STATE OF NEW YORK

EXECUTIVE DEPARTMENT

***OFFICE OF GENERAL SERVICES***

***PROCUREMENT SERVICES GROUP***

CORNING TOWER- 38th Floor

EMPIRE STATE PLAZA

ALBANY, NEW YORK 12242

**PIGGYBACK AGREEMENT**

|  |  |  |
| --- | --- | --- |
| AGREEMENT NUMBER | TITLE: GROUP | |
| RETURN BY: | Purchase Request No. | |
| SPECIFICATION REFERENCE:  As Incorporated Herein | |
| **CONTRACT PERIOD:** | | |
| **DESIGNATED CONTACTS:** Team # | | |
| Purchasing Officer I  Telephone No. (518)  E-mail address: @ogs.ny.gov | | Team Leader  Telephone No. (518)  E-mail address: @ogs.ny.gov |

|  |
| --- |
| The bid must be fully and properly executed by an authorized person. **By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this INVITATION FOR BIDS, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).** Information may be accessed at:  Procurement Lobbying: http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html |

|  |  |  |
| --- | --- | --- |
| **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 Zip County | | |
| Bidder’s Signature:  Title: | | Printed or Typed Name:  Date: |
| Phone : ( ) - ext ( )  Fax : ( ) - ext ( ) | | Toll Free Phone : ( ) - ext ( )  Toll Free Fax : ( ) - ext ( ) |
| E-mail Address: | | Company Web Site: |

GENERAL INFORMATION

APPENDIX A

Appendix A, Standard Clauses For New York State Contracts, dated December 2011, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein. **Please retain this document for future reference and do not return to OGS as part of the Bid submission.**

APPENDIX B:

Appendix B, Office of General Services General Specifications, dated July 2006, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. **Please retain this document for future reference and do not return to OGS as part of the Bid submission.**

APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any claims or actions brought by Contractor against the State for monetary damages shall be brought in the New York State Court of Claims. See "Governing Law" in Appendix A, Standard Clauses for New York State Contracts.

CONFLICT OF TERMS AND CONDITIONS:

Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

a. Appendix A (Standard Clauses For NYS Contracts)

b. This Invitation For Bids

c. Appendix B (General Specifications)

d. Bidder’s Bid

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 an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html

DISPUTE RESOLUTION POLICY:

It is the policy of the Office of General Services’ Procurement Services Group (PSG) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to PSG bid solicitations or contract awards. PSG encourages vendors to seek resolution of disputes through consultation with PSG staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of PSG’s Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this Invitation for Bids or through the OGS website (www.ogs.ny.gov).

CONTRACT PAYMENTS

Contract payments cannot be processed by New York State agencies and other authorized users until the contract products have been delivered and accepted. Invoices for such payment must contain sufficient data including, but not limited to, New York State’s Contract Number, description of product, quantity, unit and price per unit as well as federal identification number. See "Contract Billings" in Appendix B, OGS General Specifications.

GENERAL INFORMATION (Cont’d)

CONTRACT BILLINGS AND PAYMENTS

a. Billings. Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. Payment of Contract purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment. The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner’s sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller’s procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at [www.osc.state.ny.us](http://www.osc.state.ny.us), by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-486-1255. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller’s electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

c. Payment of Contract purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment. The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

PAYMENTS OF INTEREST

See "Interest on Late Payments" in Appendix B, OGS General Specifications. The Federal Prompt Payment Law (or any other law governing payment terms incorporated in the Master Contract) does not apply to the New York State Contract regardless of customer.

NEW YORK STATE VENDOR FILE REGISTRATION:

Prior to being awarded a contract pursuant to this Solicitation, the Bidder(s) and any designated authorized resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, unique New York State ten-digit vendor identification numbers will be assigned to your company and to each of your authorized resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors 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, list the ten-digit vendor id number on the first page of this bid document. Authorized resellers already registered should list the ten-digit vendor id number along with the authorized reseller information.

