



SOLICITATION

BID OPENING DATE: May 14, 2019 TIME: 11:00 A.M. EST SOLICITATION NUMBER: 23150	TITLE: Group 77201 – Intelligent Facility & Security Systems and Solutions (Statewide) Classification Codes: 32, 43, 46, 92
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CONTRACT PERIOD:	Five (5) years with extensions for up to 10 years, in increments as deemed to be in the best interest of the State.
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DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.

Email Address: Michael.DeCicco@ogs.ny.gov

Michael DeCicco Contract Management Specialist 1 Telephone No. (518) 474-3562 E-mail address: Michael.DeCicco@ogs.ny.gov	Joseph Better Contract Management Specialist 2 Telephone No. (518) 474-7101 E-mail address: Joseph.Better@ogs.ny.gov
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Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>	NYS Vendor Identification Number: <i>(See New York State Vendor File Registration Clause)</i>
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Legal Business Name of Company Bidding:

D/B/A – Doing Business As (if applicable):

Street	City	State	County	Zip Code
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E-mail Address:	Company Web Site:
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If applicable, place an "x" in the appropriate box(es) *(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
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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

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 365 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 Solicitation.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or Services as described in the Solicitation.
3. The Bidder has read and understands the provisions of the Solicitation, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS’s procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at https://ogs.ny.gov/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

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TABLE OF CONTENTS

SECTION 1: INTRODUCTION	8
1.1 OVERVIEW	8
1.2 SCOPE	8
1.3 ESTIMATED QUANTITIES	10
1.4 KEY EVENTS/DATES.....	11
1.5 PRE-BID CONFERENCE.....	11
1.6 BIDDER QUESTIONS.....	12
1.7 NYS CONTRACT REPORTER.....	12
1.8 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING.....	12
1.9 DEFINITIONS.....	12
1.10 APPENDICES AND ATTACHMENTS.....	12
1.11 ADDENDA.....	13
1.12 CONFLICT OF TERMS.....	13
SECTION 2: BIDDER QUALIFICATIONS	14
2.1 GENERAL QUALIFICATIONS	14
2.2 MINIMUM QUALIFICATIONS.....	14
2.2.1 PROOF OF PAST SALES	14
2.2.2 CONTINUOUS OPERATION REQUIREMENT	14
2.3 LOT 1 SPECIFIC QUALIFICATIONS	14
2.4 LOT 2 SPECIFIC QUALIFICATIONS	14
SECTION 3: ADMINISTRATIVE PROPOSAL REQUIREMENTS	15
3.1 NYS REQUIRED CERTIFICATIONS.....	15
3.2 ENCOURAGING THE USE OF NYS SMALL BUSINESSES	15
3.3 INSURANCE	15
3.3.1 LOT 2 PROJECT-SPECIFIC INSURANCE	15
3.4 NYS FIRE ALARM SECURITY SYSTEMS INSTALLER LICENSE WHERE REQUIRED BY LAW	15
3.5 BIDDER INFORMATION QUESTIONNAIRE	15
3.6 BIDDER SUBMISSION CHECKLIST	15
3.7 EEO 100 (EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN)	15
3.8 MWBE UTILIZATION.....	16
3.8.1 MWBE 100 (MWBE UTILIZATION PLAN) OR WAIVER	16
3.9 SDVOB UTILIZATION	16
3.9.1 SDVOB 100 (SDVOB UTILIZATION PLAN) OR WAIVER	16
3.10 PROOF OF SALES.....	17
3.11 LOT 1 DEALER PROPOSAL FORM.....	17
3.12 PRICING.....	17
3.12.1 REASONABLENESS OF PRICE	17
3.12.2 COMPARABLE CONTRACTS	17
SECTION 4: BID SUBMISSION	19
4.1 NOTICE TO POTENTIAL BIDDERS	19
4.2 PERFORMANCE AND BID BONDS	19
4.3 NYS VENDOR FILE REGISTRATION.....	19
4.4 FORMAT OF BID SUBMISSION	19
4.5 CONTENT	20
4.6 BID ENVELOPES AND PACKAGES	20
4.7 BID DELIVERY.....	20
4.8 IMPORTANT BUILDING ACCESS PROCEDURES	20
4.9 BID DEVIATIONS	20
4.10 ELECTRONIC BID OPENING RESULTS	21
4.11 BID LIABILITY	21
4.12 FIRM OFFER.....	21

4.13	NYS RESERVED RIGHTS.....	21
4.14	AUTHORIZED USER RESERVED RIGHTS	22
4.15	INCORPORATION	22
SECTION 5: METHOD OF AWARD		23
5.1	METHOD OF AWARD	23
5.2	NOTIFICATION OF AWARD	23
SECTION 6: TERMS AND CONDITIONS		24
6.1	CONTRACT TERM AND EXTENSIONS	24
6.2	SHORT TERM EXTENSION	24
6.3	PROCUREMENT INSTRUCTIONS FOR AUTHORIZED USERS	24
6.4	SURVIVAL OF AUTHORIZED USER AGREEMENTS	24
6.5	ADDITIONAL CONTRACTOR TERMS AND CONDITIONS WITHIN AN AUTHORIZED USER AGREEMENT	24
6.6	PERIODIC RECRUITMENT	24
6.7	EMERGING TECHNOLOGIES	25
6.8	CONTRACT UPDATE PROCEDURES	25
6.9	NYS DOL PREVAILING WAGE RATES	25
6.9.1	OVERVIEW:	25
6.9.2	LIVING WAGE LAW	26
6.10	PRODUCT LINES	26
6.11	BEST PRICING OFFER	26
6.12	PURCHASING CARD ORDERS.....	29
6.13	MINIMUM ORDER	29
6.14	INVOICING AND PAYMENT	29
6.15	NYS FINANCIAL SYSTEM (SFS).....	30
6.16	AMERICANS WITH DISABILITIES ACT (ADA)	30
6.17	INSURANCE	30
6.18	REPORT OF CONTRACT USAGE.....	30
6.19	CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NYS CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN	31
6.19.1	NEW YORK STATE LAW	31
6.19.2	GENERAL PROVISIONS	31
6.19.3	EQUAL EMPLOYMENT OPPORTUNITY (EEO)	31
6.19.4	CONTRACT GOALS	32
6.19.5	MWBE UTILIZATION PLAN	32
6.19.6	REQUEST FOR WAIVER	33
6.19.7	REQUIRED GOOD FAITH EFFORTS	34
6.19.8	MONTHLY MWBE CONTRACTOR COMPLIANCE REPORT	34
6.19.9	BREACH OF CONTRACT AND LIQUIDATED DAMAGES	35
6.19.10	FRAUD	35
6.20	PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES.....	35
6.20.1	CONTRACT GOALS	36
6.20.2	SDVOB UTILIZATION PLAN	36
6.20.3	REQUEST FOR WAIVER	36
6.20.4	REQUIRED GOOD FAITH EFFORTS	37
6.20.5	MONTHLY SDVOB CONTRACTOR COMPLIANCE REPORT	37
6.20.6	BREACH OF CONTRACT AND DAMAGES	37
6.21	USE OF RECYCLED OR REMANUFACTURED MATERIALS	35
6.22	BULK DELIVERY AND ALTERNATE PACKAGING	38
6.23	SURPLUS/TAKE-BACK/RECYCLING.....	38
6.24	ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4	38
6.25	CONSUMER PRODUCTS CONTAINING MERCURY	39

6.26	PREFERRED SOURCE PRODUCTS AND SERVICES	39
6.27	NYS VENDOR RESPONSIBILITY	39
6.28	NYS TAX LAW SECTION 5-A	40
6.29	NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS.....	40
6.30	EXTENSION OF USE	40
6.31	CONTRACTOR AND SUBCONTRACTOR.....	41
6.31.1	SUBCONTRACTOR	
		ER
	ROR! BOOKMARK NOT DEFINED.	
6.32	LOT 1 EQUIPMENT ONLY DEALERS.....	42
6.32.1	APPLICABILITY AND LIMITATIONS OF DEALERS	42
6.32.2	DESIGNATION OF DEALERS	
		ER
	ROR! BOOKMARK NOT DEFINED.	
6.32.3	RESPONSIBILITY FOR REPORTING/PERFORMANCE	42
6.32.4	APPLICABILITY OF CONTRACT TERMS	
		ER
	ROR! BOOKMARK NOT DEFINED.	
6.33	NEW ACCOUNTS.....	42
6.34	DRUG AND ALCOHOL USE PROHIBITED.....	42
6.35	TRAFFIC INFRACTIONS.....	43
6.36	INSTRUCTION MANUALS	43
6.37	RECALLS.....	43
6.38	REMOVAL OF RECORDS FROM PREMISES	43
6.39	DESIGN BUILD AUTHORIZATION, PROFESSIONAL DESIGN SERVICES, AND PERMITTING	43
6.40	CONFIDENTIALITY OF AUTHORIZED USER DATA, PROCEDURES, INFRASTRUCTURE, ETC.	43
6.41	CAPTIONS	43
6.42	DRAWINGS.....	43
6.43	FEDERAL FUNDING	44
6.44	APPENDIX B REVISIONS	44
6.44.1	ACCEPTANCE TESTING & PRODUCT/SYSTEM ACCEPTANCE	44
6.45	SYSTEMS AND SOLUTIONS THAT INCLUDE CLOUD/HOSTED/REMOTE OFFERINGS	44
6.46	REQUIREMENTS OF N.Y. STATE FINANCE LAW § 139-L.....	45
6.47	NYS FIRE ALARM SECURITY SYSTEM INSTALLER ONGOING COMPLIANCE WHERE REQUIRED BY LAW.....	45
6.48	SEVERABILITY	46
	SECTION 7: MAINTENANCE	47
7.1	GENERAL PROVISIONS.....	47
7.2	PREVENTATIVE MAINTENANCE	47
7.3	REMEDIAL MAINTENANCE	47
7.4	REMOTE MAINTENANCE/REMOTE SUPPORT.....	48
7.5	MAINTENANCE SERVICES FOR EQUIPMENT PURCHASED OUTSIDE OF THIS AWARD	48
7.6	MAINTENANCE RESPONSIBILITY	49
7.7	MAINTENANCE GUARANTEE	49
7.8	FAILURE TO COMPLY.....	49

