



Invitation for Bids (Revised 03/06/2019)

BID OPENING DATE: April 23, 2019 TIME: 11:00 A.M. EST INVITATION FOR BIDS NUMBER: 23155	TITLE: Group 35200 - FIREARMS, AMMUNITION, & LESS-LETHAL PRODUCTS (Statewide) Classification Codes: 12, 46			
CONTRACT PERIOD: November 1, 2019 to October 31, 2024				
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.				
PRIMARY CONTACT Neilene Rabideau Contract Management Specialist 1 Telephone No. (518) 473-6518 Email address: neilene.rabideau@ogs.ny.gov	SECONDARY CONTACT Joseph Better Contract Management Specialist 2 Telephone No. (518) 474-7101 Email address: joseph.better@ogs.ny.gov			
Bidder's Federal Tax Identification Number: (Do Not Use Social Security Number)	NYS Vendor Identification Number: (See New York State Vendor File Registration Clause)			
Legal Business Name of Company Bidding:				
D/B/A – Doing Business As (if applicable):				
Street	City	State	County	Zip Code
Email Address:		Company Web Site:		
If applicable, place an "x" in the appropriate box(es) (check all that apply)				
<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business	
If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> WE ARE NOT BIDDING AT THIS TIME BECAUSE:				
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: _____

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 60 days from the date of submission to the New York State (“NYS”) Office of General Services (“OGS”), or for such longer period as is set forth in the Invitation for Bids.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Invitation for Bids.
3. The Bidder has read and understands the provisions of the Invitation for Bids, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS’s procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at https://ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Bidder referenced above and that he or she signed this Bidder Certification as the legally binding act of the Bidder.

Print Full Bidder Entity Name

By:

Signature of Person Authorized to
Legally Bind the Bidder

Print Name of Signatory

Print Title of Signatory

Date

RETURN THIS PAGE AS PART OF BID

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SECTION 1 INTRODUCTION

1.1 OVERVIEW

This Invitation for Bids (IFB) is issued by the New York State (NYS) Office of General Services (OGS), Procurement Services to establish multiple statewide Contracts for Firearms, Ammunition, and Less-Lethal Products for all Authorized Users eligible to purchase through this Solicitation, as is defined in Section 1 *DEFINITIONS*.

The purpose of this IFB and the resultant Contracts is to provide Authorized Users with a means of acquiring Firearms, Ammunition, and Less-Lethal Products. This IFB contains a total of nine (9) Lots, which are described in further detail below in Section 1 *SCOPE*, and in Attachment 1 – *Pricing*. A Bidder is not required to Bid on all Lots.

Each Product Line within a Lot will be awarded in accordance with Section 5 *Method of Award*. For a successful Bidder who is awarded more than one Product Line, a single Contract will be issued.

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

The Products included in this IFB are divided into the following Lots:

- Lot 1 – Firearms & Accessories
- Lot 2 – Live Ammunition
- Lot 3 – Less-Lethal Ammunition
- Lot 4 – Restraints
- Lot 5 – Batons & Baton Holders
- Lot 6 – Holsters, Duty Belts & Related Holders
- Lot 7 – Conducted Electrical Weapons (CEWs) & Accessories
- Lot 8 – Less-Lethal Gases & Grenades
- Lot 9 – Firearms Optics & Accessories

The scope of this IFB and the resultant Contracts, is set forth below:

A. Lot 1 – FIREARMS & ACCESSORIES

This Lot is for the acquisition of firearms and applicable accessories. The firearms in this Lot are limited to the Manufacturer's Law Enforcement (LE) Product Line and accessories, and Sporting Arms Product Line and accessories. The applicable Manufacturer's accessories for firearms May include, but are not limited to, gun parts, magazines, and cleaning kits.

Exclusion(s): Firearm optics and accessories (See Lot 9).

B. Lot 2 – LIVE AMMUNITION

This Lot is for the acquisition of live ammunition.

C. Lot 3 – LESS-LETHAL AMMUNITION

This Lot is for the acquisition of less-lethal ammunition including, but not limited to, blank rounds, training markers, applicable magazines, conversion kits, and kinetic impact projectiles and related projectile launchers.

D. Lot 4 – RESTRAINTS

This Lot is for the acquisition of physical restraints including, but not limited to, handcuffs, leg irons, and waist/belt chains.

E. Lot 5 – BATONS & BATON HOLDERS

This Lot is for the acquisition of several types of tactical batons including, but not limited to, straight, side handle, or expandable models. This Lot also includes the baton holders.

Exclusion(s): Baton holders with body camera technology.

F. Lot 6 – HOLSTERS, DUTY BELTS & RELATED HOLDERS

This Lot is for the acquisition of holsters and duty belts. This Lot includes slings, and pouches and/or holders that attach directly to the duty belt.

Exclusion(s): Holsters with body camera technology and pouches and/or holders that do not directly attach to the duty belt.

G. Lot 7 – CONDUCTED ELECTRICAL WEAPONS (CEWs) & ACCESSORIES

This Lot is for the acquisition of CEWs & accessories including, but not limited to, extended warranties, batteries, cartridges, protective training suits, and targets.

Exclusion(s): Services related to body camera technology and any Software/Cloud Offerings.

