



Invitation for Bids **(Revised April 8, 2019)**

BID OPENING DATE: 04/16/2019 TIME: 11:00 A.M. EST INVITATION FOR BIDS NUMBER: 23164	TITLE: Group 38708 – IN-BREATH ALCOHOL TESTING EQUIPMENT AND ACCESSORIES (STATEWIDE) Classification Codes: 41 & 42
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CONTRACT PERIOD: Five (5) years with optional renewal up to five (5) years.

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

Email Address: Vivian.Basile@ogs.ny.gov		
Vivian Basile Contract Management Specialist Telephone No. (518) 474-0912 E-mail address: Vivian.Basile@ogs.ny.gov	Theresa Kuo Contract Management Specialist 2 Telephone No. (518) 474-0259 E-mail address: Ningbin.Kuo@ogs.ny.gov	Terri L. Allen Assistant Director Telephone No. (518) 474-7795 E-mail address: terri.allen@ogs.ny.gov

Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>	NYS Vendor Identification Number: <i>(See New York State Vendor File Registration Clause)</i>
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Legal Business Name of Company Bidding:

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

Street	City	State	County	Zip Code
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E-mail Address:	Company Web Site:
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If applicable, place an "x" in the appropriate box(es) <i>(check all that apply)</i>			
<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business

If you are not bidding, place an "x" in the box and return this page only.
 WE ARE NOT BIDDING AT THIS TIME BECAUSE:

FOR PROCUREMENT SERVICES USE ONLY			
LITERATURE <input type="checkbox"/>	LETTER <input type="checkbox"/>	USB FLASH DRIVE <input type="checkbox"/>	# of Binders/Packages: _____
PURC. MEMO <input type="checkbox"/>	OTHER <input type="checkbox"/>	Documented by: _____	

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 90 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/acpl>

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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Appendix A – *Standard Clauses for NYS Contracts* (January 2014)
Appendix B – *General Specifications* (April 2016)

ATTACHMENTS

Attachment 1 – *Pricing*
Attachment 2 – *NYS Required Certifications*
Attachment 3 – *Encouraging Use of NYS Businesses*
Attachment 4 – *Insurance Requirements*
Attachment 5 – *Bidder Information Questionnaire*
Attachment 6 – *Bidder Submission Checklist* (Revised April 8, 2019)
Attachment 7 – *Bidder Questions Form*
Attachment 8 – *Report of Contract Usage*

1. INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for In-Breath Alcohol Testing Equipment and Accessories (Statewide) as specified herein for all Authorized Users eligible to purchase through this Solicitation.

The term of the resulting contract award will be five (5) years with the option to extend up to five (5) additional years. This is a competitive Solicitation.

Award in Lots 1 and 2 shall be made by item based on price bid for each item by a responsive and responsible Bidder. It is anticipated that there will be multiple awardees for each Lot.

Award in Lots 3 and 4 shall be made to all responsive and responsible Bidders within each Sub-Lot who meet the minimum requirements, and whose pricing is deemed to be reasonable as determined by the State. It is anticipated that there will be multiple awardees for each Sub-Lot.

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 Solicitation is divided into four (4) separate Lots as indicated below.

Bidders are not required to bid on all Lots, but may bid on as many Lots as they wish.

For Lots 1 and 2, Bidders are not required to bid on all items within a Lot, but may bid on as many items as they wish.

Lots 3 and 4 each contain six (6) Sub-Lots. Bidders are not required to bid on all Sub-Lots within Lots 3 or 4, but may bid on as many Sub-Lots as they wish

Bidders **must** bid on all items in a Sub-Lot.

Lot	Description	Sub-Lot	Bidder Qualifications
1	Instrumentation	None	As referenced in Section 2.1
2	Mouthpieces	None	As referenced in Section 2.2
3	Reference Standard (Liquid)		
3A	Liquid Reference Standard for Calibration of Breath Testing Equipment	3A1	As referenced in Section 2.3.1, #1
		3A2	As referenced in Section 2.3.1, #2
		3A3	As referenced in Section 2.3.1, #3
3B	Liquid Reference Standard for Field Use on Breath Testing Equipment	3B1	As referenced in Section 2.3.2, #1
		3B2	As referenced in Section 2.3.2, #2
		3B3	As referenced in Section 2.3.2, #3
4	Reference Standard (Gas)		
4A	Gas Reference Standard for Calibration of Breath Testing Equipment	4A1	As referenced in Section 2.4.1, #1
		4A2	As referenced in Section 2.4.1, #2
		4A3	As referenced in Section 2.4.1, #3

4B	Gas Reference Standard for Field Use	4B1	As referenced in Section 2.4.2, #1
		4B2	As referenced in Section 2.4.2, #2
		4B3	As referenced in Section 2.4.2, #3

A Bidder shall provide individual item pricing on any item or items on Attachment 1 – *Pricing*.

1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$500,000 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

EVENT	DATE	TIME
Closing Date for Bidder Questions	3/29/2019	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	4/5/2019 (tentative)	N/A
Deadline for Submission of Intent to Bid	4/12/2019	5:00 PM ET
Bid Opening / Due date for Bids	4/16/2019	11:00 AM ET

1.5 Intent To Bid

A Bidder is requested to indicate its intent to bid by sending an e-mail titled "INTENT TO BID-[BIDDER NAME]" to vivian.basile@ogs.ny.gov on or before the date and time indicated in the *Key Events/Dates* section. The e-mail should include the Bidder's company name and a contact name and contact information. A Bidder is asked to indicate which Lot(s) it intends to Bid on. The intent to bid is discretionary.

1.6 Pre-Bid Conference

There is no pre-bid conference for this solicitation.