APPENDICES

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

Appendix B – *General Specifications (April 2016)*

Appendix C – *Contract Modification Form and Procedures*

ATTACHMENTS

Attachment 1 – *NYS Net Pricing Pages*

Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Encouraging Use of NYS Businesses*

Attachment 4 – *Contract Insurance Requirements*

Attachment 5 – *Project-Specific Insurance Attestation*

Attachment 6 – *Bidder Information Questionnaire*

Attachment 7 – *Bidder Submission Checklist*

Attachment 8 – *Bidder Questions Form*

Attachment 9 – *Proof of Past Sales*

Attachment 10 – *Lot 1 Dealer Proposal Form*

Attachment 11 – *Lot 1 Manufacturer's Certificate*

Attachment 12 – *Lot 1 Distributor's Certificate*

Attachment 13 – *Lot 2 Manufacturer's Guarantee*

Attachment 14 – *Lot 2 Distributor's Guarantee*

Attachment 15 – *Glossary of Terms*

Attachment 16 – *How to Use*

Attachment 17 – *Report of Contract Usage*

SECTION 1: INTRODUCTION

1.1 OVERVIEW

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Intelligent Facility & Security Systems and Solutions (“IFSSS”) as specified herein for all Authorized Users eligible to purchase through this Solicitation. The purpose of this Solicitation is to award multiple Contracts to responsive and responsible Bidders that meet the terms and conditions of this Solicitation as specified herein. The Contract(s) awarded as a result of this Solicitation shall be awarded by Lot and Region and will be for use by New York State Agencies and other Authorized Users. 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

Procurement Services is seeking bid proposals for IFSSS.

The Solicitation is limited to the IFSSS systems set forth below. All other items are excluded from the scope of this Solicitation. Bidders are not required to bid all systems. Bidders can bid on as many or as few systems as they elect.

Alarm and Signal Systems
Building Automation Systems (BAS)
Command Center Systems
Computer Aided Dispatch Systems
Electronic Article Surveillance Systems
Electronic Identification Systems
Emergency Mass Notification Systems
Emergency Management Systems
Emergency Phone/PBX Systems
Energy Management Systems
CCTV/Surveillance Camera Systems
Electrical Distribution and Control Systems
Parking Access Control Systems
Physical Access Control Systems
Fire Alarm Systems
Fire Pump Systems
Fire Station Alerting Systems
Inmate Radio Systems
Microprocessor-Controlled HVAC Equipment Systems
Permanent Facility Perimeter Fencing Systems
Fire Sprinkler and Fire Suppression Systems
Lighting Control/Occupancy Detecting Systems
Livescan Store and Forwarding System
Nurse Call Systems
Personal Alarm Systems
Public Address Systems
Public Safety Digital Display Systems
Time Management Systems
Traffic and Transportation CCTV/Surveillance and Monitoring Systems

Please see Attachment 15 – *Glossary of Terms* for the definitions of each of these Systems.

Any Equipment or Service that does not directly relate to the provision of an Intelligent Facility and Security System and Solution is prohibited. Please see Attached 16 – *How to Use* for additional information.

For example, the following are appropriate use of wiring and cable under This Award:

- Removing/disposing of the system
- Core-drilling if directly connected to the provision of the system
- Installing conduit for wire
- Running wire (Line Voltage Wiring and Low Voltage Wiring)
- Connecting Equipment to the wiring
- Start-up/Commissioning/programming

This is a Multiple Award Procurement, with provisions for Periodic Recruitment. Awards will be made to Manufacturers, Distributors, Dealers, and Integrators of Intelligent Facility and Security Systems and Solutions who are responsive and responsible and that meet the terms and conditions of this Solicitation.

Bidders should be aware that Authorized Users may be required to conduct a Second Tier Solicitation. For more information, please refer Attachment 16 - *How to Use*.

Contracts will be awarded by Lot and Region as outlined below.

The Solicitation consists of the following Lots.

LOT 1: Equipment Only

LOT 2: Systems & Solutions (Equipment, Installation, Integration, and Maintenance)

Bidders are permitted to bid on only a single Lot. In the event that a Bidder incorrectly submits bids for both Lots, Procurement Services will require them to indicate in Writing which Lot they are choosing to bid within ten business days of notification. Bidder will be required to withdraw its bid for the other Lot.

The Solicitation contains the Regions set forth below. Bidders are not required to bid on all Regions. Bidders may bid one or multiple regions in the Lot bid.

Regions	Counties	
Region 1	Nassau	Suffolk
Region 2	Bronx Kings New York	Queens Richmond
Region 3	Dutchess Putnam	Westchester
Region 4	Orange Rockland	Sullivan Ulster
Region 5	Albany Columbia Delaware Fulton Greene	Montgomery Otsego Rensselaer Schenectady Schoharie
Region 6	Clinton Essex Franklin Hamilton	Saratoga Warren Washington
Region 7	Cayuga Herkimer Jefferson Lewis Madison	Oneida Onondaga Oswego St. Lawrence
Region 8	Broome Chemung Chenango Cortland Livingston Monroe Ontario	Schuyler Seneca Steuben Tioga Tompkins Wayne Yates
Region 9	Alleghany Cattaraugus Chautauqua Genesee	Erie Niagara Orleans Wyoming

1.3 ESTIMATED QUANTITIES

The Contract(s) resulting from this Solicitation will be Indefinite Delivery, Indefinite Quantity (IDIQ) Contracts. 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 under previous awards, is approximately \$100,000,000.00 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, *Estimated/Specific Quantity Contracts* and *Participation in Centralized Contracts*.

Numerous factors could cause the actual 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>
Solicitation Release	January 28, 2019	N/A
Registration Deadline for Pre-Bid Conference	February 13, 2019	5:00 PM ET
Pre-Bid Conference	February 19, 2019	TBD
Closing Date for First Round of Bidder Questions	March 5, 2019	5:00 PM ET
OGS Procurement Services' Responses to First Round of Bidder Questions	April 2, 2019 <i>(tentative)</i>	N/A
Closing Date for Second Round of Bidder Questions	April 23, 2019	5:00 PM ET
OGS Procurement Services' Responses to Second Round of Bidder Questions	May 4, 2019 <i>(tentative)</i>	N/A
Bid Opening / Due date for Bids	May 14, 2019	11:00 AM ET
Contract Approval Date / Award Publish Date	August 27, 2019 <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 michael.decicco@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, which Lot(s) the Bidder intends to bid (if applicable), and the name and title of Pre-Bid Conference attendees. With respect to in-person attendance, each interested Bidder is limited to two (2) representatives.

Prospective Bidders may attend the Pre-Bid Conference in person at Empire State Plaza, Albany, New York, or via conference call, or via webinar. The room location and 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 and to discuss Bidder questions related to the Solicitation. Questions will be permitted and may be answered verbally at the Pre-Bid Conference. However, answers may 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 should be submitted using Attachment 8 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to michael.decicco@ogs.ny.gov by the date and time indicated in the *Key Events/Dates* section. Questions submitted after the deadline indicated may not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter (“NYSCR”). Your company must select the “opt-in” option within the Contract Reporter ad to receive notification updates of this Solicitation.

If a Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the *Questions* period so that they may be given due consideration prior to the submission of Bids. See §4.9 *Bid Deviations* for additional information.

Any verbal information obtained from statements made by representatives of Procurement Services during the procurement process Shall not be binding. Only such corrections or addenda issued in writing to all Bidders Shall become a part of the Solicitation and any resultant Contract. Procurement Services will not be responsible for verbal instructions.

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 “bookmark the ad” on the upper right-hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select “send me notification updates” option listed to the right of the ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR.

If you do not opt-in to receive notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents.

Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information may result in your Bid being deemed non-responsive to the Solicitation.

1.8 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, are identified on the first page of this Solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to State Finance Law §139-j and §139-k. Certain findings of non-responsibility can result in rejection for Contract award and, in the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at: <https://www.ogs.ny.gov/acpl/>

1.9 DEFINITIONS

Capitalized terms used in this Solicitation Shall be defined in accordance with Appendix B, *Definitions*, or in Attachment 15 – *Glossary of Terms*.

1.10 APPENDICES AND ATTACHMENTS

The appendices and attachments as set forth in the Table of Contents are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

1.11 ADDENDA

All Addenda issued by Procurement Services for this procurement are expressly incorporated in this Solicitation and any resulting Contract.

Bidders Shall include completed and signed electronic and hardcopy versions of the Addenda acknowledgements in its proposal.

1.12 CONFLICT OF TERMS

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

1. Appendix A, Standard Clauses for New York State Contracts (January 2014);
2. The Solicitation and Attachment 15 – *Glossary of Terms*;
3. Appendix B, General Specifications (April 2016);
4. All other appendices and attachments to the Solicitation;

SECTION 2: BIDDER QUALIFICATIONS

2.1 GENERAL 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(s). Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can meet the minimum qualifications and perform the work required under the Solicitation. 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. **Any bidder who fails to meet the following minimum qualifications will be disqualified.**

2.2 MINIMUM QUALIFICATIONS

The following Minimum Qualifications apply to all Bidders regardless of which Lot is Bid.

2.2.1 PROOF OF PAST SALES

1. Bidders Bidding up to 2 Regions are required to provide proof of:

At least \$200,000 in prior sales to either Government Entities and/or Authorized Users as defined herein made during the three years (entire time period, not annually) immediately preceding the bid opening date, and which sales are for IFSSS listed in §1.2.

2. Bidders bidding 3 or more Regions are required to provide proof of:

At least \$600,000 in prior sales to either Government Entities and/or to Authorized Users as defined herein made during the three years (entire time period, not annually) immediately preceding the bid opening date, and which sales are for IFSSS listed in §1.2.