H. Lot 8 – LESS-LETHAL GASES & GRENADES

This Lot is for the acquisition of 2-chlorobenzylidene malononitrile (CS), Chloroacetophenone (CN), and Oleoresin Capsicum (OC) chemical gases for riot and crowd control, personal defense, and tactical deployment. This Lot also includes flash, sound, and smoke grenades and Products associated with the use and deployment of the gases and grenades, such as launchers.

Exclusion(s): Lethal grenades such as incendiary, offensive, and fragmentation.

I. Lot 9 – FIREARM OPTICS & ACCESSORIES

This Lot is for the acquisition of firearm optics including, but not limited to, scopes and sights. This Lot also includes related optic accessories including, but not limited to, lens covers and mounting kits.

1.3 ESTIMATED QUANTITIES

A Contract resulting from this Solicitation will be an Indefinite Delivery and Indefinite Quantity (IDIQ) Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor Must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$10,000,000 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>
IFB Release	February 7, 2019	N/A
Closing Date for First Round of Bidder Questions	February 28, 2019	5:00 PM ET
OGS Procurement Services' Responses to First Round of Bidder Questions	March 7, 2019 (tentative)	N/A
Closing Date for Second Round of Bidder Questions	March 28, 2019	5:00 PM ET
OGS Procurement Services' Responses to Second Round of Bidder Questions	April 4, 2019 (tentative)	N/A
Bid Opening / Due Date for Bids	April 23, 2019	11:00 AM ET
Contract Approval Date / Award Publish Date	November 1, 2019 (tentative)	N/A

1.5 PRE-BID CONFERENCE

There is no pre-bid conference for this Solicitation.

1.6 NYS CONTRACT REPORTER

Bidders Must register with the New York State Contract Reporter ("NYSCR") at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the "I want to find contracts to bid on" page to register for your free account. In order to receive email notifications regarding updates to the content or status of a particular ad, you Must "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 the "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 email notifications regarding updates, including email notifications regarding the posting of the question and answer document and updates to Solicitation documents.

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

1.7 BIDDER QUESTIONS

All questions regarding this Solicitation should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form Must be emailed to neilene.rabideau@ogs.ny.gov by the date and time indicated in the *Key Events/Dates* section. Questions submitted after the deadline indicated May not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter ("NYSCR"). Your company Must select the "opt-in" option within the Contract Reporter ad to receive notification updates of this Solicitation.

If Bidder intends to submit a Bid that deviates from the requirements of this 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 Section 4 *Bid Deviations* for additional information.

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: <http://www.ogs.ny.gov/acpl/>.

1.9 DEFINITIONS

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

"Authorized User" refers to entities that meet the definition in Appendix B, *Definitions* and are comprised of "Police Officer(s)" as defined by subdivision 34 of §1.20 of the New York State Criminal Procedure Law and/or "Peace Officer(s)" as defined in §2.10 of the New York State Criminal Procedure Law.

"Business Day" refers to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS holidays.

"Bulkload State Agency" refers to any State agency that does not directly input financial information into SFS; but instead, transfers financial information through a bulkload transaction interface process. Through this process, an internal agency system electronically transmits data to the SFS and the SFS creates data extract files to send back to the internal agency system.

"Dealers" refers to retailers who usually purchase from Distributors and sell to the public. Dealers are authorized/designated by a Manufacturer to be an alternate distribution source for that Manufacturer, subject to approval by OGS, Procurement Services.

"Distributors" refers to wholesalers who may sell to Dealers and to the public. Distributors are authorized/designated by a Manufacturer to be an alternate distribution source for that Manufacturer, subject to approval by OGS, Procurement Services.

"FET/FAET" refers to the federal Firearms and Ammunition Exercise Tax.

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

"List Price/MSRP" refers to the published or displayed price at which a Manufacturer recommends their Products be sold commercially. This applies even if the Manufacturer names this recommended pricing differently.

"Manufacturer" refers to a business entity that creates, produces, processes, manipulates or changes the form of an article or by combining or assembling two or more articles as defined in 27 CFR 53.11. This term also includes "producer" and "importer" as defined in 27 CFR 53.11.

"Manufacturer's Nationally Published Price List" refers to the document published or issued in some form by the Manufacturer, which is available to and recognized by the trade, and contains the Manufacturer's part number, Product description and List Price/MSRP.

"May" denotes the permissive in a clause or specification of this IFB or a resulting contract. "May" does not mean "required."

"Must" denotes the imperative in a clause or specification of this IFB or a resulting contract. "Must" is synonymous with "required." Also see "Shall."

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

“Non-State Authorized User” refers to any Authorized User defined in Appendix B *Definitions* except for a New York State Agency.

“NYS Holidays” refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

“NYS Net Pricing” means the quantifiable not-to-exceed price for all Products offered, computed by multiplying the List Price/MSRP by the Percentage Discount.

“NYS Vendor ID” is a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

“Online State Agency” refers to State agencies that input financial information data directly into SFS.

“Preferred Source Products” refers to those Products that have been approved in accordance with New York State Finance Law § 162.

“Preferred Source Program” refers to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to a State agencies, political subdivisions and public benefit corporations (including most public authorities).

“Procurement Services” refers to a business unit of OGS, formerly known as New York State Procurement (“NYSPRO”) and Procurement Services Group (“PSG”).

“Product Line” refers to a group of similar or related Products manufactured by a single Manufacturer and identified by a particular name or single brand.

