



Solicitation (Revised 05/01/2017)

BID OPENING DATE: 5/11/2017 TIME: 11:00 A.M. EST SOLICITATION NUMBER: 23073	TITLE: Group 30204- Athletic Equipment (Statewide) Classification Code: 49
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CONTRACT PERIOD: 5 years, with option to renew up to 2 additional years

DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.

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Email Address: ogs.sm.insrev@ogs.ny.gov	
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Bidder's Federal Tax Identification Number: (Do Not Use Social Security Number)		NYS Vendor Identification Number: (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
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.

☐ WE ARE NOT BIDDING AT THIS TIME BECAUSE:

FOR PROCUREMENT SERVICES USE ONLY

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

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 http://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

Contents

SECTION 1	Introduction	6
1.1	Overview	6
1.2	Scope	6
1.3	Estimated Quantities	7
1.4	Key Events/Dates	8
1.5	Pre-Bid Conference	8
1.6	Bidder Questions.....	9
1.7	NYS Contract Reporter	9
1.8	Summary Of Policy And Prohibitions On Procurement Lobbying.....	9
1.9	Definitions.....	10
1.10	Conflict of Terms	11
SECTION 2	Bidder Qualifications.....	11
SECTION 3	Specifications	12
SECTION 4	Bid Submission	12
4.1	Performance and Bid Bonds	12
4.2	NYS Vendor File Registration	12
4.3	Format and Content of Bid Submission	13
4.3.1	Content	13
4.3.2	Bid Envelopes and Packages	14
4.3.3	Bid Delivery	14
4.3.4	Important Building Access Procedures	15
4.4	NYS Required Certifications	15
4.5	Bid Deviations	15
4.6	Bid Opening Results	15
4.7	Bid Liability	15
4.8	NYS Reserved Rights	16
4.9	Incorporation	16
SECTION 5	Method of Award.....	17
5.1	Method of Award.....	17
5.2	Periodic Recruitment	17
5.3	Procurement Instructions for Authorized Users.....	18
5.4	Notification of Award.....	18

SECTION 6	Terms and Conditions	19
6.1	Contract Term and Extensions	19
6.2	Short Term Extension.....	19
6.3	Price	19
6.3.1	Public Works	20
6.4	Price Updates	20
6.5	Best Pricing Offer	21
6.6	Price Structure	21
6.7	Volume Discounts	22
6.8	Ordering	22
6.9	Minimum Order	22
6.10	Invoicing and Payment.....	22
6.11	Product Delivery.....	23
6.12	Product Returns and Exchanges	23
6.13	Contract Administration	23
6.14	NYS Financial System (SFS).....	24
6.15	Web-Based Ordering.....	24
6.16	Accessibility of Web-Based Information and Applications Policy.....	25
6.17	Americans with Disabilities Act (ADA)	25
6.18	Insurance.....	25
6.19	Report of Contract Usage.....	25
6.20	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	26
I.	New York State Law	26
II.	General Provisions	26
III.	Equal Employment Opportunity (EEO)	26
IV.	Contract Goals.....	27
V.	Fraud	28
6.21	Participation Opportunities for New York State Certified Service-Disabled Veteran Owned Businesses	28
6.22	Use of Recycled or Remanufactured Materials	29
6.23	Bulk Delivery and Alternate Packaging	29
6.24	Surplus/Take-Back/Recycling	29

6.25	Environmental Attributes and NYS Executive Order Number 4	30
6.26	Consumer Products Containing Mercury.....	30
6.27	Diesel Emission Reduction Act	30
6.28	Overlapping Contract Products.....	31
6.29	Preferred Source Products.....	31
6.30	NYS Vendor Responsibility	31
6.31	NYS Tax Law Section 5-a	32
6.32	“OGS or Less” Guidelines	32
6.33	Non-State Agencies Participation in Centralized Contracts.....	33
6.34	Extension of Use.....	33
6.35	Resellers	33
6.36	New Accounts	34
6.37	Centralized Contract Modifications	34
6.38	Drug and Alcohol Use Prohibited.....	35
6.39	Traffic Infractions.....	35
6.40	Instruction Manuals	35
6.41	Embedded Software/Firmware; Updates.....	35