2.2.2 CONTINUOUS OPERATION REQUIREMENT

Bidders Must have been in continuous operation for at least three (3) years immediately preceding the Bid Opening Date. Bidders should list this information in Attachment 6 - *Bidder Information Questionnaire*.

2.3 LOT 1 SPECIFIC QUALIFICATIONS

Bidders Bidding Lot 1 Must either:

1. Be the Manufacturer of the Product Line(s) they are offering, or
2. Be a Distributor or Dealer authorized by the Manufacturer to sell the Product Line(s) they are offering by providing either Attachment 11 – *Lot 1 Manufacturer's Certificate* or Attachment 12 – *Lot 1 Distributor's Certificate*

2.4 LOT 2 SPECIFIC QUALIFICATIONS

Bidders Bidding Lot 2 Must either:

1. Be the Manufacturer of the Product Line(s) they are offering, or
2. Be an Integrator authorized by the Manufacturer to sell and perform Installation, Integration, and Maintenance of the Product Line(s) they are offering by providing either Attachment 13 – *Lot 2 Manufacturer's Guarantee* or Attachment 14 – *Lot 2 Distributor's Guarantee*

SECTION 3: ADMINISTRATIVE PROPOSAL REQUIREMENTS

The following lists the forms which will be reviewed for completeness and accuracy at the time of the Bid Opening. Prior to Tentative Award, Bidders must have provided complete and accurate versions of these forms in the format specified below and in Attachment 7 – *Bidder Submission Checklist*. OGS reserves the right to seek clarification for any of these forms.

Only documents which require an original wet ink signature are required to be submitted as original ink hardcopy. All other documents only need to be submitted electronically.

3.1 NYS REQUIRED CERTIFICATIONS

Bidder Must complete, sign and submit both in hardcopy and electronic format Attachment 2 – *NYS Required Certifications* with its Bidder Submission.

3.2 ENCOURAGING THE USE OF NYS SMALL BUSINESSES

Bidder Must complete and submit electronically Attachment 3 – *Encouraging Use of NYS Businesses* with its Bidder Submission.

3.3 INSURANCE

Bidder Must produce at its sole cost and expense and provide electronically with its Bidder Submission all proof of required insurance as detailed in Attachment 4 – *Contract Insurance Requirements*.

3.3.1 LOT 2 PROJECT-SPECIFIC INSURANCE

Bidders Bidding Lot 2 Must also complete, sign, and include with their proposal Attachment 5 - *Project-Specific Insurance Attestation*.

3.4 NYS FIRE ALARM SECURITY SYSTEMS INSTALLER LICENSE WHERE REQUIRED BY LAW

Section 69-M of the General Business Law and Title 19 NYCRR Reg. 195.2 provide that any person (as defined in the same) engaging in the business of Installing, Servicing or Maintaining security or fire alarm Systems must be licensed to do so.

Bidders Bidding Lot 2 and offering the aforementioned Systems and corresponding Job Titles Must provide proof of an active license prior to Award.

Bidders Shall indicate the Systems they are offering by completing the corresponding Job Titles in Attachment 1 – *NYS Net Pricing Pages*.

Additional information regarding these requirements May be obtained from the New York State Department of State at: <HTTPS://WWW.DOS.NY.GOV/LICENSING/PDFS/SECURITY.PDF>

3.5 BIDDER INFORMATION QUESTIONNAIRE

Bidder Must complete and submit electronically Attachment 6 – *Bidder Information Questionnaire* with its Bidder Submission.

3.6 BIDDER SUBMISSION CHECKLIST

Bidder Must complete and submit electronically Attachment 7 – *Bidder Submission Checklist* with its Bidder Submission.

3.7 EEO 100 (EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN)

Pursuant to §6.19 of this Solicitation, a Bidder Must complete EEO 100 (Equal Employment Opportunity Staffing Plan) in its entirety, sign and submit with its Bidder Submission.

For the purposes of a response to this Solicitation, the EEO 100 Must be completed in full unless otherwise specified below. The link to this form on the OGS website is as follows:

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

Under Solicitation Number, enter the Solicitation Number.

1. Under the Reporting Entity, check the “Contractor” box.
2. Under Report includes Contractor’s, check the “Contractor’s work force to be utilized on this contract” box.
3. In the table requesting the total number of employees for each classification, a Bidder should identify all staff that will be utilized specifically for the resulting IFSSS Contracts, if known. At a minimum, a Bidder Must account for the following:
 - A. All management level staff that will oversee the Bidder’s execution of the Contract.
 - B. All employees who will be performing Installation, Integration and Maintenance (for Lot 2 Contracts)
 - C. All staff involved in Contract Management Activities (e.g. preparing and submitting contract updates, proposals, etc.)
 - D. All staff responsible for accounts payable and receivable.
 - E. All clerical staff that will assist the individuals above.

3.8 MWBE UTILIZATION

The following are the instructions for completing either the MWBE 100 or an MWBE waiver. The link to the MWBE 100 form and a waiver on the OGS website is as follows:

<http://www.ogs.ny.gov/MWBE/Forms.asp>;

3.8.1 MWBE 100 (MWBE UTILIZATION PLAN) OR WAIVER

Pursuant to §6.19 of this Solicitation, a Bidder Must complete MWBE 100 (MWBE Utilization Plan) in its entirety, sign and submit with its Bidder Submission.

For the purposes of a response to this Solicitation, the MWBE 100 should be completed in full unless the Bidder is submitting a Waiver request:

1. Under Contract/Solicitation Number, enter the Solicitation Number “23150”.
2. Under MWBE Goals in Contract, enter “15%” for MBE and “15%” for WBE.
3. Under Certified MWBE Subcontractor/Supplier Name, enter a minimum of one (1) MBE and one (1) WBE Subcontractor which you will work with if awarded a Contract.
4. Under Detailed Description of Work, describe the nature of Subcontracts/supplies/Services the Bidder intends to obtain from each identified MWBE.
5. Under Dollar Value of Subcontracts/supplies/Services and intended performance dates of each component of the Contract, enter “Unknown at this time.” You do not have to include the performance dates.

Please Note: Where the Bidder is proposing to use an MBE Supplier to meet the aforementioned Goals, the Bidder must obtain either (depending upon the Lot Bid) an Attachment 12 – Lot 1 Distributor’s Certificate or Attachment 14 – Lot 2 Distributor’s Guarantee from the MWBE Supplier and provide this to Procurement Services.

3.9 SDVOB UTILIZATION

3.9.1 SDVOB 100 (SDVOB UTILIZATION PLAN) OR WAIVER

Pursuant to §6.20 of this Solicitation, a Bidder should complete SDVOB 100 (SDVOB Utilization Plan) in its entirety, sign and submit with its Bidder Submission. The link to the SDVOB 100 and the Waiver Request forms on the OGS website is as follows:

https://ogs.ny.gov/Veterans/Docs/2016/SDVOB_100_Utilization_Plan.docx

For the purposes of a response to this Solicitation, the SDVOB Utilization Plan Must be completed in full unless the Bidder is requesting a Waiver as follows:

1. Under Contract/Solicitation Number, enter the Solicitation Number, “23150”.
2. Under SDVOB Goals in Contract, enter “6%”.
3. Under SDVOB Subcontractor/Supplier Name, enter a minimum of one (1) SDVOB Subcontractor which you will work with if awarded a Contract.
4. Under Detailed Description of Work, describe the nature of Subcontracts/supplies/Services the Bidder intends to obtain from each identified SDVOB.

5. Under Dollar Value of Subcontracts/supplies/Services and intended performance dates of each component of the Contract, enter “Unknown at this time.” You do not have to include the performance dates.

Please Note: Where the Bidder is proposing to use an SDVOB Supplier to meet the aforementioned Goals, The Bidder must obtain either (depending upon the Lot Bid) an Attachment 12 – Lot 1 Distributor’s Certificate or Attachment 14 – Lot 2 Distributor’s Guarantee from the SDVOB and provide this to Procurement Services.

3.10 PROOF OF SALES

All Bidders Shall complete and provide to Procurement Services an Attachment 9 – *Proof of Past Sales* form, using this to demonstrate they meet the mandatory Minimum Qualifications listed in §2.2.1 *Proof of Past Sales*.

3.11 LOT 1 DEALER PROPOSAL FORM

All Bidders Bidding Lot 1, who propose to utilize Dealers Must complete and provide to Procurement Services an Attachment 10 – *Lot 1 Dealer Proposal Form*, indicating the required information for each proposed Dealer.

Bidders Bidding/Contractors awarded Lot 2 cannot propose or use Dealers.

3.12 PRICING

Any Bidder who does not provide pricing at the time of the Bid Opening will be disqualified and ineligible for award for either the entire Bid Proposal or for the portions of the pricing (e.g. Product Line, Services, entire Region, etc.) where Procurement Services determined the Bidder did not provide pricing.

Prior to Procurement Services commencing the review of pricing, all pricing Must be provided in Excel format (unprotected) using Attachment 1 *NYS Net Pricing Pages* in accordance with the Instructions tab listed within Attachment 1.

In addition, each Bidder Must provide a current copy of the Manufacturer’s/Distributor’s Price List with List Price/MSRP (“List Price/MSRP File”) in effect at time of Bid Submission, and in its original format, detailing current List Price/MSRP for the Equipment the Bidder is proposing in Attachment 1 – *NYS Net Pricing Pages*. In no event will NYS Net Pricing in Attachment 1 – *NYS Net Pricing Pages* exceed the List Price/MSRP contained in the Manufacturer’s/Distributor’s Price List with List Price/MSRP (“List Price/MSRP File”).

3.12.1 REASONABLENESS OF PRICE

Bidders Must demonstrate Reasonableness of Price for the Equipment and/or Services they are Bidding. Bidders may demonstrate Reasonableness of Price by offering NYS equal to or better pricing (Percent (%) Discounts, Percent (%) Markups, etc.) than the following:

1. Pricing on any contracts awarded by GSA, Veteran’s Administration (VA), Department of Defense (DOD), and other government entities,
2. Pricing on other state(‘s) government contract,
3. Pricing offered by Bidders to their Best Commercial Customer(s), and/or
4. Reviewing other information deemed necessary by the Office of General Services

All Not-To-Exceed Pricing Must not include industrial funding fees (IFF) or other contract administration or use fees. Final determination for whether Not-To-Exceed Pricing complies with this requirement resides solely with Procurement Services. Where Procurement Services determines a Bidder has included the IFF or other contract administration or use fees in its Not-To-Exceed Pricing, Procurement Services will either require the Bidder to reduce the particular Not-To-Exceed Pricing to reflect removing the fees or not award the particular Not-To-Exceed Pricing.