“Percentage Discount” An allowance, reduction, or deduction from the List Price/MSRP to the NYS Net Pricing expressed as a percentage rounded to two decimal points.

“RFQ” is an acronym for Request For Quote.

“Shall” denotes the imperative in a Contract clause or specification.

“SFS” is an acronym for State Financial System.

“SDVOB” refers to a NYS-certified Service-Disabled Veteran-Owned Business

1.10 APPENDICES AND ATTACHMENTS

The appendices and attachments set forth in the Table of Contents and attached hereto, 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.

1.12 CONFLICT OF TERMS

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

1. Appendix A, *Standard Clauses for New York State Contracts*;
2. The Solicitation

3. Appendix B, *General Specifications*;
4. All other appendices and attachments to the Solicitation.

SECTION 2 BIDDER QUALIFICATIONS

Bidder is advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Bidder will have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required. Procurement Services retains the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work. A Bidder Must meet the following qualifications:

Bids will be accepted only from Manufacturers or their authorized Distributors and Dealers.

- A. Lots 1 and 2 Bidders Must be either a Manufacturer or authorized Distributor. Bids will not be accepted from Dealers for Lots 1 and 2.
- B. Lots 3 through 9 Bidders May either be a Manufacturer or their authorized Distributor or Dealer.

Distributors or Dealers who submit Bids Must demonstrate they are authorized by providing a Manufacturer's Certificates for the Products Lines offered. See Section 4 *Manufacturer's Certificate*.

SECTION 3 SPECIFICATIONS

All Product(s) offered Must meet all standards applicable to the Product's intended use in addition to the following requirements.

- A. All Products offered Must be **new**, not remanufactured, not seconds, and not surplus.
- B. All Products offered under Lot 2 – Live Ammunition Must not exceed the maximum chamber pressure levels established by the Sporting Arms and Ammunition Manufacturers Institute (SAAMI) and Must meet all other applicable SAAMI specifications. The following link is to the SAAMI standards: <https://saami.org/technical-information/ansi-saami-standards/>
- C. For Products offered under Lot 4 – Restraints, the standard handcuffs and leg irons Must be constructed of stainless steel and Must be provided with a minimum of two keys.
- D. For Products offered under Lot 8 – Gases & Less-Lethal Grenades, the gases Must meet the current standard set by the National Institute of Justice (NIJ): NIJ Standard 0110.00 for Hand-Held Aerosol Tear Gas Weapons; NIJ Standard 0111.00 for Barrier-Penetrating Tear Gas Munitions. The following link is to the NIJ Standards: <https://www.nij.gov/topics/technology/standards-testing/Pages/active.aspx>

Bidders are required to submit Attachment 11 – *Product Detailed Specs* listing the applicable standards, or the requirements associated with the Product. If no such standard exists for the Product, then the Bidder is required to list the Manufacturer's specification for the offered Product and provide a direct website link to the specific Manufacturer's specification. For Bidders offering Lot 2 and Lot 8 Products, the additional Manufacturer's Attestation is required to demonstrate that the Product(s) and/or unique model(s) offered meets the applicable standard in Section 3 *SPECIFICATIONS*. Failure to submit any of the data May result in rejection of the Bid.

OGS Procurement Services May require additional documentation to determine that Bidder's offer meets the detailed specifications. The Bidder will be given a date by which the requested documents Must be provided. If the Bidder fails to submit the documentation, the Bid May be considered non-responsive. If Bidder is unable to meet the deadline set forth, the Bidder Must request an extension in writing prior to the given deadline. Upon review of the extension request, OGS will either provide a new deadline or if the deadline is not met, consider Bidder non-responsive and Bidder's offer will no longer be considered for an award.

SECTION 4 BID SUBMISSION

4.1 PERFORMANCE AND BID BONDS

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

4.2 NYS VENDOR FILE REGISTRATION

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder and any authorized Dealers/Distributors 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 Dealers/Distributors (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables a vendor to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York.

If Bidder is already registered in the New York State Vendor File, the Bidder Must enter its Vendor ID on the first page of this Solicitation. Authorized Dealers/Distributors already registered should list the Vendor ID number along with the authorized Dealer/Distributor 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 Dealer/Distributor is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized Dealer/Distributor and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized Dealers/Distributors. Once the process is initiated, registrants will receive an email identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

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

http://www.osc.state.ny.us/vendor_management

4.3 FORMAT OF BID SUBMISSION

The complete Bid package Must be received by OGS Procurement Services by the date and time of the Bid opening stated in Section 1 *KEY EVENTS/DATES*. Late Bids will be handled in accordance with Appendix B, *Late Bids*.

Bidders are responsible to ensure that all digital storage devices (CDs or flash drives) and electronic files are properly formatted and accessible. 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. 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.

E-mail or facsimile Bid submissions are not acceptable and will result in a Bid Proposal being disqualified.

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.

4.4 CONTENT

Bidders are required to submit ONE copy of each of the documents listed in Attachment 6 – *Bidder Submission Checklist* and in the manner specified (i.e., paper or electronic). Failure to do so May result in the Bid being

deemed non-responsive to the Solicitation. Each document should be saved as its own file, properly marked as to its contents, and all documents saved to one (1) CD or flash drive. Note: all Excel documents Must NOT be locked or password protected by Bidder.