APPENDICES

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

Appendix B – *General Specifications* (April 2016)

ATTACHMENTS

Attachment 1 – *Pricing* (*Revised 05/01/2017*)

Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Encouraging Use of New York State Businesses in Contract Performance*

Attachment 4 – *Insurance Requirements*

Attachment 5 – *Bidder Information Questionnaire*

Attachment 6 – *Bidder Submission Checklist* (*Revised 05/01/2017*)

Attachment 7 – *Bidder Questions/Deviations Form*

Attachment 8 – *Report of Contract Usage*

Attachment 9 – *Contractor and Reseller Information*

SECTION 1 Introduction

1.1 Overview

This Solicitation is issued by the New York State (NYS) Office of General Services (OGS), Procurement Services. The Contracts awarded as a result of this Solicitation will be multiple statewide centralized Contracts for the purchase of commercial strength training, cardiovascular, and gymnasium and physical education equipment by all Authorized Users eligible to purchase through this Solicitation. The term of this award will be five (5) years with the option to extend up to two additional years. This Solicitation is being conducted as a non-competitive periodic recruitment. Contract awards will be made to all responsive and responsible Bidders who meet minimum qualifications and offer reasonable, not to exceed prices as determined by OGS. Bidder must be a manufacturer or an authorized distributor/reseller of a manufacturer for the products they are offering under this Solicitation.

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

1.2 Scope

This is a discount from pricelist contract providing for strength training, cardiovascular, and gymnasium and physical education equipment to Correctional Facilities, State Agencies, State Colleges, Public Schools and other eligible Authorized Users. Products designed primarily for home use will not be considered. Products shall be of commercial/institutional grade. Authorized users are encouraged to purchase from contractors who offer products and pricing that best meets their needs. Installation is not part of this contract. Product categories are as follows:

Strength training equipment and associated accessories	
Equipment specialized for improving muscular strength by gradually increasing the ability to resist force through the use of free weights, machines, or the person's own body weight.	
Examples include: <ul style="list-style-type: none"> • Weightlifting machines • Weight Benches • Bars and plates • Dumbbells • Plyometric equipment • Medicine balls • Training Ropes 	Accessories include: <ul style="list-style-type: none"> • Dumbbell racks • Medicine ball racks • Resistance bands • Weight vests and belts

Cardiovascular equipment and associated accessories	
Equipment that focuses on raising heart rate and exercising the cardiovascular system.	
Examples include: <ul style="list-style-type: none"> • Treadmills • Elliptical Machines • Stair Climbers • Rowers • Stationary exercise bikes 	Accessories include: <ul style="list-style-type: none"> • Replacement equipment • Bike seat covers • Pedals • Equipment mat

Gymnasium and Physical Education (indoor and outdoor) equipment and accessories that are directly associated with or attached to the products in this category	
Items in this category are intended to equip the athletic facilities of Authorized Users with core objects for organized sports and physical training.	
Examples include: <ul style="list-style-type: none"> • Gym mats (for wall or floor) • Gym curtain dividers • Climbing ropes • Practice cages • Sport goals and goal posts • Volleyball and other net game systems • Basketball backboards • Indoor climbing walls 	Accessories include: <ul style="list-style-type: none"> • Ground sleeves (for outdoor steel post goals) • Goal nets • Protective padding for equipment • Floor sleeves • Floor cover plates • Winch

Bidders may bid on one or multiple Product Categories.