3.12.2 COMPARABLE CONTRACTS

Comparable contracts (e.g. GSA contracts), used to demonstrate Reasonableness of Price, cannot be used to:

1. Reduce the Contractually-Approved Percent (%) Discount Structure From List Price/MSRP, or
2. Increase the Contractually-Approved Percent (%) Markup Structure Over the Prevailing Wage Rate and Supplemental Benefit.

This section Shall not be construed to alter or diminish NYS' rights under Appendix B, *Pricing* and §6.11 *Best Pricing Offer*.

SECTION 4: BID SUBMISSION

4.1 NOTICE TO POTENTIAL BIDDERS

Receipt of a Bid does not indicate that Procurement Services has pre-determined a company's qualifications to receive a Contract award. Such determination Shall be based on the evaluation of a Bid compared to the specific requirements and qualifications contained in this Solicitation.

4.2 PERFORMANCE AND BID BONDS

There are no bonds for this Solicitation or the resulting Contract. However, an Authorized User May require in a Second Tier Solicitation or Direct Engagement a performance, payment, or Bid Bond or negotiable irrevocable Letter of Credit or other form of security for the faithful performance for the resultant Authorized user Agreement.

4.3 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 a Bidder is already registered in the New York State Vendor File, the Bidder must enter its Vendor ID on the first page of this Solicitation. Authorized resellers already registered should list the Vendor ID number along with the authorized reseller information. (The Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.)

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

For more information on the Vendor File please visit the following website:
http://www.osc.state.ny.us/vendor_management

4.4 FORMAT OF BID SUBMISSION

The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be handled in accordance with Appendix B, *Late Bids*. Any Bid pricing or portions thereof submitted on 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 and will result in a Bid Proposal being disqualified.

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

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

4.5 CONTENT

Please see Attachment 7 – *Bidder Submission Checklist* and §6.4 *Price* for the content of a complete Bid Submission.

In the case of discrepancies between paper copies and electronic copies (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.

4.6 BID ENVELOPES AND PACKAGES

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

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation number (Solicitation #23150)
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.

4.7 BID DELIVERY

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

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

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

4.8 IMPORTANT BUILDING ACCESS PROCEDURES

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

4.9 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 should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

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

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

4.10 ELECTRONIC BID OPENING RESULTS

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

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

4.11 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.

4.12 FIRM OFFER

Bids must remain an effective offer, firm and irrevocable, for at least 365 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 365 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

4.13 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;
- 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;

- T. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Unilaterally make revisions, changes, and/or updates to any templates, Appendices (excluding Appendices A and B), and/or Attachments to the proposed/Awarded Contract without processing a formal amendment and/or modification; and
- X. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

4.14 AUTHORIZED USER RESERVED RIGHTS

In addition to all reserved rights retained by the State, Authorized Users reserve the right to:

- A. Verify that all Equipment has the necessary Industry Certification (e.g. UL, FM, etc.);
- B. Require documentation to verify compliance with any applicable Information Security, Cyber Security, Data Breach, etc. Laws, Rules, Regulations, Guidelines, Policies, etc. (e.g. HIPPA, CJIS, etc.);
- C. Perform Vendor Responsibility Reviews on Subcontractors;
- D. Require the Contractor to agree to a Project Labor Agreement as a condition of selection;
- E. Issue final and binding interpretation of specifications and requirements; and
- F. Require any other information which the Authorized User deems necessary or appropriate to allow the Authorized User to make an allowable selection and substantiate all business decisions made when utilizing this contract.

4.15 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, having its own provision governing conflict of terms.

SECTION 5: METHOD OF AWARD

5.1 METHOD OF AWARD

It is Procurement Services' intention to Award contracts only to responsive and responsible Bidders who meet all Bidder Qualifications as outlined in §2 *Bidder Qualifications* and whose pricing is determined by the State to be reasonable.

Bidders May be requested by Procurement Services to clarify the contents of their proposals. Other than to provide such information as May be requested by Procurement Services, no Bidder will be allowed to alter its proposal or add information after the deadline for submission of proposals.

Evaluation will be performed first on those Proposals which are either complete or where the Bidder responds to Procurement Service's request for clarification accurately and timely.

Final determination and award will be at the sole discretion of Procurement Services.

5.2 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. 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.

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

SECTION 6: TERMS AND CONDITIONS

6.1 CONTRACT TERM AND EXTENSIONS

The Contract will be in effect for an initial 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 10 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.

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

6.2 SHORT 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 90 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications.. However, this extension automatically terminates should a replacement Contract be issued in the interim.

6.3 PROCUREMENT INSTRUCTIONS FOR AUTHORIZED USERS

Authorized Users Must review Attachment 16 - *How to Use* for Guidance on utilizing This Award. Authorized Users Must follow their internal procurement Guidelines and Control Agency Requirements when Utilizing This Award and are responsible for documenting all decisions in their procurement record.

Additionally, Authorized Users should review Attachment 17 - *Second Tier Solicitation Form* and Attachment 18 - *Direct Engagement Form*. Authorized Users may use these forms as applicable (Please see Attachment 16 - *How to Use*). If an Authorized User elects not to use these forms, Authorized Users must obtain from the Contractor and document in their procurement record all of the information required in these forms.

6.4 SURVIVAL OF AUTHORIZED USER AGREEMENTS

Authorized User Agreements fully executed prior to the expiration of the Centralized Contract Shall survive the expiration date of the Centralized Contract, if applicable, based on the term of the Authorized User Agreement, but Shall in no event go beyond 36 months from the date of expiration of the Centralized Contract.

6.5 ADDITIONAL CONTRACTOR TERMS AND CONDITIONS WITHIN AN AUTHORIZED USER AGREEMENT

As part of Contractor's response to an Authorized User Second Tier Solicitation or Direct Engagement, a Contractor May propose additional terms and conditions in accordance with Appendix B, Modification of Terms.

6.6 PERIODIC RECRUITMENT

This Award 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 submit a Contract Amendment at time of Periodic Recruitment for future consideration to:

1. Add additional regions, and
2. Update (change) the Lot they are awarded.

In addition, if a Bid is deemed non-responsive during the initial Solicitation or any periodic recruitment period, Bidder Shall have the opportunity to reapply by submitting a proposal in response to the periodic recruitment

6.7 EMERGING TECHNOLOGIES

Under the Periodic Recruitment provisions of the Solicitation, Procurement Services reserves the right to modify the terms of the Solicitation at any time to allow for technologies not identified elsewhere under this document. If a need is identified for an "emerging technology," and Procurement Services feels it is warranted to contract for such technology, Procurement Services reserves the right to include such technology hereunder or to issue a formal modification or amendment to the Solicitation or existing contract. The Technology will have to have been in the commercial marketplace for a reasonable amount of time and have met with some degree of success among a substantial base of Issuing Entities to be considered by Procurement Services for inclusion in existing or awarding of a new Contract.

6.8 CONTRACT UPDATE PROCEDURES

Contract Updates will be handled as provided in Appendix C – *Contract Modification Form and Procedures*.

- A. OGS may, propose amendments to the Contract terms and conditions, including any Attachments or Appendices, at any time to serve the best interests of Authorized Users.
- B. Notwithstanding the foregoing, OGS may unilaterally make revisions, changes and/or updates to any templates, Appendices (excluding Appendices A and B) and/or Attachments to the Contract without processing a formal amendment and/or modification.

6.9 NYS DOL PREVAILING WAGE RATES

6.9.1 OVERVIEW

This Solicitation and any Contracts resulting from it are subject to the Prevailing Wage Rate provisions of New York State Labor Law. See "Prevailing Wage Rates - Public Works and Building Services Contracts" in Appendix B, *OGS General Specifications*. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" May be grounds for a determination of vendor non-responsibility, rejection of a Contractor's response to an Authorized User (e.g. an Second Tier Solicitation response), suspension or termination of Contract.

For bidding purposes, the applicable Prevailing Wage Rate Schedule for this Solicitation is PRC# 2018011846.

IMPORTANT NOTE: Authorized Users **MUST** obtain a separate PRC # for each purchase from This Award where prevailing wage rates apply. The PRC # 2018011846 provided in this Solicitation is for information and evaluation purposes only. The requested PRC number **MUST** be noted on all Authorized User Agreements issued for purchases from any Contract resulting from this Solicitation.

The Authorized User Total Hourly Rate (actual hourly bill rates) for each Authorized User engagement will be established in response to a particular Authorized User Agreement and will incorporate/reference the PRC # obtained by each requesting Authorized User.

To obtain an original the Department of Labor (DOL) Prevailing Wage Schedule PRC#, use the following link: <https://www.labor.state.ny.us/workerprotection/publicwork/PWReqforOWS.shtm>

6.9.2 LIVING WAGE LAW

An Authorized User subject to a local law, such as the “living wage” requirement as found in Section 6-109 of the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies with such local law at the time of issuance of an Authorized User Agreement to the selected Contractor. If Contractor documents that it is required to pay higher than the Prevailing Wage Rate and Supplemental Benefit as per a “Living Wage Law,” it Shall be allowed, after award of Contract, to propose, via the Contract update procedures, a higher rate of pay and benefits than the Prevailing Wage Rate and Supplemental Benefits, but maintaining the same Percent (%) Markup for this proposed higher pay and benefit rate as the Percent (%) Markup over the Prevailing Wage Rate and Supplemental Benefits. If a Contractor does not submit such a request and wishes to perform work for an Authorized User, it Must pay the higher pay or benefits required by the Local Living Wage Law and not charge above its Total Hourly Rate.