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

Any indicators or messages built into the attachments are for informational purposes 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 OGS 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.

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

In the event a Bidder May need to submit amendments to their Bid prior to the Bid Submission Deadline, any amended pages should show the date of the revision and indicate the portion of the page being changed. One (1) paper version of amended page(s), if applicable, and a new CD or flash drive should be submitted indicating the date of revision.

Bidder is responsible for ensuring that the most recently updated version of all required documents has been submitted. Any updated versions released after the initial Bid release date will be posted on the OGS website and announced via the NYS Contract Reporter.

4.4.1 ADMINISTRATIVE PROPOSAL REQUIREMENTS

The following lists the forms which will be reviewed for completeness and accuracy at the time of the Bid Opening. A Bidder must submit all documents in the manner and format set forth below and in Attachment 6 – *Bidder Submittal Checklist* (i.e., paper or electronic). Failure to do so May result in the Bid being deemed non-responsive.

Each document should be saved as its own file, properly marked as to its contents, and all documents saved to one (1) CD or flash Drive. If an item is noted as requiring a paper version submission, this Must be provided with original ("wet") ink signature (e.g. no photocopies) and be placed in a loose-leaf binder and tabbed.

- A. **IFB Cover Page**
Page #1 of the IFB (cover page/first page of this document) completed, signed, and submitted both in paper and electronic format.
- B. **IFB Bidder Certification and Affirmation Page**
Page #2 of the IFB (the Bidder Certification and Affirmation Page/second page of this document) completed, signed, and submitted both in paper and electronic format.
- C. **Attachment 2 – NYS Required Certifications** (see Section 6 *NYS FINANCE LAW § 139-l*)
Completed, signed, and submitted both in paper and electronic format.
- D. **Attachment 3 – Encouraging Use of NYS Businesses**
Completed and submitted in electronic format.
- E. **Attachment 4 – Insurance Requirements**
Documentation, produced at Bidder's sole expense and submitted in electronic format, that provides proof of compliance with required insurance as specified in Attachment 4 – *Insurance Requirements*.
- F. **Attachment 5 – Bidder Information Questionnaire**
Both worksheets completed and submitted in Excel format.
- G. **Attachment 6 – Bidder Submittal Checklist**
Completed and submitted in Excel format
- H. **Attachment 9 – Dealer/Distributor Info** (see Section 6 *DEALERS/DISTRIBUTORS*)
Completed and submitted in Word format. This form is required if the Bidder is a Manufacturer and has authorized Dealers/Distributors.

- I. **Attachment 10 – Manufacturer’s Certificate** (see Section 4 *MANUFACTURER’S CERTIFICATE*)
Completed and submitted in electronic format for each Product Line offered. This form is required if the Bidder is a Dealer/Distributor and not the Manufacturer.
- J. **Attachment 11 – Product Detailed Specs** (see Section 3 *SPECIFICATIONS*)
Specs worksheet completed and submitted in Excel format. Manufacturer’s Attestation worksheet completed, signed, and submitted in electronic format. Manufacturer’s Attestation is required if Bidder is offering Lot 2 or Lot 8.
- K. **NY State Taxation and Finance form ST-220CA, Contractor Certification** (see Section 6 *NYS TAX LAW SECTION 5-a*)
Completed, signed, notarized, and submitted in paper.
- L. **Equal Employment Opportunity Staffing Plan (EEO 100)** (see Section 6, *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*)
Completed, signed, and submitted both in paper and electronic format
- M. **NYS Vendor Responsibility Questionnaire (For-Profit Business Entity)** (see Section 6, *NYS VENDOR RESPONSIBILITY*)
 - a. Online electronic completion and submission through the NYS VendRep System, with a certification date no more than six (6) months prior to Bid Opening date; OR
 - b. Completed, signed, notarized, and submitted in paper with date of signature no more than six (6) months prior to Bid Opening date.
- N. **Supporting Information**
 - a. Addendums for Solicitation, including answers to Bidder’s inquiries
Completed, signed, and submitted in both paper and electronic format.

4.5 BID PRICING SUBMITTAL

Pricing will be collected using Attachment 1 – Pricing in accordance with the Instructions tab listed within Attachment 1. Failure to provide pricing at the time of Bid Opening Shall render the Bid non-responsive and result in either the rejection of the entire Bid or those particular Lot(s) or Product Lines where the Bidder did not provide pricing. Bid pricing submitted in a format other than Attachment 1 – *Pricing* May render the Bid non-responsive and May result in the Bid being removed from consideration.

Attachment 1 – *Pricing* contains a total of nine (9) Lots. A Bidder is not required to Bid on all Lots.

Bidders Must offer a COMPLETE Manufacturer’s Product Line. Incomplete, partial Product Lines, or selected Products from a Product Line will not be considered. Failure to offer the COMPLETE Product Line Shall render the Bid non-responsive and result in rejection of Bid.

All NYS Net Pricing Shall be discounted from List Price/MSRP. Bidder is required to include the applicable current Manufacturer’s Nationally Published Price List for each Product Line offered.

For each Product line being offered, the Bidder will offer a single Percentage Discount greater than 0%,

NOTE: For Lot 1 – Firearms and Accessories, a Bidder May offer LE firearms as a separate Product Line from LE firearm accessories; and Sporting Arms as a separate Product Line from Sporting Arms accessories, even if the Manufacturer does not. This separation of accessories from the Product Lines will only be considered for Lot 1.