Exclusions:

The Following products and/or services are specifically excluded from the scope of this Solicitation and resulting Contracts:

- Standalone tablets
- All Benches (except weight benches)
- Bleachers
- Gym floors
- Lockers
- Balls and other similar individual sporting equipment

Authorized Users may purchase Products with internet or Cloud-based capabilities, but must carefully review any associated terms and conditions prior to purchase, and such terms and conditions have not been reviewed or approved by OGS. Any costs for internet or Cloud services are not included in this Solicitation and must be procured separately following the Authorized User's regular procurement practices.

Authorized Users may purchase Products requiring installation from any resultant Contract. However, any installation shall need to be procured separately following the Authorized User's regular procurement procedures and taking into account any Public Works requirements. See specific information provided in Section 6.3 – Price and 6.3.1 Public Works.

1.3 Estimated Quantities

The quantities or dollar values listed in this Solicitation are estimated only. A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases of all Authorized Users under previous awards, is approximately \$5M to \$7M annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

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

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

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

1.4 Key Events/Dates

<u>EVENT</u>	<u>DATE</u>	<u>TIME</u>
Registration Deadline for Pre-Bid Conference (webinar)	4/11/2017	5:00 PM ET
Pre-Bid Conference (webinar)	4/12/2017	10:00AM ET – 12:00PM ET
Closing Date for Bidder Questions	4/18/2017	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	4/28/2017 <i>(tentative)</i>	N/A
Bid Opening / Due date for Bids	5/11/2017	11:00 AM ET
Contract Approval Date / Award Publish Date	8/31/2017 <i>(tentative)</i>	N/A

1.5 Pre-Bid Conference

A Pre-Bid Conference will be held at the time and date indicated in Key Events/Dates. Attendance at the Pre-Bid Conference is not mandatory, but it is recommended that all Bidders attend the Pre-Bid Conference. A Bidder should register for the Pre-Bid Conference by sending an email to Sarah.Crossman@ogs.ny.gov on or before the "Pre-Bid Conference registration due" date indicated in Key Events/Dates. The email should indicate the Bidder's legal business name and the name and title of Pre-Bid Conference attendees.

The Pre-Bid conference will be offered via webinar only. The conference call number will be provided to registered attendees prior to the Pre- Bid Conference. If technological issues arise during the Pre-Bid Conference, participants shall immediately email or call the agency contact. If the technological issues are attributable to the State and cannot be immediately resolved, the Pre-Bid Conference will be re-scheduled.

The purpose of the Pre-Bid Conference is to review Bid submission procedures. Bidder questions related to the Solicitation will be permitted. However, answers will be deferred and included in the written and official OGS response to Bidder questions, which will include answers to all submitted questions, and will

be posted on the OGS website in accordance with the Bidder Questions section. Answers given at the Pre-Bid Conference are unofficial and not binding.

1.6 Bidder Questions

All questions regarding this Solicitation, including insurance requirements, should be submitted using Attachment 7 – *Bidder Questions/Deviations Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to Sarah.Crossman@ogs.ny.gov by the date and time indicated in the Key Events/Dates section. Bidder shall receive confirmation upon receipt of Bidder Questions/Deviations Form. It is the responsibility of the Bidder to follow up before the deadline if a confirmation is not received. 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 Solicitation in any way, the proposed deviations must 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.

1.7 NYS Contract Reporter

Bidders must register with the New York State Contract Reporter (“NYSCR”) at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the “I want to find contracts to bid on” page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must 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 e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents. **Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information may result in your Bid being deemed non-responsive to the Solicitation.**

1.8 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. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for Contract award and, in the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at: <http://www.ogs.ny.gov/acpl/>

1.9 Definitions

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

“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.

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

“Net Pricing” as specified in Appendix B Pricing and shall also include “Set-In-Place installation” as follows: unloading, moving to point of use, uncrating, assembling, adjusting, connecting all services and leaving ready to operate to the full extent of its design capabilities. However, anything considered Public Works is excluded.

“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.