If the Bidder is not currently registered in the Vendor File, complete the enclosed OSC Substitute W-9 Form and submit it with your bid. In addition, if authorized resellers are to be used, an OSC Substitute W-9 form should be completed by each of the designated authorized resellers and submitted to the Office of General Services. The Office of General Services will initiate the vendor registration process for all Bidders recommended for Contract Award and their authorized resellers. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company 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/

GENERAL INFORMATION (Cont’d)

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY (hereinafter the “Questionnaire”)

OGS conducts a review of prospective contractors (“Bidders”) to provide reasonable assurances that the Bidder is responsive and responsible. A 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 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, <http://www.osc.state.ny.us./vendrep/vendor_index.htm> or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

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 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, the Bidder should complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid opening 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 found by the State that the Bidder’s responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

TAX LAW 5-A AMENDED APRIL 26, 2006 (APPENDIX 2)

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than $100,000 to certify to the 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 are 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.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this bid. Form No. ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two 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 bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at **1-800-698-2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: http://www.nystax.gov.

GENERAL INFORMATION (Cont’d)

MERCURY-ADDED CONSUMER PRODUCTS:

Offerers are advised that effective January 1, 2005, Article 27, Title 21 of the Environmental Conservation Law bans the sale or distribution free of charge of fever thermometers containing mercury except by prescription written by a physician and bans the sale or distribution free of charge of elemental mercury other than for medical pre-encapsulated dental amalgam, research, or manufacturing purposes due to the hazardous waste concerns of mercury. The law further states that effective July 12, 2005, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Offerers are encouraged to contact the Department of Environmental Conservation, Bureau of Solid Waste, Reduction & Recycling at (518) 402-8705 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Offerers may also visit the Department's web site for additional information: http://www.dec.ny.gov/chemical/8512.html.

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES

In accordance with Article 15-A of the New York State Executive Law and regulations adopted pursuant thereto, OGS may establish separate goals for participation of New York State Certified minority and women-owned business enterprises, at the time of the acquisition, if the acquisition will result in a State contract (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. As a condition of award of the Contract, the Contractor agrees to be bound by the following to promote equality of economic opportunities for minority group members and women and for the facilitation of minority-and women-owned business.

a. Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Offerer agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The contractor is required to ensure that it and any subcontractors awarded a subcontract over $25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue 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, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State.

b. Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises (MWBE)

By submission of a bid or proposal in response to this solicitation, the Offerer agrees to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (MWBE) as subcontractors and suppliers on this contract for the provision of services and materials. The Directory of New York State Certified Minority and Women-owned Businesses can be viewed at: http://www.esd.ny.gov/mwbe.html.

GENERAL INFORMATION (Cont’d)

**AUTOTEXT ENTRIES FOR PIGGYBACK AGREEMENTs**

[ m2 ] ***(Part of Template - Use autotext entry if not part of original template)***

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY/WOMEN-OWNED BUSINESSES

In accordance with Article 15-A of the New York State Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) and in conformance with the Regulations promulgated by the Minority and Women’s Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the Offerer/Contractor agrees to be bound by the following to promote equality of economic opportunities for minority group members and women, and the facilitation of minority and women-owned business enterprise participation on all covered OGS contracts.

a. Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Offerer agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The contractor is required to ensure that the provisions of Appendix A clause 12 – Equal Employment Opportunities for minorities and women, are included in every subcontract in such a manner that the requirements of these provisions will be binding upon each subcontractor as to work in connection with the State contract.

b. Participation Opportunities for New York State Certified Minorities and Women-Owned Businesses

Authorized Users are encouraged to make every good faith effort to promote and assist the participation of New York State Certified Minority and Women-owned Business Enterprises (M/WBE) as subcontractors and suppliers on this contract for the provision of services and materials. To locate New York State Certified M/WBEs, the directory of Certified Businesses can be viewed at: http://www.empire.state.ny.us/Small\_and\_Growing\_Businesses/mwbe.asp