Price Must include all Customs Duties and charges, and be net, F.O.B. destination any point in New York State, including Inside Delivery.

New York State and local governments are exempt from FET/FAET and State and local sales taxes.

The Bidder will demonstrate reasonableness of price by offering the Percentage Discount to NYS that is the same or better than provided in a current contract to similarly-situated governmental entities (i.e. other NYS Contracts, other state contracts, GSA, NASPO ValuePoint, Veteran’s Administration, Department of Defense or other government entities). If the Bidder is unable to offer the Percentage Discount to NYS that is the same or

better than given to other similarly-situated governmental entities, Bidder Must provide a brief explanation in Attachment 5 – Bidder Information Questionnaire, “General Questions.” It is within OGS’s discretion to determine whether the Percentage Discount and explanation provided by Bidder is reasonable. OGS reserves the right to request further information such as copies of other governmental contracts, to determine reasonableness of price.

4.6 PRODUCT DELIVERY

Delivery will be expressed on the “Financial Offer” in Attachment 1 – Pricing, in the number of calendar days required to make delivery after receipt of a Purchase Order to any ordering Authorized User.

4.7 VOLUME DISCOUNTS

Bidder May offer cumulative statewide volume discounts that will be additional discounts applied to all future orders for all Authorized Users, based upon exceeding threshold quantities of individual items or over a specified dollar amount.

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

Volume discounts will not be considered in determining the best Percentage Discount Bid.

4.8 PROMPT PAYMENT DISCOUNTS

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

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

4.9 NYS PROCUREMENT CARD DISCOUNT

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

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

4.10 BID ENVELOPES AND PACKAGES

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

1. **BID ENCLOSED** (preferably bold, large print, all capital letters)
2. Solicitation number (IFB #23155)
3. Bid Opening Date and Time as stated in Section 1 *KEY EVENTS/DATES*
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.

4.11 BID DELIVERY

Bids Must be delivered to the following address on or before **April 23, 2019 11:00 a.m. EST** as stated in Section 1 *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 will be rejected, except as provided in

Appendix B, *Late Bids*. All Bids and accompanying documentation will become the property of the State of New York and will not be returned.

4.11.1 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.

4.12 MANUFACTURER'S CERTIFICATE

Through completion and submission of the Manufacturer's Certificate, the Manufacturer guarantees that the Bidder is an authorized Dealer/Distributor and has agreed to supply the Bidder with all quantities of Products required by the Bidder in fulfillment of its obligations under any resultant Contract with the State. Bidders will use the certificate in the attachment to this Solicitation to document this level of support (see Attachment 10 – *Manufacturer's Certificate*). Attachment 10 – *Manufacturer's Certificate* is not required when the Bidder IS the Manufacturer of the Product Line.

The Manufacturer's Certificate is to be forwarded by the Bidder to its proposed Manufacturer for completion and returned to the Bidder for inclusion with its Bid. The Commissioner reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract. See Appendix B, *Participation in Centralized Contracts and Employees, Subcontractors, and Agents* and Section 6 *DEALERS/DISTRIBUTORS*.

4.13 BID DEVIATIONS

Bids Must conform to the terms set forth in the Solicitation. As set forth in Section 1 *Bidder Questions*, if Bidder intends to submit a Bid that deviates from the requirements of this 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 will not be considered part of the Bid or resulting Contract but will be deemed included for informational or promotional purposes only.

4.14 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>

4.15 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.

4.16 NYS RESERVED RIGHTS

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

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;

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

4.17 INCORPORATION

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

SECTION 5 METHOD OF AWARD

5.1 AWARD OVERVIEW

As specified in Section 1 *SCOPE*, this Solicitation includes nine (9) Lots. One Contract award will be made for each Product Line within a Lot to a Responsive and Responsible Bidder, who offers the best Percentage Discount.

Note: NYS recognizes that a Manufacturer May have several Product Lines within a Lot. Each Manufacturer's Product Line within the Lot will be considered for Contract award.

Bids will be screened for completeness and conformance with the stated Section 1 *SCOPE*, Section 2 *BIDDER QUALIFICATIONS*, Section 3 *SPECIFICATIONS*, and requirements as specified in Attachment 6 – *Bidder*

Submission Checklist. Failure to provide properly completed documents or to demonstrate conformity with requirements found in this Solicitation, May result in a Bidder's removal from further consideration.

5.2 NOTIFICATION OF AWARD

Tentative Contract award(s) will consist of written notice to that effect by OGS to a selected Bidder. OGS will execute a Contract upon a determination 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.

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

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

SECTION 6 TERMS AND CONDITIONS

6.1 CONTRACT TERM AND EXTENSION

Each Contract let as a result of this Solicitation will be in effect for a term of up to five (5) years. The Contract term will commence after all necessary approvals are obtained and will 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 will have a co-terminus end date. At the State's option, the Contract May be extended for up to one (1) additional year as set forth in Appendix B, *Contract Term – Extension*. 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 six (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 six-month period, the definition of Authorized User will 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 will be based upon the then-existing terms and conditions. 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

This section will apply in addition to any rights set forth in Appendix B, *Contract Term – Renewal*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State May be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension May be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

6.3 PERIODIC RECRUITMENT

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. Bidder Must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Solicitation. Bids will be evaluated under substantially the same terms and conditions as the original Bids. Bidders will 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 Bidder or existing Contractor May not resubmit a Bid for future consideration for a Manufacturer's Product Line already offered with a Lot of the awarded Contract(s)

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

6.4 PRICE

The following terms and conditions apply to Contract pricing. See also Appendix B, *Pricing*.