“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

Appendices and Attachments

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

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

Appendix B – *General Specifications* (April 2016)

Attachment 1 – *Pricing* (*Revised 05/01/2017*)

Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Encouraging Use of New York State Businesses in Contract Performance*

Attachment 4 – *Insurance Requirements*

Attachment 5 – *Bidder Information Questionnaire*

Attachment 6 – *Bidder Submission Checklist* (*Revised 05/01/2017*)

Attachment 7 – *Bidder Questions/Deviations Form*

Attachment 8 – *Report of Contract Usage*

Attachment 9 – *Contractor and Reseller Information*

1.10 Conflict of Terms

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

1. Appendix A (January 2014), *Standard Clauses for New York State Contracts*;
2. Solicitation 23073 , including all appendices and attachments;
3. Appendix B (April 2016), *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:

- Bidder must have a minimum of one year experience selling equipment consistent with the scope of the bid
- Bidder must be a manufacturer or an authorized distributor/reseller of a manufacturer for the products they are offering under this Solicitation.
- Bidder must provide copies of at least one comparable governmental and/or municipal contract (a web link or an electronic copy, i.e. GSA, WSCA, VA, other state or locality, etc., to be indicated on Attachment 1-Pricing) in size and scope in effect within the last two (2) years that lists the Net Price and shows the discount and FOB point so OGS can determine pricing being offered to New York State are reasonable.

New York State reserves right to reject any bidder that does not meet the minimum qualifications for this solicitation.

SECTION 3 Specifications

- The offerings shall include products which are within the scope of the Product Categories, listed in section 1.2, ONLY. Do not include products that fall outside of the Scope.
- Used or refurbished products will not be considered.
- All products shall be of commercial/institutional grade designed for heavy use. Products will be frequently used on a daily basis by multiple people.
- Products designed primarily for home use will not be considered.
- When applicable, equipment purchased from the resulting contracts of this Solicitation shall meet safety standards developed by organizations such as ASTM International, ISO (International Organization for Standardization) or any other safety standard organization. Proof shall be made available by Bidder at the request of OGS or Authorized User.

New York State reserves the right to define what products fall within scope.

SECTION 4 Bid Submission

4.1 Performance and Bid Bonds

There are no bonds for this Contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract is required at any time during the term of the resulting Contract.

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 (http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) and submit the form to OGS in advance of Bid submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if an authorized reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the Vendor File please visit the following website:
http://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.

E-mail 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 the Solicitation may be considered non-responsive and may be rejected.

4.3.1 Content

A complete Bid consists of each of the following:

1. **TWO** electronic copies on CD or flash drive:
 - a. Pages 1 and 2 of the Solicitation (*Revised 05/01/2017*) (signed and scanned) (PDF);
 - b. Completed Attachment 1 – *Pricing* (*Revised 05/01/2017*) for all Products offered in the Bid (Excel);
Failure to submit the bid with an updated Attachment 1-Pricing, may deem bidder non-responsive and result in disqualification;
 - c. Completed Attachment 2 – *NYS Required Certifications* with original ink signatures (PDF);
 - d. Completed Attachment 3 – *Encouraging Use of New York State Businesses in Contract Performance* (PDF);
 - e. Proof of compliance with Attachment 4 – *Insurance Requirements* (PDF);
 - f. Completed Attachment 5 – *Bidder Information Questionnaire* (Excel);
 - g. Completed Attachment 6 – *Bidder Submission Checklist* (*Revised 05/01/2017*)(Excel);
 - h. Completed Attachment 9 – *Contractor and Reseller Information* (PDF);
 - i. Completed ST-220CA, Contractor Certification, notarized with original ink signatures (PDF);
 - j. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF);
 - k. Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF).
 - l. If any Bid Updates were issued (including any responses to Bidder Inquiries), completed, signed and submitted copies of All Bid Updates agreeing to amended terms.
2. Original paper versions of each of the following (to be placed in a loose leaf binder and tabbed):
 - a. Pages 1 and 2 of the Solicitation (*Revised 05/01/2017*) with original ink signatures;
 - b. Completed Attachment 2 – *NYS Required Certifications* with original ink signatures;
 - c. Completed Attachment 3 – *Encouraging Use of New York State Businesses in Contract Performance*;