[ a ] ***(FILL IN VENDOR NAME, CONTRACT IDENTIFICATION AND PRODUCT DESCRIPTION)***

BACKGROUND AND INTENT

In accordance with Article XI Section 163 of the New York State Finance Law, the Commissioner of General Services (hereinafter "OGS", "State" or "Purchaser"), may authorize purchases required by New York State agencies or other authorized purchasers by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states. The OGS Procurement Services Group, on behalf of the Commissioner, finds it necessary and desirable to enter into a contract based on this Piggyback Agreement (hereinafter "New York State Contract") with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter "Vendor" or "Contractor") for the purchase of specified products under the terms and conditions established pursuant to\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter "Master Contract") by State agencies and other authorized purchasers. By completing and signing this document, Vendor is willing and able to enter into a contract and authorizes OGS to process the contract and provide notification to all authorized purchasers.

[ b ] ***(FILL IN SPECIFIC MODIFICATION INFORMATION IF APPROPRIATE)***

CONTRACT SCOPE

Vendor agrees to enter into a contract with the State of New York under the terms and conditions set forth in the Master Contract for use by New York State agencies, political subdivisions and others authorized by law. All the terms, conditions, covenants and representations contained herein and in the Master Contract and any amendments thereto, except as modified by this document, are hereby incorporated by reference and deemed to be a part of this contract as if fully set forth at length herein. The term and conditions of this Agreement shall supersede any inconsistent terms and conditions set forth in the Master Contract.

The Master Contract is expressly modified by deleting

The Master Contract is expressly modified by adding

[ u ] ***(IF GSA OR VA PIGGBACK, SELECT APPROPRIATE "FEE" OPTION BASED ON PRIOR***

***AGREEMENT WITH VENDOR.)***

PRICE AND DISCOUNTS

Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the ordering agency. Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Master Contract will also be included in the New York State Contract.

[ v ] ***(USE FOR GSA OR VA PIGGYBACKS. FEE TO PSG.)***

The industrial funding fee normally paid to the General Services Administration or Veteran's Affairs for sales from the GSA or VA Contracts shall be remitted quarterly to the Office of General Services, Procurement Services Group with your "Report of Contract Purchases."

[ w ]  ***(USE FOR GSA OR VA PIGGYBACKS. FEE ADDED TO CONTRACT DISCOUNT.)***

The industrial funding fee normally paid to the General Services Administration or Veteran's Affairs for sales from the GSA or VA Contracts shall be incorporated into the GSA or VA Contract discount structure as an additional discount for all purchases made under the New York State Contract.

[ d ] ***(USE IF LEASE OR RENTALS IS PART OF MASTER CONTRACT.)***

TRANSACTIONS INVOLVING LEASES AND/OR RENTALS

State Agencies are required to obtain prior approval from the Office of the State Comptroller for all transactions involving leases/rentals that exceed their discretionary buying limits pursuant to the Comptroller's Procurement and Disbursement Guidelines G-80 and G-80B.

[ e ]

CONTRACT PERIOD AND RENEWALS

The New York State Contract period shall be for the term as indicated on the Piggyback Agreement. Extensions or renewals to the Master Contract or any modification including new products, terms, or price changes to the Master Contract shall be submitted by the Contractor to the Office of General Services, Procurement Services Group for approval and shall be effective to the New York State Contract upon the date of issuance of a written notification to New York State contract users

Upon expiration of the Master Contract, Contractor may submit any subsequent replacement contracts entered into for the same or similar products with the same Issuing Entity to the Office of General Services, Procurement Services Group in order to establish a new contract.

In the event Contractor's Master Contract expires and no new contract is let by the original Issuing Entity, OGS reserves the right, upon written agreement with Contractor and Office of the State Comptroller's approval, to renew the New York State Contract under the same terms and conditions for an additional period of one year.