1.7 NYS Contract Reporter

Bidders must register with the New York State Contract Reporter (“NYSCR”) at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the “I want to find contracts to bid on” page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must “bookmark the ad” on the upper right hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select “send me notification updates” option listed to the right of the ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR.

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

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

1.8 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 vivian.basile@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 the Solicitation in any way, the proposed deviations should be submitted during the *Questions* period so that they may be given due consideration prior to the submission of Bids. See *Bid Deviations* for additional information.

1.9 Summary Of Policy And Prohibitions On Procurement Lobbying

Pursuant to State Finance Law § 139-j and § 139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting, on a governmental entity’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter of intent to solicit offers/Bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff, as of the date hereof, are identified on the first page of this Solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to State Finance Law §139-j and §139-k. Certain findings of non-responsibility can result in rejection for Contract award and, in the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at: <https://www.ogs.ny.gov/acpl/>.

1.10 Definitions

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

“Bid Deviation” shall refer to any variance submitted or proposed by a Bidder, which deviates from, adds extraneous terms to, conflicts with or offers an alternative to any term, condition, specification or requirement of the Solicitation.

“Business Day” shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

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

“New York State Department of Health Approved Training Agency(ies)” or **“Training Agency(ies)”** - the five (5) agencies that have been authorized by the NYS Department of Health to provide training to police agencies across New York State regarding impaired driving issues (NYS DOH Part 59). The five (5) agencies are: New York State Division of Criminal Justice Services, New York State Police, New York City Police Department, Nassau County Police Department, and Suffolk County Police Department.

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

“NYS Vendor ID” shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

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

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

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

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

1.11 Appendices and Attachments

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

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

Appendix B – General Specifications (April 2016)

Attachment 1 – Pricing

- Attachment 2 – *NYS Required Certifications*
- Attachment 3 – *Encouraging Use of NYS Businesses*
- Attachment 4 – *Insurance Requirements*
- Attachment 5 - *Bidder Information Questionnaire*
- Attachment 6 – *Bidder Submission Checklist (Revised April 8, 2019)*
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- Attachment 8 – *Report of Contract Usage*

1.12 Conflict of Terms

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

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Solicitation (Revised April 8, 2019);
3. Appendix B, General Specifications;
4. All other appendices and attachments to the Solicitation (Revised April 8, 2019);

2. BIDDER QUALIFICATIONS

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

2.1 Lot 1 – Instrumentation

Bids will be accepted only from established manufacturers of the equipment being bid or their authorized dealers. OGS reserves the right to request additional documentation.

2.2 Lot 2 – Mouthpieces

Bids will be accepted only from established manufacturers of the equipment being bid or their authorized dealers. OGS reserves the right to request additional documentation.

2.3 Lot 3 – Reference Standard (Liquid)

All Bidders for Lot 3 – Reference Standards (Solution) must submit the following with their bid:

- Representative Samples of a single value (6 bottles). The samples must be bottled, labeled, coded and packaged in accordance with Detailed Specifications listed in Section 3 – SPECIFICATIONS.
- A Certificate of Analysis, either their own, or from an independent lab
- A copy of the documentation of testing to ensure the water's compliance with U.S.P. specifications.

2.3.1 Lot 3A – Liquid Reference Standard for Calibration of Breath Testing Equipment

* PLEASE NOTE: Bidders may Bid any or all of the following Sub-Lots, but must meet the requirements listed below of the applicable Sub-Lot(s) for which they are Bidding. Awards may be made for a bidder in each of the three (3) sets of Calibration Reference Standard requirements. *

1. Sub-Lot 3A1

Bidder must be an accredited ISO 17034 certified reference material producer of simulator solutions (accreditation provided by ANAB, A2LA or other equivalent accrediting body) that can also:

- a. Perform gas chromatographic analysis of each batch/lot of simulator solution where such testing activities have been assessed to successfully conform to the relevant parts of ISO 17025 per ISO 17034 accreditation practices. (**Bidder to provide a copy of accreditation certificates, including the scope of work covered by the accreditation**)
- b. Prepare a Certificate of Analysis as per section A.) in the CALIBRATION SIMULATOR SOLUTION CRITERIA section in Section 3.3.1 (Lot 3A) for each solution batch/lot tested. (**Bidder to provide a sample copy of Certificate of Analysis**).
- c. Testify in court within New York State to any facet of the manufacturing, analytical and documentation processes (**litigation fee schedule must be submitted with bid – for reference only – this will be billed separately, not under any resultant contract**)
- d. Meet all of the criteria in Section A through J of the CALIBRATION SIMULATOR SOLUTION CRITERIA listed in Section 3.3.1 (Lot 3A).

2. Sub-Lot 3A2

Bidder must be an accredited ISO 17034 certified reference material producer of simulator solutions (accreditation provided by ANAB, A2LA or other equivalent accrediting body, **Bidder to provide a copy of accreditation certificate, including scope of work covered by the accreditation**) that can also:

- a. Testify in court within New York State to all facets of manufacturing and all associated documentation processes.
- b. Partner with an external laboratory who can:
 - i. perform independent gas chromatographic analysis of each simulator solution batch/lot where such independent lab is accredited to ISO 17025 (accreditation provided by ANAB or A2LA) FOR the requested analysis. (**bidder to provide a copy of this accreditation certificate, including the scope of work covered by the accreditation**)
 - ii. Provide a certificate of analysis as per section A.) in the CALIBRATION SIMULATOR SOLUTION CRITERIA section in Section 3.3.1 (Lot 3A) for each solution batch/lot tested. (**bidder to provide a sample copy of independent laboratory Certificate of Analysis**).
 - iii. Testify within New York State as to all facets of their analytical and documentation processes (**litigation fee schedule must be submitted with bid – for reference only – this will be billed separately, not under any resultant contract**).
- c. Meet all of the criteria in Section A through J of CALIBRATION SIMULATOR SOLUTION CRITERIA listed in Section 3.3.1 (Lot 3A).