- d. Proof of compliance with Attachment 4 – *Insurance Requirements*;
- e. Completed Attachment 5 – *Bidder Information Questionnaire*;
- f. Completed Attachment 6 – *Bidder Submission Checklist (Revised 05/01/2017)*;
- g. Completed ST-220CA, Contractor Certification, notarized with original ink signatures;
- h. Completed Form EEO100, Equal Employment Opportunity Staffing Plan;
- i. Standard Vendor Responsibility Questionnaire complete with original ink and notarized or Certification that Questionnaire has been completed online.
- j. If any Bid Updates were issued (including any responses to Bidder Inquiries), completed, signed and submitted copies of ALL Bid Updates agreeing to amended terms

Also, please note that in the case of 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.

A Bidder should note that any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.

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 (23073)
- 3. Bid Opening Date and Time
- 4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

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

4.3.3 Bid Delivery

Bids shall be delivered to the following address on or before 11:00 a.m. ET, on or before the Bid opening date:

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 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in *Bidder Questions*, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations must 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.

4.6 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>

4.7 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.

4.8 NYS Reserved Rights

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

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

4.9 Incorporation

Portions of the successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. A final Contract will be formalized either through a separate contract document or through a contract award letter incorporating the Bid, each having its own provision governing conflict of terms.

SECTION 5 Method of Award

5.1 Method of Award

This Solicitation is being conducted as a non-competitive periodic recruitment. Award shall be made to all responsive and responsible Bidder(s) by Product Category who meet minimum qualifications and whose pricing indicates that Products offered will be delivered at a reasonable price as determined by OGS Procurement Services. Bidder shall offer a minimum Category Discount percentage (must be greater than 0.00%) from a manufacturer's nationally published price list which shall apply to all items within the Product Category. However, bidder may offer an additional percent discount for certain items in each category. In no event can the percent discount for any item be lower than the minimum Category Discount percentage. Items that are not offered at a reasonable price, as determined by OGS, may not be awarded.

It is the expectation of the State that Bidders shall offer reasonable and competitive pricing for all offered Products. New York State reserves the right to exclude from award any Products that do not fall within the scope or are not deemed to be offered at prices advantageous to the State. New York State reserves the right to require additional documentation to support the reasonableness of the prices offered. At the time of the Bid opening, Bidder must provide copies of at least one comparable governmental and/or municipal contract (a web link or an electronic copy, i.e. GSA, WSCA, VA other state or locality, etc. to be indicated on Attachment 1-Pricing,) in size and scope in effect within the last two (2) years that lists the Net Price and shows the discount and FOB point so OGS can determine prices being offered to New York State are reasonable. New York State reserves the right to reject any Bidder that does not meet the minimum qualifications for this solicitation. OGS also reserves the right to delete an individual item for which there is no comparable contract price.

New York State anticipates that the State shall be treated as a single entity and that prices reflect volume aggregated discounts commensurate with the statewide volume. Bidders are encouraged to offer their best possible pricing; additionally, Contractors may negotiate better pricing with Authorized Users at any time throughout the Contract period. (See Appendix B, Section 13, Pricing).

5.2 Periodic Recruitment

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

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for Product Categories covered by the scope of the awarded Contract, but may bid on Product Categories for which it has not been awarded a Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

5.3 Procurement Instructions for Authorized Users

The resultant Contracts will be centralized Contracts issued under a multiple award structure. Products offered under the Contracts, pricing, and other Contract information will be posted to the OGS website and, if applicable, the awarded Contractors' dedicated NYS websites. 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.