[ k ]

SHORT TERM EXTENSION

In the event the 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 one month upon notice to the contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

[ h ]

PRICE CHANGE PROCEDURE (AFTER EXPIRATION OF MASTER CONTRACT)

Should the Master Contract expire and not be extended or renewed prior to the expiration of the New York State Contract (including any renewals processed by New York State), and providing the Master contract referenced uniform discount(s) from nationally distributed price list(s), the contract prices may be subject to increase or decrease during the remainder of the contract period in accordance with changes which may be made by the manufacturer in their established, nationally distributed price list or published catalog. Catalog or price lists may indicate increases or decreases in pricing, but the percentage discount(s) in effect at the time of Master Contract expiration shall not be decreased.

In the event the Master Contract did not reference uniform discount(s) from nationally distributed price list(s), updated price lists may be submitted for acceptance providing the discount structure used as a basis for pricing which was in effect at the time of Master Contract expiration remains unaltered. This evidence must be supplied by the Contractor along with the updated price lists.

New products will be considered for inclusion provided they are pertinent to the contract and are offered to the State at the same discount, terms and conditions as the Master Contract.

The price revisions, new lists or supplements to an original list shall be submitted to the Office of General Services, Procurement Services Group, to the attention of the Purchasing Officer shown on the front of this document, in triplicate, for approval before ordering agencies will be bound to any such revisions. Approvals of price revisions shall become effective upon the date of issuance of a written notification to New York State contract users.

[ 3 ]

CANCELLATION FOR CONVENIENCE

The State of New York retains the right to cancel this contract, in whole or in part without reason provided that the Contractor is given at least sixty (60) days notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Agency agreements, which are subject to the same 60 day discretionary cancellation or cancellation for cause by the respective user Agencies.

[ j ]

CONTRACT MIGRATION

State Agencies or any other authorized user holding individual contracts with contractors under this centralized contract shall be able to migrate to this contract award with the same contractor, effective on the contract begin date (retroactively, if applicable). Migration by an agency or any other authorized user to the centralized contract shall not operate to diminish, alter or extinguish any right that the agency or other authorized user otherwise had under the terms and conditions of their original contract.

[ f ]

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in this contract. 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 "Participation in Centralized Contracts" in Appendix B, OGS General Specifications. 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 (www.ogs.state.ny.us). Questions regarding an organization's eligibility to purchase from New York State contracts may also be directed to OGS Procurement Services Group's Customer Services at 518-474-6717.

[ g ]

CATALOGS AND PRICE SHEETS

Upon request, Contractor shall furnish, without charge, copies of Master Contract including modifications thereto and related catalogs and price lists to New York State agencies and other authorized users. Upon request, contractor shall also assist authorized users in the use of such documents.

[ i ]

PREFERRED SOURCE PRODUCTS

Section 162 of the New York State Finance Law requires that New York State agencies afford first priority to the products of preferred source suppliers, such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled, when such products meet the form, function and utility of the agency. Some products in the Master Contract and the resultant New York State Contract may be available from one or more preferred sources. Contractor understands and agrees that such products must be purchased from a preferred source in accordance with New York State Law.

[ n ]

PURCHASE ORDERS

See "Purchase Orders" in Appendix B, OGS General Specifications.

If there is a discrepancy between the purchase order and what is listed on contract, it is the contractor’s obligation as a condition of payment to clarify and resolve what is to be actually shipped by contacting ordering agency.

[ s ] ***(IF APPROPRIATE, MAY DELETE ALL BUT FIRST SENTENCE SO NO SHIPPING CHARGES***

***ARE ALLOWED. ALSO USE ONLY FIRST PART OF RELATED QUESTION IN BULLETS AT***

***END OF DOCUMENT.)***

MINIMUM ORDER

If Master Contract contains minimum order quantities or values, contractor may elect to honor orders for less than the minimum order. For such orders, at the contractor’s option, shipping costs from the contractor’s address (as stated in this agreement) may be added to invoice with a copy of the freight bill. Shipping costs are to be prepaid by contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the order by the agency.

[ x ]

EMERGENCY PURCHASING

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or that the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of commodities or services, the Commissioner reserves the right to obtain such commodities or services from any source, including but not limited to this contract, as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for commodities or services procured from other sources pursuant to this paragraph.

