27 NYS Tax Law Section 5-A	I'm being told by the Tax Department that manufacturers/wholesalers should not be filling this form and suggested I contact OGS to what information OGS is looking for here. XXXXX's sales to dealers are for resale, so we do not charge tax. It's the responsibility of our dealers to collect taxes from their customers or tax-exempt forms.	It appears that DTF may not have clearly understood that your company is a potential Contractor for a Statewide Centralized Contract. To be awarded a NYS Contract, the 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. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.
Attach 1: Pricing; Pricing Spreadsheet		What if you do not have any "Comparable Governmental Contract Pricing" to compare to the price of particular item price being offered in this Bid? If you do not put a price in this "Comparable" column, the model assumes \$0, and all of the items bid are marked "NYS Higher" which is incorrect. What should we include in this cell?	If the Bidder doesn't have Comparable Governmental Contracts, i.e. other NYS contracts, GSA, Veteran's Administration, Department of Defense or other state governments; then OGS may consider local government contracts. If the Bidder doesn't have any contracts with local governments, then OGS may consider comparing lowest price offered to Bidder's top three (3) customers - in this case, the Bidder will submit the lowest price to customers in the Comparable Government Contract Pricing column and in addition, submit six (6) invoices each for their top three (3) customers. Note: Due to the size of NYS and the potential volume of sales, NYS will only consider pricing offered that is better than non-Comparable Government Contracts and other non-Comparable customers.
Attach 1: Pricing; Pricing Spreadsheet	Safety Shoes (various)	Our contracts with other government agencies cover a good representation of each product line offered but do not cover the complete product line. You are asking for comparable governmental contract pricing for ALL items in each product line. How should this be handled in our bid response?	For each product line, Comparable Government Contract pricing must be provided for all <u>common items</u> offered to NYS.

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Attach 1: Pricing; Pricing Spreadsheet		Required documentation is Attachment #1 Pricing using provided spreadsheet format. This must be submitted in a 8X11 Binder with other documentation. In order to provide this using the provided spreadsheet on the requested 8X11 format included in the binder the mentioned spreadsheets must be reduced using reduced format which shrinks the text to where it will be very hard to read each line item. This is completed using Landscaping format. Would it be acceptable to print pages under a different format other than the 8X11 and attach to the binder versus inserting into the binder. Please advise.	<b>Do not attach to the Binder. This should be inserted into the Binder under the appropriate tab.</b> <b>It is acceptable to print Attach 1: Pricing using a larger size paper than 8X11 and then folding the paper to fit inside the Binder under the appropriate tab.</b>
Attach 1: Pricing; Pricing Spreadsheet		Under which pricing section can hoods be included?	<b>Items such as firefighting hoods, firefighting face/eye protection, etc. should be included as a product line within the sub-category represented by the Manufacturer. For ex., if the manufacturer includes firefighting hoods as part of their turnout gear price list/catalog, then the hoods should be bid under the sub-category of turnout gear. If the manufacturer includes their firefighting hoods as part of their helmets price list/catalog, then hoods should be bid under the sub-category of helmets.</b>
Attach 1: Pricing; Pricing Spreadsheet	Safety Shoes (various)	Does the Safety Shoes (various) category also include non-safety toe (soft toe) slip resistant shoes for employees who don't require impact and compression protection but do need slip resistant footwear?	<b>Safety Shoes (various) category includes various safety shoes that comply with IFB Section 1.2 Scope and Section 3 Specifications.</b>
Attach 11: Manufacturer's Certificate:	<b>Attachment 11: Required Proof of Sales Summary</b>	Attachment 11 is labeled "Required Proof of Sales Summary" (not Manufacturer's Certificate). Last column formatting is % instead of \$, will there be a revision?	<b>Attach 11, Required Proof of Sales Summary has been revised to correct this format error and is posted on the OGS website.</b>
Appendix A: Standard Clauses	2. NON-ASSIGNMENT CLAUSE.	We propose an exception to this clause. It is important that XXXXX has the right to assign this Agreement to any of its affiliate or in connection with the sale or transfer of all or substantially all of the assets of the product line or business to which it pertains, without obtaining a prior consent of the State.	<b>OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).</b>
Appendix A: Standard Clauses	9. SET-OFF RIGHTS.	We are unable to agree to a clause on Set-Off and therefore propose deletion of this clause. As a last resort we would need a prior notification for setoff of XXXXX's payments due directly against this Agreement.	<b>OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).</b>
Appendix A: Standard Clauses	10. RECORDS	While we are willing to let the State inspect the records, we would like to propose certain additions to this clause. Any inspection or audit should take place after a prior written notice to XXXXX which should not be less than 30 days. XXXXX's cost, client and employee data should be exempted from such inspection or audit as we may be in breach of several other contracts if we allow this. The inspection or audit should be at the expense of the State.	<b>OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).</b>