Where commodities/services are not available from Preferred Source suppliers in the form, function and utility required by the Authorized User, Authorized Users shall purchase from the centralized Contracts awarded under this Solicitation. The basis for selection among multiple contracts at the time of purchase shall be the most practical and economic alternative and shall be in the best interests of the State. Therefore, Authorized Users are strongly encouraged to obtain quotes from at least three (3) Contractors prior to issuing a purchase order, in order to ensure that the Authorized User is receiving the best possible pricing. The Authorized User shall document its procurement decisions in its Procurement Record.

When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include: statement of need and associated requirements; obtaining all necessary prior approvals; a summary of the Contract alternatives considered for the purchase; and the reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

Authorized Users will issue purchase orders directly to the Contractor or the Contractor's authorized Reseller (if applicable), as specified by the Contractor, and specifying any shipping/delivery requirements.

Upon Authorized User acceptance of Products itemized on the purchase order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products.

Note: Contractor must disclose any forms or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents which contain additional terms or conditions must receive pre-approval by the Authorized User. Additional terms or conditions that were not pre-approved by the Authorized User or which conflict with the Contract terms and conditions are void and unenforceable at the sole discretion of the State.

Authorized Users may purchase Products requiring installation from any resultant Contract. However, any installation shall need to be procured separately following the Authorized User's regular procurement procedures and taking into account any Public Works requirements.

5.4 Notification of Award

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.

Non-awardees will receive written notification 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 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 Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for up to two (2) years, 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 – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

6.3 Price

A single minimum percentage discount is required for each Item Category. Bidder must provide a Product Category discount that is greater than zero. However, bidder may offer an additional percent discount for certain items in each category. In no event can the total percent discount for any item be lower than the minimum Category Discount percentage. Percent offered should be stated within two decimal places. Bids will be accepted on manufacturer's nationally published pricelists only. Bidders should submit bids on the most current pricelist available at the time of the bid opening. Upon request, bidder shall demonstrate that the pricelist submitted is an authentic nationally published pricelist by the manufacturer; such proof shall be in the form of a signed statement from a corporate officer of the manufacturer.

ACCEPTABLE NATIONALLY PUBLISHED PRICELIST TO BE BID MAY INCLUDE THE FOLLOWING:

- Manufacturer's Suggested List Price (MSLP)
- Manufacturer's Suggested Retail Price (MSRP)
- Governmental Pricelist
- Manufacturer's Commercial Pricelist

Bidders are asked to submit only the portion of their pricelist that applies to the products that meet the Scope. The State reserves the right to eliminate products that do not fall within the scope or pricing is not deemed reasonable. The State also reserves the right to recommend no award to vendors whose pricing is not deemed reasonable.

Pricing shall be Net Pricing as specified in Appendix B Pricing and shall include "Set-In-Place installation" as follows: unloading, moving to point of use, uncrating, assembling, adjusting, connecting all services

and leaving ready to operate to the full extent of its design capabilities. However, anything considered Public Works is excluded.

Delivery shall be to the specific location indicated by the Authorized User on the purchase order. Authorized user should clearly indicate on purchase order the specific location where delivery is required to be made. (For Example, authorized users should use terminology such as "DELIVERY TO ROOM_____LOCATED ON_____floor," etc., on purchase orders).

If additional delivery charges are required for any reason, Contractor shall provide a detailed written statement of such additional delivery charges to the Authorized User, and Authorized User shall agree to such charges prior to delivery and such costs shall be prepaid by the contractor and added to the invoice. NOTE: If it is determined the Contractor is charging excessive amounts for delivery, the State may seek reimbursement for such amounts.

6.3.1 Public Works

Installation work which is considered public works is excluded from purchase under this Solicitation. Historically, the New York State Bureau of Public Works has maintained that installation, maintenance, and repair of equipment attached to any wall, ceiling, or floor, or affixed by hard wiring or plumbing is public work. In contrast, installation of a piece of equipment which is portable or a "plug-in" free-standing unit would not be considered public work. Thus, this Solicitation does not authorize installation where the equipment becomes a permanent part of the building structure, or is otherwise incorporated into the fabric of the building (e.g. installation on a wall, ceiling, or floor in a fixed location, or affixed by hard-wiring or plumbing). This includes bolting or bracketing into walls, floors, or ceilings for the purpose of security, stability, or use. See Appendix B, Prevailing Wage Rates – Public Works and Building Services Contracts. For questions about whether a proposed installation constitutes public work, please contact the New York State Department of Labor's Bureau of Public Work district office in your area.