[ o ]

NEW YORK STATE PROCUREMENT CARD

See "Procurement Card" in Appendix B, OGS General Specifications. All bidders shall indicate if they will accept the NYS Purchasing Card for orders not to exceed $15,000 (see Questions at end of bid document).

[ k2 ]

DIESEL EMISSION REDUCTION ACT OF 2006 (NEW REQUIREMENT OF LAW):

On February 12, 2007 the Diesel Emissions Reduction Act took effect as law (the “Law”). Pursuant to new §19‑0323 of the N.Y. Environmental Conservation Law (“NYECL”) it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology (“BART”) and ultra low sulfur diesel fuel (“ULSD”). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. They need to be operated exclusively on ULSD by February 12, 2007. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

As a contract vendor the Law may be applicable to vehicles used by contract vendors “on behalf of” State agencies and public authorities. Thirty‑three percent (33%) of affected vehicles must have BART by December 31, 2008, sixty‑six percent (66%) by December 31, 2009 and one‑hundred percent (100%) by December 31, 2010. The Law provides a list of exempted vehicles. Regulations currently being drafted will provide further guidance as to the effects of the Law on contract vendors using heavy duty diesel vehicles on behalf of the State. The Law also permits waivers of ULSD and BART under limited circumstances at the discretion of the Commissioner of Environmental Conservation. The Law will also require reporting from State agencies and from contract vendors in affected contracts.

Therefore, the bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19‑0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19‑0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the bidder.

**[ w2 ]**

WORKERS’ COMPENSATION INSURANCE AND DISABILITY BENEFITS REQUIREMENTS:

Workers’ Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document it has appropriate workers’ compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of your bid or renewal.

**1. Proof of Compliance with Workers’ Compensation Coverage Requirements:**

An ACORD form is NOT acceptable proof of workers’ compensation coverage. In order to provide proof of compliance with the requirements of the Workers’ Compensation Law pertaining to workers’ compensation coverage, a contractor shall:

A) Be legally exempt from obtaining Workers’ Compensation insurance coverage; or

B) Obtain such coverage from an insurance carrier; or

C) Be a Workers’ Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers’ Compensation Board’s website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us)); (Reference applicable IFB/RFP and Group #s on the form.)

B) Certificate of Workers’ Compensation Insurance:

1) Form C-105.2 (9/07) if coverage is provided by the contractor’s insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, or

2) Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services.

C) Form SI-12, Certificate of Workers’ Compensation Self-Insurance available from the New York State Workers’ Compensation Board’s Self-Insurance Office.

D) Form GSI-105.2, Certificate of Participation in Workers’ Compensation Group Self-Insurance available from the contractor’s Group Self-Insurance Administrator.

**2. Proof of Compliance with Disability Benefits Coverage Requirements:**

In order to provide proof of compliance with the requirements of the Workers’ Compensation Law pertaining to disability benefits, a contractor shall:

A) Be legally exempt from obtaining disability benefits coverage; or

B) Obtain such coverage from an insurance carrier; or

C) Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers’ Compensation Board’s website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us)); (Reference applicable IFB/RFP and Group #s on the form.)

B) Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or

C) Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board’s Self-Insurance Office at 518-402-0247 to obtain this form.

**ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME**: The Office of General Services, Procurement Services Group, Team \_\_, 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder)

[ p ]

REPORT OF CONTRACT PURCHASES:

Contractor shall furnish quarterly reports containing total sales for both state agency and authorized non-state agency contract purchases no later than forty-five (45) days after the close of each calendar quarter.

In addition to contractor direct sales, contractor shall submit sales information for all resellers, dealers, distributors or other authorized distribution channels, where such contract sales are provided by other than the contractor. Contractors shall verify if each alternate vendor is a NYS Certified Minority (MBE) or Women (WBE) Owned Businesses. Contractors shall verify such status through the Empire State Development Minority and Women Owned Businesses Database web site at: <http://www.nylovesmwbe.ny.gov/cf/search.cfm>.