A. Pricing

The Contractor's pricing will be published to the OGS website: All List Price/MSRP, Percentage Discounts, and NYS Net Pricing will be rounded to two decimals in the resultant Contract. **Pricing submitted with the Bid must remain in effect through the first anniversary date of the Bid Opening. Thereafter, Contractors may request to update their pricing when the Manufacturer's Nationally Published Price List is published in its normal manner. Updates will be made in accordance with Appendix C – Contract Modification Procedures.**

It's the Contractor's option to increase the Percentage Discount offered to Authorized Users based on individual orders. Discounts May be greater, but in no instance, May they be lower than, the awarded Percentage Discount.

Once awarded a Contract, Contractors Must not decrease their Percentage Discount(s) for the entire term of the Contract; even if the comparable GSA contract, the other governmental contract, or cooperative contract discounts are decreased.

The awarded Percentage Discount May be increased by the Contractor at any time during the Contract term. The awarded Percentage Discount May be increased using Appendix C - Contract Modification Procedure;

B. Pricing Incentives and Rebates

More favorable pricing can be offered to Authorized Users and it is expected that Authorized Users will obtain the same rebates and special offers, such as regional and national promotional pricing, as provided to other customers. If the promotional pricing offer provides a lower price than that of the NYS Net Pricing, then the Authorized User will receive the lower of the two prices;

C. Delivery

Standard delivery Must be provided at no additional expense. Price Must include all Customs Duties and charges, and be net, freight on board F.O.B. destination any point in New York State, for orders as designated by the Authorized User, including inside delivery. In addition, delivery Sites May be expanded (see Appendix B, *Extension of Use*); and

D. Taxes

Authorized Users are exempt from FET/FAET, and State and local sales taxes.

6.5 BEST PRICING OFFER

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

6.6 PRICE STRUCTURE

If, during the Contract Term, the Contractor is unable or unwilling to meet Contractual requirements in whole or in part based on the price structure of the Contract, it Must immediately notify the Office of General Services, Procurement Services in writing. Such notification will not relieve the Contractor of its responsibilities under the Contract.

Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, the State May terminate the Contract upon 10 business days written notice mailed to the Contractor.

6.7 ORDERING

Purchase Orders will be made in accordance with the terms set forth in Appendix B, *Purchase Orders*.

Authorized Users are to follow the instructions and guidance set forth in the *How to Use* document.

6.8 PURCHASE 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 will 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.

6.9 MINIMUM ORDER

The only minimum order associated with this Contract is for Lot 2 – Live Ammunition. For Lot 2, the minimum order is one (1) full case.

There is no minimum order for the other Lots.

6.10 PROCUREMENT INSTRUCTIONS FOR AUTHORIZED USERS

The resultant Contracts will be issued under a multiple award structure. Authorized Users will procure Products that best meet their form, function, and utility requirements and the procurement instructions for Authorized Users set forth in the *How to Use* document.

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

Use of Products from the resultant Contracts Must be done in accordance with all applicable laws, regulations, policies and procedures. Additional guidance is provided by OGS in the *How to Use* document.

6.11 PRODUCT INSPECTION AND ACCEPTANCE PERIOD

Appendix B, *PRODUCT ACCEPTANCE* clause has been modified to the following:

Title or other property interest and risk of loss Must not pass from the Contractor to the Authorized User until the Products have been received, inspected, tested, and officer qualified for a period of 60 days from the date of delivery; which constitutes acceptance by the Authorized User. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) will not be deemed or construed as acceptance of the Products received. Authorized Users reserve the right to require a longer acceptance period at time of purchase.

Authorized User will notify Contractor of acceptance upon successful completion of the inspection period.

Non-State Authorized Users and Bulkload State Agencies: If Non-State Authorized Users and Bulkload State Agencies fail to provide notice of rejection to the Contractor by the expiration of the 60-day acceptance period, this will constitute acceptance by those entities.

Online State Agencies: After the successful completion of the 60-day acceptance period, Online State Agencies Must select "accept" in SFS for the Product(s) within one (1) Business Day of completing the aforementioned 60-day acceptance period.

After an Authorized User has provided notice of acceptance to the Contractor for the Products purchased, the Contractor May invoice the Authorized User for payment.

6.12 TRADE-IN ITEMS

It is acceptable for the Contractor to provide pricing for estimated trade-in items in their quote for new purchases. However, estimates of trade-in items should not be subtracted from the Gross Purchase Price of the new items on quotes or Authorized User's Purchase Orders. See the Attachment 13 - *How to Use* for more information.

After an Authorized User has provided notice of acceptance to the Contractor for the Products purchased, the Contractor will invoice the Authorized User for payment.

The Authorized User will submit trade-in items along with Attachment 12 - *Trade-In Itemization Form* to the Contractor within 30 days of invoice. Contractor Must verify the accuracy of all information including, but not limited to, Serial #s of each item prior to issuing a credit (See Section 6 *CREDIT OF TRADE-INS*).