Authorized Users **may** purchase Products requiring installation from any resultant Contract. However, any installation shall be procured separately following the Authorized User's regular procurement procedures and taking into account any Public Works requirements.

Pricing will be collected using Attachment 1 – *Pricing (Revised 05/01/2017)* in accordance with the Instructions tab listed within Attachment 1.

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 their pricelist to reflect Contractor price changes and the addition/deletion of Products. Requests for price adjustments based on changes to the nationally published price list and addition or deletion of items shall be submitted no less than 30 days prior to the anniversary date of the Bid opening and annually thereafter. Requests from Contractor(s) for price adjustments at any other time will not be granted. Percent discount can never decrease. Contract Price Lists may be modified at other intervals at the request of OGS Procurement Services.

The Contractor shall provide OGS with one electronic copy of the updated pricing. No Price Updates will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or any other documentation that is required under the resulting contract.

Contractor must also submit the supporting documentation listed below with their update request:

- Manufacturer's Suggested List Price (MSLP)
- Manufacturer's Suggested Retail Price (MSRP)

- Governmental Pricelist
- Manufacturer's Commercial Pricelist

In the event that such contracts are not available, the bidder shall supply invoices of sales to the referenced entities with repeat business detailing the discount and FOB point.

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

The discount offered on any existing or new Products added to pricelists must be at least the minimum established product category discount. If existing products have an additional discount, this may not be decreased. Contractors shall submit their updated pricelist to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves the right to request copies of existing contracts or price lists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

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 e-mail to the OGS Procurement Services contract administrator. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

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

Contractor's Submission of Contract Updates

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.

6.5 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 Price Structure

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

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

6.7 Volume Discounts

If Contractor offers a Volume Discount, this should be indicated on Attachment 5 - *Bidder Information Questionnaire*.

Volume discounts will not be assessed when determining if a vendor's prices are reasonable.

6.8 Ordering

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

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

6.9 Minimum Order

Bidders are encouraged not to set minimum orders. If Bidder wishes to set a minimum order, this must be included on Attachment 5 - *Bidder Information Questionnaire*. Bidders may not raise their minimum order amount after the Contract is awarded, but may lower or waive it at any time.

6.10 Invoicing and Payment

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

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

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date

- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

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

6.11 Product Delivery

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

Authorized Users may have certain security requirements for delivery, including schools, hospitals, or correctional facilities. Authorized Users with such requirements shall specify such requirements on the Purchase Order. Contractor shall be responsible for following all specified requirements.

6.12 Product Returns and Exchanges

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

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

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

6.13 Contract Administration

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

Bidder shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in Attachment 5 – *Bidder Information Questionnaire*. Contractor must notify OGS within five Business Days if its Contract Administrator, Emergency Contact, or Customer

Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

6.14 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://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 and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

6.15 Web-Based Ordering

The State encourages the Contractor (and any approved Resellers) to establish and maintain a dedicated NYS website specifically for the resulting Contract that has a web-based ordering system with the capability of receiving electronic orders from over 5,000 Authorized Users via the internet. The web-based ordering system shall have full order inquiry capabilities and shall acknowledge receipt of an Authorized User’s order. Contractor (and any approved Resellers) shall be required to post a copy of Contract Pricing, in both Excel and PDF formats on the website. The website link(s) will be listed under the Contractor information on the OGS website. The Contractor’s (and any approved Resellers) website will be the responsibility of the Contractor (and any approved Resellers) to maintain and keep updated. The State reserves the right to request demonstrations of the Contractor’s website.