6.10 PRODUCT LINES

If Contractor is not the Manufacturer of a Product Line Contractor is responsible for maintaining its status as authorized to offer a Product Line or Product Line Subcategory. In the event the Contractor is no longer authorized to offer a particular Product Line (or Product Line Subcategory), it is the Contractor’s responsibility to notify Procurement Services and request the removal of this Product Line (or Product Line Subcategory) in accordance with the procedure outlined in Appendix C – *Contract Modification Procedures*.

Please see as applicable Attachment 11 – *Lot 1 - Manufacturer’s Certificate*, Attachment 12 - *Lot 1 Distributor’s Certificate*, Attachment 13 – *Lot 2 Manufacturer’s Guarantee*, and Attachment 14 – *Lot 2 Distributor’s Guarantee*.

The addition of Product Lines to a Contract will also be processed in accordance with the procedure outlined in Appendix C – *Contract Modification Procedure* and the following:

- A. Contractors awarded Lot 1 who are not the Manufacturer of a Product Line they are requesting to add Must either provide or previously have provided to Procurement Services either an Attachment 11 – Lot 1 – Manufacturer’s Certificate or an Attachment 12 – Lot 1 Distributor’s Certificate for the Product Line to demonstrating they are authorized to sell this Product Line.
- B. Contractors awarded Lot 2 who are not the Manufacturer of a Product Line they are requesting to add Must either provide or previously have provided to Procurement Services either an Attachment 13 – Lot 2 – Manufacturer’s Guarantee or an Attachment 14 – Lot 2 Distributor’s Guarantee for the Product Line to demonstrating they are authorized to sell and perform the Installation, Integration, and Maintenance of this Product Line.

6.11 PRICING STRUCTURE AND ADJUSTMENTS

6.11.1 GENERAL PROVISIONS

- 1. Contractually-Approved Percent (%) Discount Structure From List Price/MSRP
 - A. Any Contractually-Approved Percent (%) Discount Structure From List Price/MSRP which is either:
 - i. Awarded as a result of a Bidder’s proposal submitted in response to this Solicitation, or
 - ii. Added/approved by Procurement Services via the Update Process,Shall not, once approved by Procurement Services, be reduced for the Term of the Contract under any circumstances.
 - B. If a Contractor states it can no longer honor the Contractually-Approved Percent (%) Discount Structure From List Price/MSRP, the Contractor Must:
 - i. Request Procurement Services remove this Product Line or Product Line Subcategory from its NYS Net Pricing Pages, and
 - ii. Confirm in Writing that if in the future the Contractor requests to add this Product Line or Product Line Subcategory back onto its contract, it Must offer NYS at least equal to, or better Percent (%) Discount(s) for the Product Line or Product Line Subcategory than the Contractually-Approved Percent (%) Discount Structure From List Price/MSRP.

2. Contractually-Approved Percent (%) Markup Structure Over the Prevailing Wage Rate and Supplemental Benefits:
 - A. Any Contractually-Approved Percent (%) Markup Structure Over the Prevailing Wage Rate and Supplemental Benefit which is either:
 - i. Awarded/Approved as a result of a Bidder's proposal submitted in response to this Solicitation, or
 - ii. Added/approved by Procurement Services via the Auto Add process,Shall not, once approved, be increased for the life of contract under any circumstances.
 - B. If a Contractor states it can no longer honor the Contractually-Approved Percent (%) Markup Structure Over the Prevailing Wage Rate and Supplemental Benefit, it Must:
 - i. Request Procurement Services remove this Job Title from its NYS Net Pricing Pages, and
 - ii. Confirm in Writing that if in the future the Contractor requests to add this Product Line back onto its Contract, it Must offer NYS at least equal to, or lower Contractually-Approved Percent (%) Markup Structure Over the Prevailing Wage Rate and Supplemental Benefit.
3. All Custom-Built Equipment NYS Net Pricing can only be increased annually on the anniversary of the date of initial Award by Core CPI or 2%, whichever is less.
4. All Job Titles Not Included in an NYS DOL Prevailing Wage Rate Schedule but which are included on a Contractor's GSA Contract can be updated based on updates to the Contractor's GSA Contract less the industrial funding fee (IFF).
5. All Job Titles Not Included in an NYS DOL Prevailing Wage Rate Schedule and not listed on a Contractor's GSA contract can only be increased annually on the anniversary of the date of initial Award by Core CPI or 2%, whichever is less.
6. All Not-To-Exceed Pricing must not include industrial funding fees (IFF) or other contract administration or use fees
7. Changes in other Government or Comparable contracts (e.g. GSA Contracts), cannot be used to:
 - A. Reduce the Contractually-Approved Percent (%) Discount Structure From List Price/MSRP, or
 - B. Increase the Contractually-Approved Percent (%) Markup Structure Over the Prevailing Wage Rate and Supplemental Benefit.
8. All pricing updates will be processed by Procurement Services in accordance with the procedures specified in Appendix C – *Contract Modification Form and Procedures*.

6.11.2 AUTHORIZED USER AGREEMENT PRICING

After the Authorized User enters into an Authorized User Agreement as defined in the Attachment 15, *Glossary of Terms*, the Authorized User's NYS Net Pricing or Authorized User Total Hourly Rates Shall only be increased as follows:

1. For the Authorized User NYS Net Pricing;
 - A. Procurement Services Must first have approved and published updated NYS Net Pricing Pages on the OGS Website in accordance with Section 6.5 of this Solicitation and Attachment 16 – *Contract Modification Form and Procedures* and such updated NYS Net Pricing Pages must include updated NYS Net Pricing for the particular Equipment under the Authorized User Agreement; and
 - B. The Contractor Must propose to the Authorized User revised Authorized User NYS Net Pricing computed by multiplying the updated NYS Net Pricing by the Authorized User Percent (%) Discount.
2. For Authorized User Total Hourly Rates for Job Titles Included in an NYS DOL Prevailing Wage Rate Schedule:
 - A. Either:
 - i. Procurement Services Must first have approved and published updated NYS Net Pricing Pages on the OGS Website in accordance with Section 6.5 of this Solicitation and such updated NYS Net Pricing Pages must include updated Prevailing Wage Rates, Supplemental Benefits, and Total Hourly Rates NYS Net Pricing for the particular Job Titles under the Authorized User Agreement; OR

- ii. NYS DOL has published an update to the Original Rate Schedule for the particular Authorized User Agreement; AND
 - B. The Contractor Must propose to the Authorized User revised Authorized User Total Hourly Rates computed by multiplying the updated Prevailing Wage Rates and Supplemental Benefits by the Authorized User Percent (%) Markup.
- 3. For Authorized User Total Hourly Rates for Job Titles Not Included in an NYS DOL Prevailing Wage Rate Schedule:
 - A. Procurement Services Must first have approved and published updated NYS Net Pricing Pages on the OGS Website in accordance with Section 6.8 of this Solicitation and Attachment 17 – *Contract Update Form and Procedures* and such updated NYS Net Pricing Pages must include updated Total Hourly Rates for the particular Job Titles under the Authorized User Agreement; and
 - B. The Contractor Must propose to the Authorized User revised Authorized User Total Hourly Rates computed by multiplying the updated Total Hourly Rates by the Authorized User Percent (%) Discount.
- 4. Where Contractor and Authorized User agree to the addition of Equipment to an Authorized User Agreement is required, this Equipment:
 - A. Must be approved by Procurement Services and Published on the Contractor's NYS Net Pricing Pages on the OGS Website, and
 - B. Where the Equipment is part of a Product Line or Product Line Subcategory where the Contractor and Authorized User have agreed to an Authorized User Percent (%) Discount, the Contractor Must add/offer this Equipment at the same (or better) Authorized User Percent (%) Discount as the other Equipment in the particular Product Line or Product Line Subcategory.

6.11.3 PRICING ON AUTHORIZED USER AGREEMENTS AFTER EXPIRATION OF THE CENTRALIZED CONTRACT

During the period after the expiration of the Centralized Contract when an Authorized User Agreement is still effective, no Equipment pricing updates or increases Shall be permitted, and the only permitted increase for services are for adjustments to Authorized User Total Hourly Rates for Job Titles Included in NYS DOL Prevailing Wage Rate Schedules. The Authorized User Percent (%) Markup Shall not be increased for the remainder of the Authorized User Agreement. During this period, the Authorized User is solely responsible for ensuring the compliance with this requirement

6.11.4 DEFERRED/INSTALLMENT PAYMENT OPTIONS

Contractors cannot offer Authorized Users deferred/installment payment options unless the following has been approved by Procurement Services and in the Contractor's NYS Net Pricing pages on the OGS website:

- A. The NYS Net Pricing for the Equipment,
- B. The Price Per month,
- C. The fixed percentage/rate of interest per month,
- D. The price of the interest per month,
- E. The sum of the price per month and the interest price per month,
- F. The number of months for which interest will be charged,
- G. The total price of the Equipment (multiplying the sum price by the number of months), and
- H. The difference between the Total Price of the Equipment and the NYS Net Pricing.

Additionally, all Deferred/Installment Payment options are subject to the following:

- A. Title Shall transfer to the Authorized User after the Acceptance period (See §6.45 *Appendix B Revisions*), and
- B. The warranty period (and all accompanying provisions) as required by Appendix B, *Warranties* Shall also commence with the transferring of title.

6.12 BEST PRICING OFFER

During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor 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, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

6.13 PURCHASING CARD ORDERS

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

6.14 MINIMUM ORDER

There is no minimum order on the contract. Contractor Shall honor all orders regardless of their value.

6.15 INVOICING AND PAYMENT

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

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 of Equipment or Service
- 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>.