3. Sub-Lot 3A3

Bidder must be a producer of simulator solutions that can also:

- a. Meet all of the criteria in Section A through J of the CALIBRATION SIMULATOR SOLUTION CRITERIA section listed in Section 3.3.1 (Lot 3A).

2.3.2 Lot 3B – Liquid Reference Standard for Field Use on Breath Testing Equipment

* PLEASE NOTE: Bidders may Bid any or all of the following Sub-Lots, but must meet the requirements listed below of the applicable Sub-Lot(s) for which they are Bidding. Awards may be made for a bidder in each of the three (3) sets of Calibration Reference Standard requirements. *

1. Sub-Lot 3B1

Bidder must be an accredited ISO 17034 certified reference material producer of simulator solutions (accreditation provided by ANAB, A2LA or other equivalent accrediting body) that can also:

- a. Perform manufacturing AND distribution activities within the United States
- b. Perform gas chromatographic analysis of each batch/lot of simulator solution where such testing activities have been assessed to successfully conform to the relevant parts of ISO 17025 per ISO

- 17034 accreditation practices. **(bidder to provide a copy of accreditation certificates, including the scope of work covered by the accreditation)**
- c. Prepare a Certificate of Analysis as per section A.) in the FIELD SIMULATOR SOLUTION CRITERIA section in Section 3.3.2 (Lot 3B) for each solution batch/lot tested. **(bidder to provide a sample copy of Certificate of Analysis).**
 - d. Testify in court within New York State to any facet of the manufacturing, analytical and documentation processes **(litigation fee schedule must be submitted with bid – for reference only – this will be billed separately, not under any resultant contract).**
 - e. Meet all of the criteria in Section A through K of the FIELD SIMULATOR SOLUTION CRITERIA section listed in Section 3.3.2 (Lot 3B).

2. Sub-Lot 3B2

Bidder must be an accredited ISO 17034 certified reference material producer of simulator solutions (accreditation provided by ANAB, A2LA or other equivalent accrediting body, **bidder to provide a copy of accreditation certificate, including scope of work covered by the accreditation**) that can also:

- a. Perform manufacturing AND distributing activities within the United States.
- b. Testify in court within New York State to all facets of manufacturing and all associated documentation processes.
- c. Partner with an external laboratory who can:
 - i. perform independent gas chromatographic analysis of each simulator solution batch/lot where such independent lab is accredited to ISO 17025 (accreditation provided by ANAB or A2LA) FOR the requested analysis. **(bidder to provide a copy of this accreditation certificate, including the scope of work covered by the accreditation)**
 - ii. Provide a certificate of analysis as per section A.) in the FIELD SIMULATOR SOLUTION CRITERIA section in Section 3.3.2 (Lot 3B) for each solution batch/lot tested. **(bidder to provide a sample copy of independent laboratory Certificate of Analysis).**
 - iii. Testify within New York State as to all facets of their analytical and documentation processes **(litigation fee schedule must be submitted with bid – for reference only – this will be billed separately, not under any resultant contract).**
- d. Meet all of the criteria in Section A through K of the FIELD SIMULATOR SOLUTION CRITERIA section listed in Section 3.3.2 (Lot 3B).

3. Sub-Lot 3B3

Bidder must be a producer of simulator solutions that can also:

- a. Perform manufacturing AND distributing activities within the United States.
- b. Meet all of the criteria in Section A through K of the FIELD SIMULATOR SOLUTION CRITERIA section listed in Section 3.3.2 (Lot 3B).

2.4 Lot 4 – Reference Standard (Gas)

All Bidders for Lot 4 – Reference Standards (Gas) must submit the following with their bid:

- A Certificate of Analysis, either their own, or from an independent lab
- A copy of their accreditation certificate, if applicable

2.4.1 Lot 4A – Gas Reference Standard for Calibration of Breath Testing Equipment

* PLEASE NOTE: Bidders may Bid any or all of the following Sub-Lots, but must meet the requirements listed below of the applicable Sub-Lot(s) for which they are Bidding. Awards may be made for a bidder in each of the three (3) sets of Calibration Reference Standard requirements. *

1. Sub-Lot 4A1

Bidder must be a manufacturer with ISO 17034 Accreditation

2. Sub-Lot 4A2

Bidder must be a manufacturer with ability to provide ISO/IEC 17025 accredited testing of their product (internal or external)

3. Sub-Lot 4A3

Bidder must be a manufacturer that can provide a Certificate of Analysis

2.4.2 Lot 4B – Gas Reference Standard for Field Use

* PLEASE NOTE: Bidders may Bid any or all of the following Sub-Lots, but must meet the requirements listed below of the applicable Sub-Lot(s) for which they are Bidding. Awards may be made for a bidder in each of the three (3) sets of Calibration Reference Standard requirements. *

1. Sub-Lot 4B1

Bidder must be a manufacturer with ISO 17034 Accreditation

2. Sub-Lot 4B2

Bidder must be a manufacturer with ability to provide ISO/IEC 17025 accredited testing of their product (internal or external)

3. Sub-Lot 4B3

Bidder must be a manufacturer that can provide a Certificate of Analysis

3. SPECIFICATIONS

3.1 Lot 1 - Instrumentation

Breath testing instrumentation in Lot 1 includes breath analyzers, breath alcohol screening devices, and alcohol reference simulators.

Contract awards for the breath analyzers and screeners in Lot 1 will be limited to: (1) those products enumerated by the National Highway Traffic Safety Administration (NHTSA) in its published Conforming Products List (available at: <https://www.govinfo.gov/content/pkg/FR-2017-11-02/pdf/2017-23869.pdf>) or (2) those products which OGS can otherwise verify have been approved by NHTSA for inclusion on the Conforming Products List for instruments that conform to the Evidential Breath Testing Devices (82 FR 50940 and any subsequent NHTSA amending docket).