A separate report shall be provided in the following format for each authorized distribution channel. The sales report form is forwarded to each contractor at time of award for completion in accordance with the contract terms and conditions:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Item/  SubItem  Number | Product or Catalog  Number | Product/  Service  Description | Total Quantity Shipped to State Agencies | Total Quantity  Shipped to  Authorized  Non-State Agencies | Total Sales $  State Agencies | Total Sales $  Authorized Non-State Agencies |
|  |  |  |  |  |  | $ |
|  |  |  |  | Grand Total Sales State  and Non-State Agencies |  | $ |

The report is to be submitted electronically in Microsoft Excel 2003 or lower format to the Office of General Services, Procurement Services Group, Tower Bldg., Empire State Plaza, Albany, NY 12242, to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the Group Number, the Award Number, Contract Number, sales period, and contractor's (or other authorized agent) name.

The outlined sales report is the minimum information required. Additional related sales information, such as monthly reports, and/or detailed user purchases may be required and must be supplied upon request.

[ t ]

OVERLAPPING CONTRACT ITEMS

Products available in the resulting contract may also be available from other New York State contracts. Contract 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.

[ / ] ***(USE FOR COMMODITY CONTRACTS ONLY - NOT APPLICABLE TO SERVICES AND PRINTING)***

"OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT:

Purchases of the products included in the Piggyback Agreement and related Contract Award Notification are subject to the "OGS or Less" provisions of Section 163.3.a.v., Article XI, of the New York State Finance Law. 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 Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit. State agencies should refer to Procurement Council Guidelines section "OGS or Less Purchases" for complete procedural and reporting requirements.

<http://www.ogs.state.ny.us/procurecounc/pdfdoc/guidelines.pdf>

[ q ] ***(DELETE OR MODIFY BULLETS AS APPROPRIATE. IMPORTANT: SELECT APPROPRIATE***

***"FEE" OPTION FOR FIRST BULLET TO MATCH PRICE CLAUSE.)***

VENDOR QUESTIONS

FAILURE TO ANSWER THE FOLLOWING QUESTIONS WILL DELAY THE EVALUATION OF YOUR OFFER.

* Has Bidder completed the New York State

Vendor Responsibility Questionnaire? \_\_\_\_\_ YES, filed online

* If Bidder completed the Questionnaire online,
* has Bidder certified or recertified the Vendor
* Responsibility Questionnaire no more than
* six (6) months prior to the bid opening date? \_\_\_\_\_ YES \_\_\_\_\_ NO

• Please state industrial funding fee(s) associated

with your GSA or VA contract(s). \_\_\_\_\_\_\_ % (GSA) \_\_\_\_\_\_ % (VA)

The requirement to remit the industrial funding fee to

OGS on a quarterly basis as contained in the

"Price and Discounts" clause is acknowledged: \_\_\_\_\_\_\_ (Initial)

The requirement to include the industrial funding fee

as an additional discount as contained in the

"Price and Discounts" clause is acknowledged: \_\_\_\_\_\_\_ (Initial)

• Does vendor offer Electronic Access Ordering (EDI)? \_\_\_\_\_ YES \_\_\_\_\_ NO

• Do you have your catalog available on the internet? \_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, do you have the ability to make NYS pricing

available along with your catalog on line? \_\_\_\_\_ YES \_\_\_\_\_ NO

* If awarded a contract, will bidder accept the New York

State Procurement Card for orders not to exceed $15,000.00? \_\_\_\_\_ YES \_\_\_\_\_ NO

* If bidder limits the maximum acceptable card amount to less

than $15,000, please indicate the maximum amount: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Additional discount for purchases made with the

NYS Procurement Card: \_\_\_\_\_\_\_ %

• If awarded a contract, will vendor honor orders for less than

the minimum order specified in the Master Contract? \_\_\_\_\_ YES \_\_\_\_\_ NO

If YES, will shipping costs be added in

accordance with the "Minimum Order" clause? \_\_\_\_\_ YES \_\_\_\_\_ NO

OR

If YES, will vendor ship at no additional cost? \_\_\_\_\_ YES \_\_\_\_\_ NO

• Are MWBE goals incorporated in the terms and

conditions of your Master Contract? \_\_\_\_\_ YES \_\_\_\_\_ NO

If YES, please attach specifics.