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Appendix B: General Specifications	8(a) Taxes	Price will be exclusive of all applicable taxes.	NYS is tax-exempt and OGS declines to agree to any revision to this clause.
Appendix B: General Specifications	30. PURCHASE ORDERS	"any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User." We are unable to agree to this part of the clause. The provisions of the governing documents should prevail irrespective of whether they are favourable to the Authorized User or not.	OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).
Appendix B: General Specifications	40. ASSIGNMENT	XXXXX's ability to assign due to a reorganization, merger, or consolidation of business should not be dependent on State's waiver. We propose this change.	OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).
Appendix B: General Specifications	42. SUSPENSION OF WORK	We might need costs from State for any rentals that we need to pay for storing the products created for State. Any product that has been created for State expires during the suspension period needs to be paid for by the State.	OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).
Appendix B: General Specifications	43. TERMINATION	We propose that XXXXX be allowed to terminate for cause and convenience as well. We would also need a prior notice in the event of termination under 43 c, d, e and f.	OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).
Appendix B: General Specifications	44. SAVINGS/FORCE MAJEURE	We propose two things: 1) payment obligations of the State should not be affected in the event of a force majeure; 2) any adjustment in the contractual terms under this clause should be with mutual agreement between both the parties.	OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).
Appendix B: General Specifications	47. PROMPT PAYMENTS	We would prefer that payment be made within 30 days from the date of invoice.	OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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). However, Bidder may offer prompt payment discounts (see IFB, Section 6.7).

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Appendix B: General Specifications	48. REMEDIES FOR BREACH	<p>b. What can be the reason behind withholding the payment under this clause. We need to be paid for all products that we have supplied.</p> <p>c. In the event of filing for bankruptcy by XXXXX, why does the need for setoff arise. We would like to discuss this clause.</p> <p>d. We would be able to reimburse for such replacement to the extent of the price of our product. We need to limit our liability under this clause. Regarding the payment of cost and expenses for a successful suit, we will pay whatever the court of law determines for us to pay. We also cannot agree to deduction of the cost of products that were not delivered timely.</p> <p>e. Again, any offset is not some thing we can agree to. we would like to discuss the entire clause 48 in detail.</p>	<p><b>OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).</b></p>
Appendix B: General Specifications	53. COOPERATION WITH THIRD PARTIES	<p>What is the kind of cooperation that is expected from us. We would like to know this in advance and be prepared for it or voice our concerns in case we are unable to.</p>	<p><b>Appendix A &amp; Appendix B are for NYS contracts. NYS has several types of contracts, such as commodities, services, technologies, real estate, construction, etc.</b></p> <p><b>IFB 23054 is a commodity Contract and it would be uncommon for Contractors under this group to work together (excluding emergency situations).</b></p> <p><b>However, there may be future situations that may arise for cooperation with third parties (for ex., e-catalogs or web-based ordering, etc.).</b></p> <p><b>Per IFB, Section 4.7 Bid Deviations: 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).</b></p>
Appendix B: General Specifications	54. WARRANTIES	<p>b. Title and ownership: There is no requirement of transfer or delivery of licenses and therefore, we propose deletion of subclsue (ii); we are unable to agree to indemnify for breach of warranties, the remedy for which is through the court of law.</p> <p>f. Workmanship warranty: We would like to replace 90 days with 15 days.</p> <p>j. No limitation of rights: We need to limit our liability herein and therefore, we propose the deletion of this subclause.</p>	<p><b>OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).</b></p>