A New York State Department of Health Approved Training Agency (“Training Agency”) reserves the right to evaluate and approve any unit prior to award. Approval by a Training Agency does not in any way relieve the manufacturer of their obligation to maintain such quality controls as will ensure that deliveries of their product will be no less acceptable than the sample upon which the inclusion was made. The Training Agencies reserve the right to inspect the facilities of the manufacturer unannounced during normal business hours.

For informational purposes only, the list below reflects instruments currently in use in New York State.

REFERENCE	MANUFACTURER	INSTRUMENT	MODEL
Breath Analyzers	Draeger Safety, Inc.	Alcotest	7110-MKIII
Breath Analyzers	Draeger Safety, Inc.	Alcotest	7110-MKIII-C
Breath Analyzers	Draeger Safety, Inc.	Alcotest	9510
Breath Analyzers	Intoximeters, Inc/NPAS	Data Master	DMT
Breath Analyzers	Intoximeters, Inc/NPAS	Data Master	DMT Dual Sensor
Breath Analyzers	MPD, Inc. (CMI)	Intoxilyzer #000066	5000 w/keyboard
Breath Analyzers	MPD, Inc. (CMI)	Intoxilyzer #000068	5000 w/keyboard
Breath Analyzers	MPD, Inc. (CMI)	Intoxilyzer #001768N	5000 EN
Breath Analyzers	MPD, Inc. (CMI)	Intoxilyzer	8000

Breath Analyzers	MPD, Inc. (CMI)	Intoxilyzer	9000
Screening Devices	Intoximeters, Inc.	Screeener	Alco-Sensor III
Screening Devices	Intoximeters, Inc.	Screeener	A/S FST
Screening Devices	Intoximeters, Inc.	Screeener	A/S IV
Screening Devices	Intoximeters, Inc.	Screeener	A/S V XL
Screening Devices	Lifeloc Technologies	Screeener	FC-10
Screening Devices	Lifeloc Technologies	Screeener	FC-20
Screening Devices	MPD, Inc. (CMI)	Screeener	S-D2
Screening Devices	MPD, Inc. (CMI)	Screeener	S-D5
Screening Devices	Draeger Safety, Inc.	Screeener	6510
Screening Devices	Draeger Safety, Inc.	Screeener	6810
Simulators	Guth Labs	Simulator	34C
Simulators	Guth Labs	Simulator	10-4
Simulators	Guth Labs	Simulator	2100
Simulators	Guth Labs	Simulator	12V500
Simulators	REPCO Marketing, Inc.	Simulator	3402C-RS
Simulators	REPCO Marketing, Inc.	Simulator	3402C-2K w/RS232

3.2 Lot 2 – Mouthpieces

Contract awards for Lot 2 will be limited to mouthpieces for any instrument on the Conforming Products List.

A New York State Department of Health Approved Training Agency (“Training Agency”) reserves the right to evaluate and approve any unit prior to award. Approval by a Training Agency does not in any way relieve the manufacturer of their obligation to maintain such quality controls as will ensure that deliveries of their product will be no less acceptable than the sample upon which the inclusion was made. The Training Agencies reserve the right to inspect the facilities of the manufacturer unannounced during normal business hours.

For informational purposes only, the list below reflects mouthpieces currently in use in New York State.

REFERENCE	INSTRUMENT
Mouthpiece	For use on Data Master, DMT, Draeger 7110 MK III-C & 9510
Mouthpiece	For Intoxilyzer 5000, 8000, 9000
Mouthpiece	For use with Alco-Sensor and Alco-Sensor III
Mouthpiece	For use with Alco-Sensor and Alco-Sensor III (Restricted)
Mouthpiece	For use with Alco-Sensor IV
Mouthpiece	For use with Alco-Sensor FST
Mouthpiece	For use with Alco-Sensor V XL
Mouthpiece	For use with S-D5 & S-D2
Mouthpiece	For use with FC10 & FC20
Mouthpiece	For use with 6510, 6810 & 7510

3.3 Lot 3 – Reference Standard (Liquid)

All Bidders for Lot 3 – Reference Standards (Liquid) must submit the following with their bid:

- Representative Samples of a single value (6 bottles). The samples must be bottled, labeled, coded and packaged in accordance with Detailed Specifications listed in Section 3 – SPECIFICATIONS.
- A Certificate of Analysis, either their own, or from an independent lab
- A copy of the documentation of testing to ensure the water’s compliance with U.S.P. specifications.

3.3.1 Lot 3A – Liquid Reference Standard for Calibration of Breath Testing Equipment

CALIBRATION SIMULATOR SOLUTION CRITERIA

A. SOLUTION:

The three calibration (3) reference standards shall be pre-mixed, ready for immediate use, ethanol (Ethyl Alcohol) reference solutions for simulators, one with a value (standard) of 0.18%, one with a value (standard) of 0.10% and one with a value (standard) of 0.08%. The manufacturer must agree to change the values (standards) upon 60 days' notice in writing from a New York State Department of Health Approved Training Agency. The solutions must contain only ethanol (Ethyl Alcohol) and purified water as described below. Packaging shall be in 500 mL bottles.

The ethanol used shall meet the requirements for Ethyl Alcohol - 200 proof dehydrated as specified in the U.S.P. (United States Pharmacopoeia) monograph for 200 proof dehydrated ethyl alcohol.

The water used in the manufacture of the solution shall be purified water as specified in the U.S.P. monograph for purified water. This water will be tested by the manufacturer to ensure compliance with U.S.P. specifications.