VENDOR QUESTIONS (Continued)

• Do you wish to designate NYS dealers to handle

receipt of orders and/or receipt of payments? \_\_\_\_\_ YES \_\_\_\_\_ NO

(If YES, please provide a complete list including

addresses, contact person, appropriate telephone,

fax, or e-mail address and function they will perform.)

• Are any products offered manufactured from

recycled materials? \_\_\_\_\_ YES \_\_\_\_\_ NO

Are any products offered remanufactured (restored

to its original performance standards and function)? \_\_\_\_\_ YES \_\_\_\_\_ NO

Are any products offered Energy Star Compliant? \_\_\_\_\_ YES \_\_\_\_\_ NO

If YES, please attach specifics.

* Person or persons to contact for

expediting New York State contract orders:

Name:

Title:

Telephone Number: ( )

Toll Free Telephone Number: ( )

Fax Number: ( )

Toll Free Fax Number: ( )

E-Mail Address:

[ y ] ***(SELECT ONLY IF CONTRACT CONTAINS HIGHLY CRITICAL PRODUCTS/SERVICES.***

***INCLUDE RESULTS IN AWARD DOCUMENT.)***

* Person or persons to contact in the event of an emergency

occurring after business hours or on weekend/holidays:

State Normal Business Hours (Specify M-F, Sat, Sun):

Name:

Title:

Telephone Number: ( )

Fax Number: ( )

Pager Number: ( )

Cellular Telephone Number: ( )

E-Mail Address:

**[** tt2 **] *(For Use ONLY with Wood Furniture and Wood Picnic Tables)***

NOTES TO BIDDERS: FAILURE TO ANSWER THE QUESTIONS WILL DELAY THE EVALUATION OF YOUR BID AND MAY RESULT IN REJECTION OF YOUR BID.

* For bidders offering wood products, are the products

manufactured from wood harvested from forests certified

as being sustainably managed? \_\_\_\_\_\_\_\_\_YES \_\_\_\_\_\_\_\_\_NO

IF YES:

* Please check the organization providing the certification:  American Tree Farm Program

Canadian Standards Association

Forest Stewardship Council

Sustainable Forestry Initiative SM

Other:

(Name)

* Please identify the products manufactured from certified forests:

[ r ]

|  |  |
| --- | --- |
| BIDDERS PLEASE ANSWER THE FOLLOWING QUESTIONS:  1. Is your company a Minority or Women-Owned Business Enterprise, certified in accordance with Article 15A of the New York State Executive Law as defined below? | \_\_\_\_\_\_\_\_\_YES \_\_\_\_\_\_\_\_\_NO |
| 2. Is your company listed in the Empire State Development Directory of Certified Minority and Women Owned Businesses?  http://www.empire.state.ny.us/Small\_and\_Growing\_Businesses/mwbe.asp  NOTE: Contractors certified **and** listed in the Empire State Development’s Directory of Certified Minority and Women-Owned Business Enterprises\* will be identified by OGS as MBEs and/or WBEs in the OGS Contract Award Notification upon award of the contract.  \*For further information and or application please contact New York State Department of Economic Development, Division of Minority and Women-Owned Business Enterprise at 518-292-5250 (Albany) or 212-803-2414 (New York City). | \_\_\_\_\_\_\_\_\_YES \_\_\_\_\_\_\_\_\_NO  MINORITY-OWNED  WOMEN-OWNED  MINORITY AND WOMEN-OWNED |
| "Minority or Women-Owned Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:  (a) at least fifty-one percent owned and controlled by the minority members and/or women;  (b) an enterprise in which such minority and/or women ownership interest is real, substantial and continuing;  (c) an enterprise in which such minority and/or women ownership has and exercises the authority to independently control the day-to-day business decisions; and  (d) an enterprise independently owned, operated and authorized to do business in New York State. |  |
| 3. Is your company a New York Small Business Concern as defined in accordance with Article 11 of the New York State Finance Law?  "Small Business Concern" means a business which:  (a) is resident in New York State;  (b) is independently owned and operated;  (c) is not dominant in its field; and,  (d) employs one hundred or fewer persons. | \_\_\_\_\_\_\_\_\_YES \_\_\_\_\_\_\_\_\_NO |
| 4. Total number of people employed by your business in  New York State: |  |