For all Work for Job Titles included in an NYSDOL Prevailing Wage Rate Schedule, invoices Must be accompanied by a certified payroll. At a minimum, certified payrolls Must show the following information:

1. Employee's full legal name,
2. Classification(s) in which the worker was employed,
3. Hourly wage rate(s) paid,
4. Supplemental Benefits paid or provided, and
5. Daily and weekly number of hours worked in each classification

NYS DOL has issued the following sample Certified Payroll:

<https://www.labor.ny.gov/workerprotection/publicwork/PDFs/PW-12%20Contractor%20Payrolls%20Cert%20.pdf>

To substantiate the certified payroll and invoice, paychecks, W-2s, and time sheets Must be submitted to the Authorized User and/or the State upon request. If Subcontractors are used, agreements between the

Contractor and Subcontractor Must be submitted in accordance with the Requirements of Appendix B and Article 8 of the New York State Labor Law. Additional documentation not listed above that May be required to support a payment, included, but is not limited to, documentation to substantiate information contained in Certified Payroll, such as Personnel records, and documentation to substantiate legal names. Confidential information or items of a sensitive nature should be redacted.

Please see Attachment 16 – *How to Use* for additional information.

6.16 NYS FINANCIAL SYSTEM (SFS)

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

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>

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

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

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 the Equipment in order to receive an award, it is necessary to identify any such Equipment offered that fall into the above category.

6.18 INSURANCE

The Contractor Must maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Contract Insurance Requirements*, and if bidding Lot 2, Attachment 5 – *Project Specific Insurance Requirements*.

6.19 REPORT OF CONTRACT USAGE

Contractor shall submit Attachment 17 – *Report of Contract Usage* including total hours billed to each Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, *no later than 10 days after the close of each semiannual period.* (e.g. January 1st – June 30th). If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the *semiannual* report.

Contractors shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBES), 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 17 – *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.

6.19 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NYS CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

6.19.1 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.

6.19.2 GENERAL PROVISIONS

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause 6.19.9 of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

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

6.19.4 CONTRACT GOALS

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses Enterprises. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause 6.19.7 below).

6.19.5 MWBE UTILIZATION PLAN

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By

signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an MWBE Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause 6.19.4 of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

6.19.6 REQUEST FOR WAIVER

- A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

6.19.7 REQUIRED GOOD FAITH EFFORTS

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

- A. 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.
- B. 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.
- C. 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.
- D. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
- E. 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.
- F. Other information deemed relevant to the request.

6.19.8 MONTHLY MWBE CONTRACTOR COMPLIANCE REPORT

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month’s activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System (“NYSCS”) to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor’s responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification (“audit notice”) indicating that a representative of its company needs to log-in to the NYSCS to report the company’s MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor’s responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: **“Introduction to the System - Vendor training”** and **“Contract Compliance Reporting - Vendor Training”** to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>

- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on “**Account Lookup**” to identify the Contractor’s account by company name. Contact information should be reviewed and updated if necessary by choosing “**Change Info.**” It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through “**Request New User.**” When identifying the person responsible, please add “**- MWBE Contact**” after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for “**Contact Us & Support**” then “**Technical Support**” on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month’s activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor’s responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause 6.19.9 below.

6.19.9 BREACH OF CONTRACT AND LIQUIDATED DAMAGES

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

6.19.10 FRAUD

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

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

6.20 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 (“SDVOB”), 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 are 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.

6.20.1 CONTRACT GOALS

- A. OGS hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/Veterans/default.asp>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts listed on page 1 of this document. Additionally, following Contract execution, Contractor is encouraged to contact the Division at 518-474-2015 to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause 6.20.4 below).

6.20.2 SDVOB UTILIZATION PLAN

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.
- C. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. OGS may disqualify a Bidder’s bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

6.20.3 REQUEST FOR WAIVER

- A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to the Designated Contacts listed on Page 1 of this Solicitation.

6.20.4 REQUIRED GOOD FAITH EFFORTS

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- A. Copies of solicitations to SDVOBs and any responses thereto.
- B. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- C. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified SDVOBs whom OGS determined were capable of fulfilling the SDVOB goals set in the Contract.
- D. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- E. Other information deemed relevant to the waiver request.

6.20.5 MONTHLY SDVOB CONTRACTOR COMPLIANCE REPORT

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available on the OGS website and should be completed by the Contractor and submitted to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: michael.decicco@ogs.ny.gov

6.20.6 BREACH OF CONTRACT AND DAMAGES

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

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

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 Equipment 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

- A. 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.
- B. 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 6.21C below for specific requirements governing electronic equipment recycling.
- C. 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>
- D. 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 <https://www.ogs.ny.gov/greenny/>. 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 shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Contract.

6.27 PREFERRED SOURCE PRODUCTS AND SERVICES

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products and Services 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 Services 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.

6.28 NYS VENDOR RESPONSIBILITY

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

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

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

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

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

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

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

with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

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

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

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

6.29 NYS TAX LAW SECTION 5-A

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <https://www.tax.ny.gov/> for additional information.

6.30 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law May participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, *Participation in Centralized Contracts*. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the *Price* clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<https://www.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

6.31 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.

6.32 CONTRACTOR RESPONSIBILITY AND SUBCONTRACTOR

The following requirements Shall supplement the requirements of Appendix B, *Employees, Subcontractors and Agents* and Appendix B, *Subcontractors and Suppliers*:

1. The Contractor Shall not in any way be relieved of any responsibility under the Contract by any subcontract.
2. The Contractor Shall be solely responsible to the State and Authorized User for the acts or defaults of its Subcontractors and of such Subcontractors' officers, agents, and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract.
3. Any Equipment or Service provided or furnished by a Subcontractor shall be deemed for purposes of the Contract to be provided or furnished by the Contractor and Must be on the Contractor's published price list on the OGS website.
4. The Contractor Shall inform each Subcontractor fully and completely of all provisions and requirements of the Contract, including:
 - A. those relating either directly or indirectly to the Equipment and Services to be provided pursuant to its respective subcontract,
 - B. to maintain and protect against any unauthorized disclosure of records with respect to Work performed under the subcontract in the same manner as required of the Contractor,
 - C. those relating to the State's rights to audit records and
 - D. to cooperate with any investigation, audit, or other inquiry related to the Contract or any litigation relating thereto.
5. Contractor agrees that every such subcontract Shall expressly stipulate that all Labor performed and Equipment furnished pursuant thereto Shall strictly comply with the requirements of the Contract and that no subcontract Shall impair the rights of the State or Authorized User or create any contractual relationship between the Subcontractor and the State or Authorized User.
6. The Contractor Shall pay all Subcontractors for and on account of Services performed by such Subcontractors in accordance with the terms of their respective subcontracts and if and when required by the State or Authorized User, the Contractor shall submit satisfactory evidence that it has made such payment.
7. The Contractor Shall, within 5 business days of the State or Authorized User written request, file promptly with the requestor a copy of any subcontract providing services for an Authorized User Agreement.
8. The Contractor Shall require that the Subcontractor must pass through all terms and conditions of the Contract, including but not limited to Appendix A, to any Sub-Subcontractors.
9. The Contractor and all Subcontractor Shall work in harmony with the applicable trades by complying with any collective bargaining agreement to which the Contractor or Subcontractor(s) are a party with the trades when performing work under This Award;
10. Contractor Shall not engage in any Bid Shopping;
11. All employees of the Contractor, or of its Subcontractors, who Shall perform under an Authorized User Agreement, Shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All Subcontractors that perform Services under the Contract on behalf of Contractor Shall, in performing the Services, comply with all applicable Federal, State, and local laws concerning employment in the United States.
12. Subcontractors Shall use and cannot charge more than the Total Hourly Rates on the Contractor's pricing published on the OGS website to develop its Authorized User Total Hourly Rates for all Services on Contract;
13. Subcontractors Shall not perform any Installation, Integration, or Maintenance on Equipment which is not listed on the Contractor's pricing published on the OGS website;
14. Subcontractors Shall not execute or enter into any Authorized User Agreement and are not Dealers;
15. Subcontractor Shall meet current Prevailing Wage Rate mandates for their respective trade; and

16. Contractor Shall act as the single point of contact for all Authorized Users, executing/entering into all Authorized User Agreements directly and taking full ownership of all Subcontractor's work including, but not limited to the warranty provisions as set forth in This Award.

6.32 CONTRACTOR UTILIZATION OF SUBCONTRACTORS

1. Contractors awarded Lot 2 are permitted to charge a Subcontractor Percent (%) Markup for all work performed by Subcontractors on Authorized user Agreements provided the Contractor has an approved This Subcontractor Percent (%) Markup in its pricing pages on the OGS website. This Subcontractor Percent (%) Markup covers all back-office costs to administer the project including, but not limited to, all of the following:
 - A. Developing a scope of work for the Subcontractors
 - B. Procuring Subcontracting Services including, but not limited to, walkthroughs as necessary
 - C. Managing and verifying Subcontractor project documents including, but not limited to, timesheets, certified payroll, payments, as-built documents, and project close out documents
 - D. Coordinating project activity between trades
 - E. Overall responsibility for Subcontractor meeting project plans and specifications
 - F. Verifying Subcontractor compliance with any Prevailing Wage Rate requirements.
 - G. Documenting and Verifying Subcontractor compliance with any licensing, certification, etc. requirements.
2. Prior to the execution/entering into any Authorized User Agreement which includes the use of Subcontractors, Contractor Must provide Authorized Users with a copy of the quote from the Subcontractor to the Contractor for the Subcontractor's portion of the work for this Authorized User Agreement.
3. When applying for payment which involves Work performed by a Subcontractor, Contractor Must include a copy of the Subcontractors' invoice to the Contractor and clearly list the Subcontractor (%) Percent Markup
4. Subcontractors Must provide Services either on a Fixed Price/Lump Sum or Time & Material basis as required by the Authorized User. and the Contractor is be responsible for verifying compliance with this.
5. Even if the Subcontractor is performing work on a Fixed Price/Lump Sum basis, the Subcontractor Must provide to the Contractor, and the Contractor Must provide the Authorized User Total Hourly Rate the Subcontractor is proposing to charge the Authorized User as part of the Subcontractor's Quote and Contractor's Proposal.