Documentation of these testing results will be maintained by the manufacturer. A copy of the testing results must accompany the samples. (Any sample found to include additional chemicals used in the manufacturing to control the growth of algae, fungus, mildew, etc. will be rejected and the bid offer will be disqualified.)

At a value (standard) of 0.18%, the solution shall:

- Contain 0.218 (± 0.007) grams of ethanol per 100 mL of solution
- Provide a value of 0.180% ($\pm 3\%$) at 34°C ($\pm 0.2^\circ\text{C}$) on a breath alcohol testing device.
- Be manufactured by a single batch/lot in a volume at least equivalent to each bi-monthly shipment.

At a value (standard) of 0.10%, the solution shall:

- Contain 0.121 (± 0.004) grams of ethanol per 100 mL of solution.
- Provide a value of 0.100% ($\pm 3\%$) at 34°C ($\pm 0.2^\circ\text{C}$) on a breath alcohol testing device.
- Be manufactured by a single batch/lot in a volume at least equivalent to each bi-monthly shipment.

At a value (standard) of 0.08%, the solution shall:

- Contain 0.097 (± 0.003) grams of ethanol per 100 mL of solution
- Provide a value of 0.080% ($\pm 3\%$) at 34°C ($\pm 0.2^\circ\text{C}$) on a breath alcohol testing device.
- Be manufactured by a single batch/lot in a volume at least equivalent to each bi-monthly shipment.

All solutions shall have been tested for accuracy by an independent laboratory other than the supplier unless the supplier is an ISO 17034 accredited reference material producer with testing activities assessed to conform to the relevant parts of ISO 17025 per Section 2.3.1 (#1), above. All analyses shall be performed utilizing gas chromatography and procedures traceable to the standards established by the National Institute of Standards and Technology. All analyses shall reflect the batch/lot number assigned to the solution analyzed and the test results of analysis shall be expressed in grams of ethanol per 100 mL of solution or its equivalent.

If the solution fails at any time to meet specifications as determined by the agencies, the contractor shall replace the entire batch/lot within one month at no cost to the State, and also, be responsible for any additional cost factors.

The analytical laboratory's certificate of analysis/assay of the specific batch/lot must be forwarded to and received by the requesting New York State Department of Health Approved Training Agency. The certificate shall minimally contain the following:

- Name and address of testing facility
- Batch/Lot Number
- Date of Analysis
- Results of acceptable method of analysis

If the analytical laboratory testing the simulator solution is accredited, the certificate of analysis must also include:

- Reference to accreditation held by manufacturer and/or testing laboratory
- Estimation of measurement uncertainty with a 95% confidence level (coverage factor $k=2$)

B. FURTHER CONTRACT INFORMATION:

The New York State Department of Health Approved Training Agencies reserve the right to inspect the facilities of the manufacturer unannounced during normal business hours. The bidder of the reference standard must also be the manufacturer of the reference standard. The bidder must include along with evaluation samples, three (3) current customer references. These references will contain the following:

- Name of Reference
- Address of Reference
- Telephone Number
- Contact Person

C. PACKAGING:

All bottles supplied shall be pharmaceutical quality, high-density polyethylene with a natural finish.

Each bottle shall be designed to contain 500 milliliters of solution for a simulator.

The bottle closure (cap) shall have a liner specifically designed to provide a non-absorptive positive seal. In addition, once the cap is in place, the liner will remain attached to the top of the bottle (pressure seal), whenever the cap is removed.

Each bottle shall be designed with a tamper-proof outer seal, which must be broken and removed before the cap can be removed.

The shipping carton shall be designed to protect each shipment against damage.

Calibration solution shipments shall be packaged and transported so as to arrive directly to any location within New York State within two (2) business days of shipping. Shipments must be secured from loss and damage. A New York State Department of Health Approved Training Agency may allow other transit timeframes if mutually agreed upon.

The contractor shall be able to provide shipments of at least a package of two (2) 500 ml bottles.

D. VOLUME:

The volume within the appropriate container shall be within 5%.

E. LABELING:

Labels for the 0.10% reference standard must be white, and labels for the 0.18% and 0.08% reference standard must be contrasting colors. Labels shall be prepared using permanent-type, non-water-soluble ink.

Each container must be minimally labeled to indicate:

- Batch/Lot number assigned to the particular batch

- Expiration date (month/day/year)
- Bottle number
- Nominal Value via breath test instrument
- Name & address of manufacturer

Each package of two bottles or more of Simulator Reference Solution (500mL) shall carry the necessary extra labels listing a stamped batch/lot number, expiration/use date (month/day/year), value.

The extra labels shall be designed so that they may be readily removed from the Simulator Reservoir Jar

F. CODE:

Each batch/lot shall be assigned a unique batch/lot code, which shall appear on the label and on the manufacturer’s analysis/assay report.

Every batch/lot code number must be unique and never be reused. Each batch/lot code number shall represent a batch produced in a single vessel.

Each batch/lot produced may be sold to other customers in addition to New York State, but must be sold to them at a similar market value.

G. NUMBERING:

All bottles of Simulator Reference Solution shall be numbered consecutively starting with 0001 for each bottle filled from a particular batch/lot number.

H. BATCH/LOT SIZE:

Each batch must be mixed in a single container. The minimum amount requested in each order will be at the training agency’s discretion.

I. MIXING:

Mixing of the solution must be accomplished using an electronic submersible pump or an alternative method deemed acceptable by a New York State Department of Health Approved Training Agency.

J. EXPIRATION DATE:

Expiration date shall not exceed twelve (12) months from date of manufacture, unless requested by a New York State Department of Health Approved Training Agency.

Shipments must be received by agencies within New York State so that there is a minimum of ten (10) months remaining before the expiration date.