All items submitted to the Contractor for trade-in Shall be “as-is” and OGS and Authorized User make no representations as to the condition of the items. OGS and Authorized User further expressly disclaim all warranties including any warranties for fitness for particular purpose or merchantability of the weapons. It is the responsibility of the Contractor to investigate the condition of the items. The Contractor releases OGS and the Authorized User from all liability related to the use of the items, and will ensure that any third parties that receive any items are made aware of this disclaimer, including but not limited to the “as-is” nature of the items and agree to release OGS and the Authorized User from all liability related to the use of the items.

6.13 INVOICING AND PAYMENT

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

After receiving the Authorized User’s acceptance of Products, itemized on the Purchase Order, the Contractor will invoice Authorized User for any Products accepted. 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. The Contractor Must provide itemized invoicing for all Products ordered. At a minimum, the following fields Must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number (PCXXXX)
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User’s Purchase Order Number (if applicable)
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure

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

6.13.1 CREDIT FOR TRADE-IN ITEMS

Once the Contractor has verified the accuracy of the information contained in an applicable *Trade-in Itemization Form*, the Contractor will submit credit memos or checks in accordance with Attachment 13 – *How to Use*.

6.14 PRODUCT DELIVERY

The Contractor will be required to deliver Product anywhere within NYS boundaries, at the location and time designated by the Authorized User on the Purchase Order, or by other mutual agreement. If there is a

discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the ordering agency and, if applicable, from the Office of General Services, Procurement Services.

A. Shipping Dates and Delivery Time

1. All correspondence on shipping dates and delivery time will be directed to the Authorized User's contact person.
2. Contractor will provide written acknowledgement of orders within five (5) business days after receipt of order and will also provide anticipated shipping date.
3. If shipment will not be made within the anticipated shipping/delivery timeframe, the Contractor is required to notify the Authorized User in writing at least two weeks prior to the latest date of the original delivery obligation. This notification Must include the reason for the delay and a revised anticipated shipping and delivery dates. The Authorized User May request the Contractor to provide documentation to support the reason for the shipping/delivery delay. Failure to supply timely, written notification of the delay to the Authorized User, May initiate Contract default proceedings.

6.15 PRODUCT RETURNS AND EXCHANGES DUE TO CONTRACTOR'S ERROR

In addition to the provisions of Appendix B, *Title and Risk of Loss*, *Product Substitution*, and *Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, or Contractor errors otherwise not specified, will be handled as follows:

1. Upon receipt of Product, Authorized Users Must inspect all Products (see Section 6 *PRODUCT INSPECTION AND ACCEPTANCE PERIOD*).
2. If during the inspection period, the Authorized User determines that the Product is not acceptable, the Product will be returned to the Contractor with no restocking fee or other charges to the Authorized User. Authorized User is responsible to contact the Contractor and inform them of the intent to return the Product.
3. The Contractor is responsible for removal of the Product from the Authorized User's premises within ten (10) calendar days of notification of rejection by the Authorized User. If available, the Authorized User should obtain a return authorization from the Contractor.
4. In the event a specified Contract Product becomes unavailable, the Authorized User May require the Contractor to substitute a new Product, which will perform at the same or better level of performance, at no additional cost or expense to the Authorized User. Authorized User will determine what constitutes the same or better level of performance. Upon receipt of the substituted new Product, Authorized User Must commence a new inspection period.

6.15.1 DISCREPANCIES

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

6.16 PRODUCT RETURNS BECAUSE OF AUTHORIZED USER ERROR

Standard stock Products ordered in error by Authorized User May be returned at Authorized User's expense within 30 days of receipt. Product(s) should be in resalable condition (original container, unused).

Contractor can only charge a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale. The restocking fee cannot exceed the NYS Net Pricing of the returned or exchanged Product.

6.17 PRODUCT END-OF-CYCLE RECYCLING/DISPOSAL

If available, Bidder is to provide an overview of the Manufacturer(s) established recycling and/or disposal program.

At the request of the ordering entity, the awarded Contractor is to provide written instructions on how to use this program. If Manufacturer offers a recycling and/or disposal program, then the Contractor will provide documentation to program participants that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. Contractor will provide said records to OGS and/or any other governmental entity with oversight responsibility, upon request.

6.18 CONTRACT ADMINISTRATION

Bidder will provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator will be set forth in Attachment 5 – *Bidder Information Questionnaire*. Contractor should notify OGS within five Business Days if its Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes should be submitted electronically via email to the OGS Contract Management Specialist.

6.19 CONTRACT UPDATES

Contract Updates will be handled as provided in Appendix C – Contract Modification 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.

6.20 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 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/>.

6.20.1 PARTICIPATION IN eMARKETPLACE

The State is 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.osg.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.

6.21 NYS FINANCE LAW § 139-I

Pursuant to NYS State Finance Law § 139-I, 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 NYS Labor Law § 201-g.

NYS 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 NYS 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 NYS Finance Law § 139-I, 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.

6.22 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 – *Insurance Requirements*.

6.23 REPORT OF CONTRACT USAGE

Contractor is required to submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of the resulting Contract by the Contractor, and all authorized Dealers and Distributors, *no later than 15 days after the close of each calendar quarter*. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the quarterly report.