6.33 LOT 1 EQUIPMENT ONLY DEALERS

6.32.1 APPLICABILITY AND LIMITATIONS OF DEALERS

1. Dealers May only be added to Contracts for Lot 1 Equipment Only.
2. No Dealer May be added to any Contract for Lot 2 under any circumstances.
3. No Contractor awarded a Contract as a result of this Solicitation May be a Dealer on any other Contract awarded as a result of this Solicitation.

6.33.2 RESPONSIBILITY FOR REPORTING/PERFORMANCE

Contractor Shall be fully liable for a Dealer's performance and compliance with all Contract terms and conditions. Equipment purchased through a Dealer Must be reported by Contractor in the required Semi-Annual sales reports to the State as a condition of payment. In addition to inclusion of Dealer volume in the Contractor's sales reporting obligation to the State, at the request of an Authorized User, the Dealer Shall provide the Authorized User with reports of the individual Authorized User's Contract activity with the Dealer.

6.34 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.

6.35 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.

6.36 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.

6.37 INSTRUCTION MANUALS

At the time of delivery to the Authorized User all Equipment Shall be furnished, at no extra charge, with one complete set of standard operator instruction manuals and documentation (hard copy, CD/DVD or web link) as would normally accompany such Equipment. Contractor Shall also ensure that the part numbers and NYS Net Prices associated with the documentation are available to the Authorized User and included in (insert correct appendices) should an Authorized User purchase additional sets of technical manuals. Where documentation is provided in electronic format, an Authorized User Shall be entitled to make copies to the extent necessary to fully enjoy the rights granted under this Contract provided that the Authorized User reproduces the copyright notice and any other legend of ownership on any copies made.

6.38 RECALLS

Contractor Shall immediately notify OGS of any recalls pertaining to any items awarded to the Contractor.

6.39 REMOVAL OF RECORDS FROM PREMISES

Where performance of the Contract involves use by the Contractor (or the Contractor's subsidiaries, affiliates, partners, agents or Subcontractors) of Authorized User owned or licensed papers, files, computer disks or other electronic Storage devices, Data or records at Authorized User facilities or offices, or via remote access, the Contractor (or the Contractor's subsidiaries, affiliates, partners, agents or Subcontractors) Shall not remotely access, modify, delete, copy or remove such Records without the prior Written approval of the Authorized User.

6.40 DESIGN BUILD AUTHORIZATION, PROFESSIONAL DESIGN SERVICES, AND PERMITTING

Authorized Users and Contractors Must review Attachment 16 – *How to Use* for additional information regarding Design Build Authorization, Professional Design Services, and Permitting.

6.41 CONFIDENTIALITY OF AUTHORIZED USER DATA, PROCEDURES, INFRASTRUCTURE, ETC.

Contractor and all of its officers, agents, employees, and any Subcontractor and Subcontractor's officers, agents, and employees, Shall not disclose or otherwise release any Authorized User Data, Procedures, Infrastructure, etc. without the prior Written approval of the Authorized User. Authorized Users reserve the right to include additional confidentiality requirements in any Authorized User Agreement.

6.42 CAPTIONS

The captions contained in this Contract are intended for convenience and reference purposes only and Shall in no way be deemed to define or limit any provision thereof.

6.43 DRAWINGS

1. **Drawings Submitted During the Contract Term**- Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of Work, Contractor shall do so as required by the Authorized user Agreement and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams Shall be delivered to the Authorized User's representative.
2. **Accuracy of Drawings Submitted** - All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of Equipment, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing Equipment, or carrying out any other requirements of the intended scope of work.

6.44 FEDERAL FUNDING

For an Authorized User using Federal funds, Contractor Shall cooperate in adding to the Authorized User's Agreement any Federal funding contract clauses necessary for the Authorized User's Project. An Authorized User Shall identify to Contractor, as a condition of using this Contract and during the Second Tier Solicitation/Direct Engagement process, whether Federal funds will be utilized for the Project.

Authorized Users must review and ensure they are in compliance with the requirements for the use of Federal Funds, including, but not limited to any Procurement requirements.

6.45 APPENDIX B REVISIONS

6.45.1 ACCEPTANCE TESTING & PRODUCT/SYSTEM ACCEPTANCE

Appendix B, Product Acceptance, is deleted in its entirety and replaced by the following language:

The State defines System Acceptance as the Problem Free operation of a Product/System/Solution after it is Fully Operational for a consecutive 30 calendar day period commencing with the first Business Day after the Equipment/System/Solution is Fully Operational. At that point, the Authorized User Shall test for 30 consecutive calendar days. Should the Equipment/System/Solution fail to operate Problem Free during the 30 consecutive calendar day Acceptance Testing Period, the Contractor Must correct the problem at no cost to the Authorized User and a new 30 consecutive calendar day Acceptance Testing Period will begin for the Product/System/Solution commencing the first Business Day after the problem is corrected. Problem Free operation applies to ALL components of the Equipment/System/Solution provided by the Contractor but does not include problems caused by the failure of any Authorized User provided premise infrastructure, failure of any Authorized User provided interface/Systems or erroneous software/System programming by the Authorized User.

An Authorized User has the discretion to increase the 30 consecutive calendar day Acceptance Testing Period. At the conclusion of the Acceptance Testing Period, the Authorized User May Accept the System and notify the Contractor in Writing. Upon receipt of notification of Acceptance by an Authorized User:

1. Title (or License grant for software) and risk of loss Shall pass from the Contractor to the Authorized User,
2. The Product/System/Solution warranty period in Appendix B, Warranties Shall commence, and
3. The Contractor Shall invoice the Authorized User for payment or, if using progress/milestone payments, final payment.

Authorized Users reserve the right to require additional performance and Acceptance Testing standards as part of the Authorized User Agreement.

Where the Authorized User determines to reject (non-accept) Equipment/Systems/Solutions for not performing Problem Free during the System Acceptance Testing Period and cancel the Authorized User Agreement in whole or in part, the Equipment/System/Solution Must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period Shall be regarded as abandoned by the Contractor and the Authorized User Shall have the right to dispose of Product as its own property. The Contractor Shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period. Such cancellation Shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

Where an Authorized User only purchases Equipment from a Contractor and has another entity(s) than the Contractor perform all Installation, Integration, and Maintenance, System Acceptance Testing Shall be 30 consecutive calendar days from the date of delivery.

All repair/replacement of Equipment/Systems/Solutions performed as Maintenance Shall be subject to this section.

Please see Attachment 16 – How to Use for additional information regarding invoicing and Progress/Milestone payments.

6.46 SYSTEMS AND SOLUTIONS THAT INCLUDE CLOUD/HOSTED/REMOTE OFFERINGS

The following provisions apply to any System and Solution under Lot 2 that includes Cloud/Hosted/Remote Offerings, as a component of the System:

1. All Data Must remain in CONUS. Any Data stored, or acted upon, Must be located solely in Data Centers or Central Stations within CONUS.
2. The Authorized User Shall own all right, title and interest in Data.
3. The Authorized User Must have access to its Data at all times for the term of the Authorized User Agreement.
4. The Authorized User Must have the ability to import or export Data in piecemeal or in its entirety at the Authorized User's discretion, without interference from the Contractor. This includes the ability for the Authorized User to import or export Data to/from other Contractors.
5. Except as required for reliability, performance, security, or availability of the services, the Contractor will not transfer Data unless directed to do so in writing by the Authorized User. At the request of the Authorized User, the Contractor will provide the services required to transfer Data from existing Databases to physical storage devices, to facilitate movement of large volumes of Data.
6. At the end of the Contract Term and/or Term of the Authorized User Agreement, Contractor may be required to facilitate transfer of Data to a new Contractor. This transfer must be carried out as specified by the Authorized User in the Authorized User Agreement.
7. In the case of Contract breach or termination for cause of the Contract, all expenses for the transfer of Data shall be the responsibility of the Contractor.

6.47 REQUIREMENTS OF N.Y. STATE FINANCE LAW § 139-L

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

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

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

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

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

6.48 NYS FIRE ALARM SECURITY SYSTEM INSTALLER ONGOING COMPLIANCE WHERE REQUIRED BY LAW

Contractors awarded Lot 2 for Systems that require a NYS Fire Alarm Security System Installer License Must maintain an active license in good standing for the term of the contract. OGS or the Authorized User reserves the right to require the Contractor to provide proof of such licenses and/or certifications at any time during the contract.

6.49 CERTIFIED TECHNICIANS

Contractors Must use Certified Technicians to perform all Services (as applicable). If obtaining Installation, Integration, or Maintenance, Authorized Users May require the Contractor to provide a list of Certified Technicians who will be performing Work and these individual's qualifications, including, but not limited to:

A. Number of Years Experience

B. Licenses (as applicable)

C. Certifications (e.g. from the Manufacturer for a Product Line) as applicable

Authorized Users conducting Second Tier Solicitations may use this information for ranking purposes when the basis of award will be either Best Value or Qualification-Based Selection.

6.50. ONGOING COMPLIANCE REGARDING PRICING

Contractors cannot provide Equipment/Systems or Perform Services unless all of the Equipment/Systems and Services are on their NYS Net Pricing Pages. Contractors cannot use the Job Titles on their Contract to perform Services on Equipment not offered on their Contract.

6.51 SEVERABILITY

If any provision of this contract is deemed invalid or unenforceable by a New York State or Federal Court of Competent Jurisdiction, such determination shall have no effect on the balance of the Contract, which shall be enforced and interpreted as if such provision was never included in this contract.

SECTION 7: MAINTENANCE

The following apply to all Contracts awarded for Lot 2.

7.1 GENERAL PROVISIONS

1. All Contractors awarded Lot 2 may offer Maintenance. There are two distinct types of maintenance: Preventative Maintenance, and Remedial Maintenance. Please see Attachment 15 – Glossary of Terms for the definitions of each.
2. If an Authorized Users elects to purchase any System or Equipment to be provided as a result of This Award, all required Remedial Maintenance and scheduled repairs and replacements will be provided under the warranty provisions during the first year **subsequent to Acceptance of the Equipment/System (see §6.45 Appendix B Revisions)**.
3. Contractor may offer Legacy Maintenance/support Services on End-of-Life, or obsoleted Equipment, that is not being offered under this Contract, provided that the Equipment fits within the scope of the Contract. Legacy Maintenance/support options Must be included in Attachment 1 – NYS Net Pricing Pages. A description of each type of Legacy Maintenance/support option shall be provided in Attachment 1 – *NYS Net Pricing Pages*.