Items requested for Lot 3A (all Sub-Lots):

ITEM	REFERENCE
1	0.08% Calibration Reference Standard (Liquid)
2	0.10% Calibration Reference Standard (Liquid)
3	0.18% Calibration Reference Standard (Liquid)

3.3.2 Lot 3B – Liquid Reference Standard for Field Use on Breath Testing Equipment

FIELD SIMULATOR SOLUTION CRITERIA

A. SOLUTION:

The field reference standard shall be pre-mixed, ready for immediate use, ethanol (ethyl alcohol) reference solutions for simulator use with a value (standard) of 0.10%. The manufacturer must agree

to change the value (standard) upon 60 days' notice in writing from a New York State Department of Health Approved Training Agency. The solutions must contain only ethanol (Ethyl Alcohol) and purified water as described below. Packaging shall be in 500 mL bottles.

The ethanol used shall meet the requirements for Ethyl Alcohol - 200 proof dehydrated as specified in the U.S.P. (United States Pharmacopoeia) monograph for 200 proof dehydrated ethyl alcohol.

The water used in the manufacture of the solution shall be purified water as specified in the U.S.P. monograph for purified water. This water will be tested by the manufacturer to ensure compliance with U.S.P. specifications. Documentation of these testing results will be maintained by the manufacturer. A copy of the testing results must accompany the samples. (Any sample found to include additional chemicals used in the manufacturing to control the growth of algae, fungus, mildew, etc. will be rejected and the bid offer will be disqualified.)

At a value (standard) of 0.10%, the solution shall:

- Contain 0.121 (± 0.004) grams of ethanol per 100 mL of solution.
- Provide a value of 0.100% ($\pm 3\%$) at 34°C ($\pm 0.2^\circ\text{C}$) on a breath alcohol testing device.
- Be manufactured by a single batch/lot in a volume at least equivalent to each bi-monthly shipment.

All solutions will be produced at and distributed from a site within the United States and shall have been tested for accuracy by an independent laboratory other than the supplier unless the supplier is an accredited ISO 17034 reference material producer (as described in 2.3.2 Sub-Lot 3B1) with testing activities assessed to conform to the relevant parts to ISO 17025 per ISO 17034 accreditation practices for such testing. All analyses shall be performed utilizing gas chromatography and procedures traceable to the standards established by the National Institute of Standards and Technology. All analyses shall reflect the batch/lot number assigned to the solution analyzed and the test results of analysis shall be expressed in grams of ethanol per 100 mL of solution or its equivalent.

The analytical laboratory's certificate of analysis/assay of the specific batch/lot must be forwarded to and received by the requesting New York State Department of Health Approved Training Agency. The certificate shall minimally contain the following:

- Name and address of testing facility
- Batch/Lot Number
- Date of Analysis
- Results of acceptable method of analysis

If the analytical laboratory testing the simulator solution is accredited, the certificate of analysis must also include:

- Reference to accreditation held by manufacturer and/or testing laboratory
- Estimation of measurement uncertainty with a 95% confidence level (coverage factor $k=2$)

B. SAMPLES:

Representative samples (500 mL bottles) from the beginning, middle, and end of the bottling process of each batch/lot shall be sent to the requesting New York State Department of Health Approved Training Agency for analysis prior to any distribution of the batch/lot in New York State.

These representative samples will be the beginning, middle, and end of the bottling process. All bottles in the batch/lot must be labeled and numbered consecutively.

These samples will be accompanied by a recording of the total number of bottles of Simulator Reference Solution manufactured in the particular batch/lot for distribution to authorized agencies within New York State.

No shipments of the batch/lot may be distributed in New York State until the requesting New York State Department of Health Approved Training Agency approves their contents and resultant values.

If the solution fails at any time to meet specifications as determined by the agencies, the contractor shall replace the entire batch/lot within one month at no cost to the State, and also be responsible for any additional cost factors.

Upon approval of the solutions by the State, shipments of the product shall be made by the contractor to agencies requested in the State.

C. FURTHER CONTRACT INFORMATION:

The New York State Department of Health Approved Training Agencies reserve the right to inspect the facilities of the manufacturer unannounced during normal business hours. The bidder of the reference standard must also be the manufacturer of the reference standard. The bidder must include along with evaluation samples, three (3) current customer references. These references will contain the following:

- Name of Reference
- Address of Reference
- Telephone Number
- Contact Person

D. PACKAGING:

All bottles supplied shall be pharmaceutical quality, high-density polyethylene with a natural finish.

Each bottle shall be designed to contain 500 milliliters of solution for a simulator.

The bottle closure (cap) shall have a liner specifically designed to provide a non-absorptive positive seal. In addition, once the cap is in place, the liner will remain attached to the top of the bottle (pressure seal), whenever the cap is removed.

Each bottle shall be designed with a tamper-proof outer seal, which must be broken and removed before the cap can be removed.

The shipping carton shall be designed to protect each shipment against damage.

Field solution shipments shall be packaged and transported so as to arrive directly to each of over 240 agencies within New York State within two (2) business days of shipping, every two (2) months. Shipments must be secured from loss and damage. A New York State Department of Health Approved Training Agency may request other agency shipment timeframes, and allow other transit timeframes if mutually agreed upon.

The contractor shall be able to provide shipments of at least a package of two (2) 500 ml bottles.

E. VOLUME:

The volume within the appropriate container shall be within 5%.

F. LABELING:

Labels for the 0.10% field reference standard must be white. Labels shall be prepared using permanent-type, non-water-soluble ink.