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Appendix B: General Specifications	56. INDEMNIFICATION	<p>Since, XXXXX would be in control of the defence, it is not liable to pay for attorney's fees. State may participate at its own cost, however State may not enter into any settlement, assume any obligation or make any concession without the prior written approval of XXXXX, which may not be unreasonably withheld. In the last paragraph, XXXXX is willing to notify the state od such a situation however, it does not have a duty to secure a continuance to permit the State and Authorized User to appear and defend. That is something which has to be undertaken by the State and the Authorized User.</p> <p>We propose the inclusion of the following paragraph: Any liability of Contractor under this provision is subject to the "Limitations of Liability" provision (Section 58). This provision states the parties' entire liability, sole recourse and their exclusive remedies with respect to infringement. All other warranties against infringement of any intellectual property rights, statutory, express or implied are hereby disclaimed.</p>	<p><b>OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).</b></p>
Appendix B: General Specifications	57. INDEMNIFICATION RELATING TO INFRINGEMENT	<p>Since, XXXXX would be in control of the defence, it is not liable to pay for attorney's fees. State may participate at its own cost, however State may not enter into any settlement, assume any obligation or make any concession without the prior written approval of XXXXX, which may not be unreasonably withheld. In the last paragraph, XXXXX is willing to notify the state od such a situation however, it does not have a duty to secure a continuance to permit the State and Authorized User to appear and defend. That is something which has to be undertaken by the State and the Authorized User.</p> <p>We propose the inclusion of the following two paragraphs: Contractor will have no obligation or liability with respect to: (a) Products provided pursuant to State and Authorized User's designs, drawings or manufacturing specifications; (b) Products used other than for their ordinary purpose; (c) claims of infringement resulting from combining any Product furnished under these Terms and Conditions with any article not furnished by Contractor; (d) use of other than the latest version of software Product released by Contractor; or (e) any modification of the Product other than a modification by Contractor. Further, State and Authorized User agree to indemnify and defend Contractor to the same extent and subject to the same restrictions as set forth above in Contractor's obligations to State and Authorized User for any suit against Contractor based upon a claim of infringement resulting from (a), (b), (c), (d) or (e) of the preceding paragraph.</p> <p>Any liability of Contractor under this provision is subject to the "Limitations of Liability" provision (Section 58). This provision states the parties' entire liability, sole recourse and their exclusive remedies with respect to infringement. All other warranties against infringement of any intellectual property rights, statutory, express or implied are hereby disclaimed.</p>	<p><b>OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).</b></p>

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Appendix B: General Specifications	58. LIMITATION OF LIABILITY	<p>We are unable to agree to unlimited liability for our indemnification obligations.</p> <p>We propose that subclause a be replaced by the following paragraph: Contractor's liability for damages arising out of or related to this Agreement shall in no case exceed the lesser of the contract price for the Product that gave rise to the claim paid by the State or Authorized User to the Contractor or _____.</p> <p>We propose the deletion of subclause b in its entirety.</p>	<p><b>OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).</b></p>
Appendix B: General Specifications	59. DISPUTE RESOLUTION PROCEDURES	<p>We propose to have dispute resolution under the AAA instead of the OGS.</p>	<p><b>OGS declines to agree to this revision. Per IFB, Section 4.7 Bid Deviations: 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).</b></p>