7.2 PREVENTATIVE MAINTENANCE

The Contractor Shall perform Preventive Maintenance (PM) according to the Manufacturer's recommended schedule.

7.3 REMEDIAL MAINTENANCE

1. Whenever an Authorized User enters into any Maintenance Agreement with a Contractor under This Award, the Contractor automatically becomes responsible for the performance of Remedial Maintenance. Authorized Users cannot waive the Remedial Maintenance and Remedial Maintenance Response Requirements listed in this Section.
2. Whether the Authorized User elects to subscribe to monthly Maintenance, prepaid annual Maintenance, or Time and Materials (T&M), Remedial Maintenance Must be performed after the Authorized User notifies the Contractor that the Equipment/System is inoperable or unsuitable for operation. The Contractor will be responsible for insuring that Service for each request is provided in accordance with the following:
 - A. Priority Emergency Service - A "Priority Emergency" is a situation involving a major Malfunction of the Intelligent Facility and Security System Equipment or System, involving the inability of 10% or more of the Equipment or 10% or more of the System to operate Problem Free. The Contractor Must Respond in Priority Emergencies within two (2) continuous hours following notification by the Authorized User. Authorized Users reserve the right to require a more stringent definition of a Priority Emergency at time of purchase.
 - B. Emergency Service - An "Emergency" is a situation involving a "critical" System Malfunction in the opinion of the Authorized User. The Contractor Must Respond in Emergencies within four (4) continuous hours after Authorized User notifies Contractor of the emergency.
 - C. Non-Emergency Service - A "Non-Emergency" is a situation involving a System Malfunction of a scope less than that described for an Emergency. The Contractor Must Respond in Non-Emergencies within six (6) continuous hours after Authorized User notifies Contractor of the Malfunction.

The above Response requirements includes Travel Time and Site Access Time. Remedial Maintenance Must be available twenty-four hours per day, seven days per week, including New York State legal holidays.

Contractors Must provide a local telephone number for the Contractor at no additional Cost and a Long Distance Telephone Number at no additional Cost if the Authorized User will need to make a Long Distance Phone Call which would otherwise result in the Authorized User incurring toll charges. .

In the event Contractor does not meet the aforementioned Remedial Maintenance Response requirements, the Authorized User Shall be entitled to a credit of 10 percent of the monthly System Maintenance cost but not less than one hundred (\$100.00) dollars for every hour beyond the aforementioned Remedial Maintenance Response requirements. During the first year of warranty or T&M conditions, any such credit Shall be levied against any Preventative Maintenance charges incurred by the Authorized User with the Contractor, and thereafter against any future purchase, including, but not limited to any Maintenance Agreement

If the Contractor does not perform according to the Maintenance Agreement, the Authorized User reserves the right to contract with another Maintenance provider. The difference in cost, if any, between the two will be borne by the Contractor issued the Maintenance Agreement.

3. During the Warranty Period required by Appendix B, *Warranties* where a Contractor has provided Equipment, Installation, Integration, and repairs/replacement for an Authorized User, the provisions of this section Shall be deemed part of the Warranty at no cost to the Authorized User.

7.4 REMOTE MAINTENANCE/REMOTE SUPPORT

To meet the Remedial Maintenance Response requirements, and perform certain Preventative Maintenance, Contractors May utilize Remote Administration and/or Remote Maintenance/Support Services arrangements.

Connections to an Authorized User's networks/Systems Must be performed in a manner prescribed by the Authorized User to preserve the integrity of the Authorized User's network, confidentiality and integrity of information transmitted over that Authorized User's network/System, and the availability of the network/System.

Furthermore, the Authorized User Must specifically grant permission for the Contractor to access the System for each Remedial Maintenance and Preventative Maintenance incident.

7.5 MAINTENANCE SERVICES FOR EQUIPMENT PURCHASED OUTSIDE OF THIS AWARD

In addition, Maintenance for Equipment/Systems not purchased, Installed, and Integrated from Contracts for Intelligent Facility & Security Systems & Solutions Awarded as a result of Solicitation 23150 May be purchased from Contracts for Lot 2 but only in accordance with the following;

1. Authorized Users are allowed to purchase Maintenance for Equipment/Systems purchased outside of this Award if the specific Product Line(s) and specific Equipment to be Maintained are on the Contractor's NYS Net Price Pages;
2. The Contractor Must use the Total Hourly Rates in its NYS Net Pricing Pages to develop the Authorized User Total Hourly Rates for the Maintenance of Equipment/Systems purchased outside of this Award;
3. Contractors are not obligated to provide the Authorized Users Maintenance Service for Equipment/Systems not purchased, Installed, and Integrated from This Award; and
4. The Contractor Shall inspect the Equipment/Systems to make a determination as to whether or not they wish to provide the Authorized User Maintenance. *Any rates for the inspection Service Shall be at or below the Total Hourly Rates listed on the Contractors' NYS Net Pricing Pages. Contractors May refuse to offer Maintenance on previously purchased Equipment/Systems, due to age, condition, availability of Equipment, etc.*

7.6 MAINTENANCE SHEETS

The Contractor Must furnish the Authorized User with a Maintenance Service sheet for all Maintenance requests as follows:

1. Preventative Maintenance:

The Maintenance Service sheets for Preventative Maintenance Must include, at a minimum, the following information for each performance of Service:

- A. Date and time of Arrival and Department
- B. Equipment/Systems tested, inspected, cleaned, etc.
- C. Any scheduled repairs or replacements performed

- D. Any deficiencies, Malfunctions, etc. identified
 - E. Date and time all testing, inspection, cleaning, scheduled repairs & replacements, etc. were complete
 - F. Charges for Services and Equipment, if applicable (Authorized User Total Hourly Rate and Authorized User NYS Net Pricing)
 - G. Name of technician(s) performing Maintenance on Equipment/System
2. Remedial Maintenance:
The Maintenance Service sheets for Remedial Maintenance Must include, at a minimum, the following information for each request for Service:
- A. Date and time notified
 - B. Date and time of arrival and departure
 - C. Description of Malfunction reported
 - D. Diagnosis of Malfunction/failure and Work performed
 - E. Date and time Malfunction/failure was corrected
 - F. Charges for Services and Equipment, if applicable (Authorized User Total Hourly Rate and Authorized User NYS Net Pricing)
 - G. Name of technician(s) performing Maintenance on Equipment/System

The Maintenance Service report Must be supplied upon completion of Maintenance whenever it is performed on the System

7.6 MAINTENANCE RESPONSIBILITY

As a part of Maintenance/support responsibilities, the Contractor shall represent the Authorized User in regards to other involved Equipment and service providers to identify and correct the malfunction. Malfunctions that cannot be immediately diagnosed and pinpointed to a certain piece of Equipment will require the participation of the Contractor until the responsibility for the problem has been established. See Appendix B, Cooperation with Third Parties.

In no instance Shall the failure to resolve the issue of responsibility relieve any Contractor of their obligation to restore Problem Free System operation. The Authorized User Shall have the right to adjust such matters after the fact and validate charges and/or Maintenance credits applicable to the provisions of the Contract and Maintenance Agreement. The specific Maintenance responsibilities are described in this Solicitation and include the delineation of responsibility.

7.7 MAINTENANCE GUARANTEE

Contractor guarantees that within forty-eight (48) continuous hours of its Response for any Remedial Maintenance as provided above that repairs/replacements Must be successfully completed and that Problem Free System operation Must be fully restored so long as the Malfunction is attributable to Contractor's Equipment/Systems/Services. Upon the Contractor's failure to provide such Maintenance Service to correct the Malfunction within the forty-eight (48) hour time period, the Authorized User Shall be entitled to a credit of 10 percent of the monthly System Maintenance cost but not less than one hundred (\$100.00) dollars for every hour beyond the forty-eight (48) hour time period. During the first year of warranty or T&M conditions, any such credit Shall be levied against any Preventative Maintenance charges incurred by the Authorized User with the Contractor, and thereafter against any future purchase, including, but not limited to any Maintenance Agreement. Should the Equipment/System Malfunction for a period of more than forty-eight (48) consecutive hours or fail to be restored to Problem Free operation after two corrective Maintenance Services, the Authorized User Shall have the option of requesting, and Contractor Shall provide on a temporary basis, replacement Equipment of the same or similar design and equal to or better performance pending successful repair of the Equipment. Should these measures fail to lead to a satisfactory resolution within sixty (60) days of their commencement, the Authorized User Shall be entitled, at its option, to the Equipment's replacement with new, reliable Equipment of the same or similar design and equal to or better performance at no cost to the Authorized User. The terms and conditions of the Contract Shall be equally applicable to such replacement Equipment.

7.8 FAILURE TO COMPLY

Should the selected Contractor fail to Maintain the Installed, Integrated, and Accepted Equipment/System, the Authorized User reserves the right to terminate the Maintenance Agreement without any penalty whatsoever after a Written notice to said Contractor and providing said Contractor thirty-day (30) days to

correct all Malfunctions and Maintenance Agreement issues. Failure to correct these Malfunctions and Maintenance Agreement issues identified in the Written notice May result in NYS or the Authorized User seeking damages equal to the cost of Equipment/Systems repair/replacement or any charges incurred in having the identified Malfunctions or Maintenance Agreement issues corrected. These costs are not limited to repair or replacement Equipment costs but May also include charges for Installation, Integration, Maintenance, training etc. Contractor will be required to refund the total amount of any prepaid Maintenance.

Additionally, any failure to meet the required Remedial Maintenance Response requirements May result in a responsibility hearing, which could lead to contract suspension or termination.

All Equipment repaired or replaced (including, but not limited to all Maintenance Labor necessary to complete such repair or replacement) either through Preventative Maintenance or Remedial Maintenance Shall be subject to the provisions of Sec. 6.44 *Appendix B Revisions*.