Each container must be minimally labeled to indicate:

- Batch/Lot number assigned to the particular batch
- Expiration date (month/day/year)

- Bottle number
- Nominal Value via breath test instrument
- Name & address of manufacturer

Each package of two bottles or more of Simulator Reference Solution (500mL) shall carry the necessary extra labels listing a stamped batch/lot number, expiration/use date (month/day/year), value. These extra labels shall be designed so that they may be readily removed from the Simulator Reservoir Jar.

G. CODE:

Each batch/lot shall be assigned a unique batch/lot code, which shall appear on the label and on the manufacturer’s analysis/assay report.

Every batch/lot code number must be unique and never be reused. Every batch/lot code number shall represent a batch produced in a single vessel.

Each batch/lot produced may be sold to other customers in addition to New York State, but must be sold to them at a similar market value.

H. NUMBERING:

All bottles of Simulator Reference Solution shall be numbered consecutively starting with 0001 for each bottle filled from a particular batch/lot number.

I. BATCH/LOT SIZE:

Each batch, mixed in a single container, shall not be less than 30 gallons nor more than 300 gallons.

The State reserves the right to request a batch run of less than thirty (30) gallons for each item.

J. MIXING:

Mixing of the solution must be accomplished using an electronic submersible pump or an alternative method deemed acceptable by a New York State Department of Health Approved Training Agency.

K. EXPIRATION DATE:

Expiration date shall not exceed six (6) months from date of manufacture, unless requested by a New York State Department of Health Approved Training Agency.

Shipments must be received by agencies within New York State so that there is a minimum of four (4) months remaining before the expiration date.

Item requested for Lot 3B (all Sub-Lots):

ITEM	REFERENCE
1	0.10% Field Reference Standard (Liquid)

3.4 Lot 4 – Reference Standard (Gas)

Dry gas ethanol-nitrogen reference standards shall be pre-mixed and ready for immediate use in the concentrations specified in sections A and B below. **The dry gas is intended for use for both evidential Breath Analyzers and the Screening Devices.** The ethanol gas mixture shall be traceable to National Institute of Standards and Technology or equivalent ethanol standard (sample “certificate of analysis” shall be provided with bid). All cylinders will be labeled with the standard value in ppm and %BrAC (breath alcohol concentration), unique cylinder number, batch/lot number and expiration date. The supplier shall pressure test and leak test all cylinders that will be shipped to the requesting New York State Department of Health

Approved Training Agency. The Bidder must provide the name(s) of the instruments(s) on the Conforming Products List (CPL) with which their gases are compatible.

The New York State Department of Health Approved Training Agencies may request other cylinder sizes and/or concentrations if needed.

The dry gas ethanol standards shall meet the following acceptability requirements:

- Concentrations $\geq 0.100\%$ BrAC 2%
- Concentrations $< 0.100\%$ BrAC 0.002% BrAC.

The supplier shall provide with each batch/lot a certificate of analysis to minimally contain:

- Name and address of supplier
- Batch/Lot Number
- Date of manufacture
- Method of analysis
- Results obtained
- Traceability information for any critical reference materials used in the production of the ethanol standards
- Reference to accreditation held by the manufacturer and/or testing laboratory (if applicable)
- Estimation of measurement uncertainty with a 95% confidence level (coverage factor $k=2$), if available

PACKAGING:

All cylinders supplied shall conform to all appropriate standards to facilitate safe storage and shipment. Each cylinder shall have an appropriate tamper proof/safety seal over the gas outlet port to protect the valve from contamination and tampering. The shipping carton shall be designed to protect each shipment from damage. Shipments shall be packaged to arrive at their final destination point(s) in satisfactory condition. The contractor shall be capable of providing shipments of a package of 1 cylinder or more.

3.4.1 Lot 4A – Gas Reference Standard for Calibration of Breath Testing Equipment

Cylinders used for delivering the standard to breath testing instruments shall hold approximately 105 liters of gas at approximately 1000 psig at 70 degrees F. Dry gas cylinders will be provided in the following concentrations.

Items requested for Lot 4A (all Sub-Lots):

ITEM	REFERENCE
1	Dry Gas Cylinder 0.020%
2	Dry Gas Cylinder 0.080%
3	Dry Gas Cylinder 0.100%
4	Dry Gas Cylinder 0.180%
5	Dry Gas Cylinder 0.250%

3.4.2 Lot 4B – Gas Reference Standard for Field Use

Cylinders used for delivering the standard to breath testing instruments shall hold an appropriate amount of gas dependent upon the instrument utilized at approximately 1000 psig at 70 degrees F. A representative sampling from the batch/lot will be provided to the requesting New York State Department of Health Approved Training Agency for testing and approval prior to the release of the batch/lot for purchase. The manufacturer must provide information on the total number of cylinders filled for each batch/lot. Once approved, the particular batch/lot number will be available solely for the requesting agency (unless prior written authorization is received from the requesting agency). If the dry gas reference standard fails to meet the specifications of the batch/lot, the manufacturer shall replace the cylinder(s) at no cost to the State.

Item requested for Lot 4B (all Sub-Lots):

ITEM	REFERENCE
1	Dry Gas Cylinder 0.100%

4. BID SUBMISSION

4.1 Performance and Bid Bonds

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

4.2 NYS Vendor File Registration

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder and any authorized resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and to each of your authorized resellers (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables a vendor to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York.

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

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

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

4.3 Format of Bid Submission

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

Situations susceptible to Disqualification may include:

- E-mail or facsimile Bid submissions are not acceptable, and
- Absent Price Pages (Attachment 1 *Pricing* are not acceptable.)