|  |  |
| --- | --- |
| 5. **PLACE OF MANUFACTURE OF PRODUCT(S) BID**:  (Indicate Yes or No for either A, B or C)  A. All NYS Manufacture  B. All Manufactured outside NYS  C. Manufactured In NYS and Outside NYS  If yes to C above, Location (State) where more than  half the value is added to the product(s) bid: | \_\_\_\_\_\_\_\_\_YES \_\_\_\_\_\_\_\_\_NO  \_\_\_\_\_\_\_\_\_YES \_\_\_\_\_\_\_\_\_NO  \_\_\_\_\_\_\_\_\_YES \_\_\_\_\_\_\_\_\_NO  State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| 6. **BIDDER’S PRINCIPAL PLACE OF BUSINESS\*:**  \*"Principal Place of Business" is the location of the primary control, direction and management of the enterprise. | State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| 7. **"NONDISCRIMINATION IN EMPLOYMENT IN**  **NORTHERN IRELAND:**  **MacBRIDE FAIR EMPLOYMENT PRINCIPLES**"  In accordance with Section 165 of the State Finance Law, the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either:  (Answer Yes or No to one or both of the following, as applicable),  A. have business operations in Northern Ireland:  If yes,  B. shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to non-discrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such Principles. | \_\_\_\_\_\_\_\_\_YES \_\_\_\_\_\_\_\_\_NO  \_\_\_\_\_\_\_\_\_YES \_\_\_\_\_\_\_\_\_NO |

|  |  |
| --- | --- |
| **8. BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS**  Pursuant to Procurement Lobbying Law (SFL §139-j) |  |
| A. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? | \_\_\_\_\_\_\_\_\_YES \_\_\_\_\_\_\_\_\_NO |
| If yes, please answer the following question: |  |
| B. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j? | \_\_\_\_\_\_\_\_\_YES \_\_\_\_\_\_\_\_\_NO |
| C. If yes, was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity? | \_\_\_\_\_\_\_\_\_YES \_\_\_\_\_\_\_\_\_NO |
| If yes, please provide details regarding the finding of non-responsibility: |  |
| Governmental Entity: |  |
| Date of Finding of Non-responsibility: |  |
| Basis of Finding of Non-Responsibility:  (add additional pages if necessary) |  |
| D. Has any governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information? | \_\_\_\_\_\_\_\_\_YES \_\_\_\_\_\_\_\_\_NO |
| If yes, please provide details: |  |
| Governmental Entity: |  |
| Date of Termination or Withholding of Contract: |  |
| Basis of Termination or Withholding:  (add additional pages if necessary) |  |
|  |  |
|  |  |
|  |  |

Miscellaneous Autotext Entries To Use Within Document:

**(#)** Blank page to be used for documents with odd number of pages.

**(i2) *(MUST BE MODIFIED BASED ON BID AND CONTRACT REQUIREMENT.)***

***(All insurance requirements must be reviewed by Bureau of Risk***

***Management and pre-approved by Legal Services.)***

INSURANCE REQUIREMENT:

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*(A1) APPENDIX 1 - Vendor Responsibility Questions*

***NO LONGER UTILIZED - REPLACED WITH NEW CLAUSE IN TEMPLATE***

***(A2)***

***APPENDIX 2 - Tax Certification Forms***

***MUST BE INCLUDED WITHIN ALL DOCUMENTS.***

~~~~~~Other Documents to be Included~~~~~~

***APPENDIX A Template***

***MUST BE PRINTED WITH ALL DOCUMENTS.***

***APPENDIX B Template***

***MUST BE PRINTED WITH ALL DOCUMENTS.***