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

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

6.24 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

Contractor Requirements and Procedures for Participation by New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR"), the New York State Office of General Services ("OGS") is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of OGS Contracts.

II. General Provisions

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State Contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 Shall be a part of these requirements. These provisions Shall be deemed supplementary to, and not in lieu

of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State, or local laws.

C. Failure to comply with all of the requirements herein May result in a finding of non-responsiveness, a finding of non-responsibility, breach of Contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women Shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the Contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors Shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO Shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO- 100 – Staffing Plan

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

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

1. The Contractor Shall submit, and Shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services Must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
2. Separate forms Shall be completed by Contractor and all subcontractors.
3. In limited instances, the Contractor or subcontractor May not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor Shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor Shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- B. Good Faith Efforts
- Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts Shall include, but not be limited to, the following:
1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
 2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
 3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
 4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
 5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
 6. Other information deemed relevant to the request.

V. Fraud

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

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

6.25 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

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

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation May be as Subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

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

<https://ogs.ny.gov/Veterans/default.asp>

Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract. ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/default.asp>


6.26 RECALLS

The Contractor Must immediately notify the OGS Procurement Services of any recalls pertaining to Contract Products.

6.27 OVERLAPPING CONTRACT PRODUCTS

Products available under the resulting Contract May also be available from other New York State Contracts. Authorized Users will be advised to select the most cost-effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

OGS identified Products that May be available from other OGS Centralized Contracts to assist Authorized Users in their procurement efforts. The table below is a tool, but it is not intended to capture every instance at Award or when Contract offerings are updated. At the time of purchase, it is incumbent upon the Authorized User to review other contracts to identify overlapping Contract Products and comply with all applicable requirements and guidelines.

Categories Represented in Contracts under this Group 35200		NYS Contract Overlap 	Group 38232 - Hazardous Incident Response Equip. (HIRE)
Lot 1	Firearms Accessories Only - which includes magazines and cleaning kits		X
Lot 5	Holsters, Duty Belts & Related Accessories		X
Lot 9	Firearms Optics		X

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 will 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 will 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 will 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 "OGS OR LESS" GUIDELINES

Purchases of the Products included in the Solicitation and resulting Contract are subject to the "OGS or Less" provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from

sources other than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

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

6.31 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

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

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

6.32 EXTENSION OF USE

Any Contract resulting from this Solicitation May be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction May also participate in any resultant Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

6.33 DEALERS/DISTRIBUTORS

The following terms and conditions apply to Contractors who are the Manufacturer and May use Dealers/Distributors as alternate distribution sources.

A. Conditions of Dealer/Distributors Participation

Dealers/Distributors Must be approved in advance by OGS as a condition of eligibility under the Contract. OGS also reserves the right to rescind any such participation, limit the number of Dealers/Distributors, or request that Contractor name additional Dealers/Distributors, in the best interests of the State, at OGS's sole discretion, at any time. Contractor has the right to qualify Dealers/Distributors and their participation under Contract by Product Line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria (“qualifying criteria”), provided that:

1. such qualifying criteria are uniformly applied to all potential Dealers/Distributors based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. the State reserves the right to request Contractor disclosure of all general categories of qualifying criteria;
3. those qualifying criteria met by the Dealer/Distributor Must be identified in Dealer/Distributor designations Attachment 9 – *Authorized Dealer/Distributor Info* at the time that Dealer/Distributor approval is requested; and,
4. immediate notice is provided to OGS in the event that a change in Dealer/Distributor's status occurs during the Contract term.

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

B. Designation of Dealers/Distributors

When Dealers/Distributors are submitted for approval, Contractor Must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 9 – *Authorized Dealer/Distributor Info*. Contractor will also specify whether orders Must be placed directly with Contractor or May be placed directly with designated Dealer/Distributors.

D. Responsibility for Reporting/Performance

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

E. Applicability of Contract Terms

Product ordered directly through Dealers/Distributors will be limited to Products previously approved for inclusion under this Contract and will be subject to all terms and conditions of this Contract as a condition of Dealer/Distributor participation.

6.34 NEW ACCOUNTS

The 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 will not be required to provide credit references.

6.35 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.

6.36 INSTRUCTION MANUALS

At the time of delivery, Contractor will provide a complete Manufacturer's instruction manual for the Product supplied to the Authorized User.

6.37 MANUFACTURER'S INSTRUCTIONS FOR ARMORERS:

Awarded Contractor(s) will provide Authorized Users with additional Manufacturer's instructions upon request. These instructions May include, but are not limited to:

- Manufacturer's instructions for routine maintenance of each firearm model within a Product Line; and
- Manufacturer's instructions for armorer maintenance with exploded view and parts list for each firearm model within a Product Line.

6.38 PREFERRED SOURCE

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.

6.39 ONGOING COMPLIANCE

Awarded Contractors Must comply with all applicable federal, state, and local laws and regulations. Contractors are responsible for maintaining all necessary permits and licenses required to sell Products available under Contracts awarded pursuant to this Solicitation. Contractors Must keep records of all sales, disposals and transfers in compliance with all applicable laws and regulations and will provide said records to OGS and/or any other governmental entity with oversight responsibility, upon request.

6.40 CAPTIONS

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

6.41 SEVERABILITY

If any provision of the 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.