The web-based ordering system must be capable of controlling, documenting and reporting on the following minimum data elements:

- Contractor Name and Address
- Contract Number
- Ordering Agency/Facility/Political Subdivision, etc. and Address
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- Delivery Location
- Delivery Instructions
- Stock Number
- Manufacturer
- Description
- Unit of Measure
- List Price (unit)
- Net Price (unit)

In the event the Contractor utilizes Resellers under the resulting Contract, Contractor must provide on the landing page of its dedicated NYS website, a link to each Reseller's website. All Resellers must provide a dedicated NYS website that mirrors that of the Contractor as set forth above.

6.16 Accessibility of Web-Based Information and Applications Policy

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

Any web-based information and applications development, or programming delivered pursuant to the Contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005. Quality assurance testing may be conducted by the State and the results of such testing, if performed, must be satisfactory to the State before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.

6.17 Americans with Disabilities Act (ADA)

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

6.18 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*.

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

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

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

6.20 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, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be

performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.

2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 – Staffing Plan

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

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

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.

2. Separate forms shall be completed by Contractor and all subcontractors.

3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

IV. Contract Goals

A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation

of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at:
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.
Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

V. Fraud

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

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

6.21 Participation Opportunities for New York State Certified Service-Disabled Veteran Owned Businesses

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

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and

expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

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

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

ALL FORMS ARE AVAILABLE AT:

http://www.ogs.ny.gov/Core/SDVOBA.asp?_sm_a_u_=-iVVjF227tLtF4JJH

6.22 Use of Recycled or Remanufactured Materials

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Solicitation. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

6.23 Bulk Delivery and Alternate Packaging

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A Contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the Product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

6.24 Surplus/Take-Back/Recycling

- I. A State Agency is reminded of its obligation to comply with the NY State Finance Law § 167, Transfer and Disposal of Personal Property, and § 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.
- III. The NYS Department of Environmental Conservation ("DEC") Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection,

handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at:
<http://www.dec.ny.gov/chemical/65583.html>

IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology ("NIST") Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

6.25 Environmental Attributes and NYS Executive Order Number 4

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <http://ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

6.26 Consumer Products Containing Mercury

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any Products containing elemental mercury for any purpose under the Contract.

6.27 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.

6.28 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.

6.29 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.

6.30 NYS Vendor Responsibility

OGS conducts a review of prospective Contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction Contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website at <http://www.osc.state.ny.us/vendrep/index.htm> or to enroll, go directly to the VendRep System online at <http://www.osc.state.ny.us/vendrep/enroll.htm>.

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the *NYS Vendor File Registration* section. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

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

The Bidder agrees that if it is awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

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

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

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

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

6.31 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 http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at http://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 <http://www.tax.ny.gov/> for additional information.

6.32 "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.

6.33 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 (<http://www.ogs.state.ny.us/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

6.34 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.

6.35 Resellers

A. Definition

“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.

B. Conditions of Reseller Participation

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

1. such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;

3. those qualifying criteria met by the Reseller must be identified in Reseller designations in Attachment 9 - *Contractor and Reseller Information* at the time that Reseller approval is requested; and,
4. Immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.

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

C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 9 - *Contractor and Reseller Information*. Contractor shall also specify whether orders must be placed directly with Contractor, or may be placed directly with designated Resellers.

D. Responsibility for Reporting/Performance

Contractor shall be fully liable for a Reseller's performance and compliance with all Contract terms and conditions. Product purchased through a Reseller must be reported by Contractor in the required 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.

E. Applicability of Contract Terms

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

6.36 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.

6.37 Centralized Contract Modifications

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of Contract Terms*.

6.38 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

6.39 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.

6.40 Instruction Manuals

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

6.41 Embedded Software/Firmware; Updates

Contractor shall provide at no charge all updates to any embedded software or firmware in the Product offered to customers generally.