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

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

4.4 Content

A complete Bid consists of each of the following:

1. Two (2) USB flash drives containing:
 - a. Pages 1 and 2 of the Solicitation (**Revised April 8, 2019**) (signed and scanned) (PDF);
 - b. Completed Attachment 1 – *Pricing* (must be submitted as an Excel file);
 - c. Completed Attachment 2 – *NYS Required Certifications* with original ink signatures (PDF);
 - d. Completed Attachment 3 – *Encouraging Use of NYS Businesses* (PDF);
 - e. Proof of compliance with Attachment 4 – *Insurance Requirements* (PDF);
 - f. Completed Attachment 5 – *Bidder Information Questionnaire* (Excel);
 - g. Completed Attachment 6 – *Bidder Submission Checklist* (**Revised April 8, 2019**) (Excel);
 - h. Completed ST-220CA, Contractor Certification, notarized with original ink signatures (PDF);
 - i. Completed MWBE 100, MWBE Utilization Plan (if applicable) (PDF);
 - j. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF);
 - k. Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF).
 - l. Copy of accreditation certificates (if applicable) for Lot 3 and/or Lot 4
 - m. Sample Certificate of Analysis (if applicable) for Lot 3 and/or Lot 4.
 - n. Litigation fee schedule (if applicable) for Lot 3 and/or Lot 4

2. Original paper versions of each of the following (to be placed in a loose-leaf binder and tabbed):
 - a. Pages 1 and 2 of the Solicitation (**Revised April 8, 2019**) with original ink signatures;
 - b. Completed Attachment 2 – *NYS Required Certifications* with original ink signatures;
 - c. Completed Attachment 3 – *Encouraging Use of NYS Businesses*;
 - d. Proof of compliance with Attachment 4 – *Insurance Requirements*;
 - e. Completed Attachment 5 – *Bidder Information Questionnaire*;
 - f. Completed Attachment 6 – *Bidder Submission Checklist* (**Revised April 8, 2019**);
 - g. Completed ST-220CA, Contractor Certification, notarized with original ink signatures;
 - h. Completed MWBE 100, MWBE Utilization Plan (if applicable);
 - i. Completed Form EEO100, Equal Employment Opportunity Staffing Plan;
 - j. Standard Vendor Responsibility Questionnaire (completed and signed) or Certification that Questionnaire has been completed online.

Also, please note that in the case of discrepancies between paper copies and USB flash drive submissions of the documents required in both formats, the electronic USB flash drive copy shall take precedence over the paper copy.

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

3. **All Bidders for Lot 3 – Reference Standards (Liquid)** must submit the following with their bid:
 - Representative Samples of a single value (6 bottles). The samples must be bottled, labeled, coded and packaged in accordance with Detailed Specifications listed in Section 3 – SPECIFICATIONS.

- A Certificate of Analysis, either their own, or from an independent lab
- A copy of the documentation of testing to ensure the water's compliance with U.S.P. specifications.

4.5 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 #23164)
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

Label should indicate **FRAGILE** if submitting samples.

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.

4.6 Bid Delivery

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

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

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

4.7 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.

4.8 NYS Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 2 – *NYS Required Certifications*) with its Bid.

4.9 Authorized Resellers or Distributors

Bids will be accepted only from manufacturers or authorized dealers. Bidders guarantee they are an authorized reseller or distributor for any manufacturer offered. 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.

4.10 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Bidder Questions, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

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

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

4.11 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://ogs.ny.gov/procurement/bid-opening-results-0>.

4.12 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.

4.13 Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least 90 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 90 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

4.14 NYS Reserved Rights

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

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;

- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State; and
- T. Conduct Contract negotiations with -the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, region, or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, or lots.
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing.
- W. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

4.15 Incorporation

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

5. METHOD OF AWARD

Award in Lots 1 and 2 shall be made by item based on the lowest price bid for each item by a responsive and responsible Bidder. It is anticipated that there will be multiple awardees for each Lot.

Award in Lots 3 and 4 shall be made to all responsive and responsible Bidders within each Sub-Lot who meet the minimum requirements, and whose pricing is deemed to be reasonable as determined by the State. It is anticipated that there will be multiple awardees for each Sub-Lot.

5.1 Periodic Recruitment

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

If a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

5.2 Procurement Instructions for Authorized Users

Authorized Users shall procure Products that best meet their form, function, and utility requirements.

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

Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.

5.3 Notification of Award

Tentative award of the Contract shall consist of written notice to that effect by OGS to a selected Bidder, who shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible.

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

6. TERMS AND CONDITIONS

6.1 Contract Term and Extensions

The Contract will be in effect for a term of up to five (5) years. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, Contract Creation/Execution).

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for five (5) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, Contract Term – Extension.

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

6.2 Short term Extension

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

6.3 Price

Pricing will be collected using Attachment 1 – *Pricing* in accordance with the Instructions tab listed within Attachment 1.

6.4 CPI Price Update

On each annual anniversary date of the Bid Opening, the Contractor may request a rate change (increase or decrease) based upon fluctuations in the latest published copy of the Consumer Price Index for all urban consumers as published by the U S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212.

The index is also available through the Internet at the Bureau of Labor Statistics web site at <https://stats.bls.gov/>. Go to “Subjects” > “Inflation and Prices Overview” > “Consumer Price Index” > “CPI Tables” and then refer to “Table Containing History of CPI-U U.S. All Items Indexes and Annual Percent Changes From 1913 to Present is now available in the CPI Detailed Report as Table 24”.

The Contractor is solely responsible for notifying OGS Procurement Services that the Contractor wishes to receive the CPI rate change and to submit a request for the adjusted rate on the applicable Bid Opening anniversary date; and Contractor shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease to OGS Procurement Services and the Authorized User(s), as appropriate. Should the Contractor fail to make a request and submit supporting documentation to OGS Procurement Services within ninety (90) days after the applicable anniversary date, the Contractor shall be deemed to have waived its right to any increase in price for that year, but the State shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.

Price adjustments using the CPI involve changing the base payment by the percent change in the level of the CPI for the current year compared to the previous year. This is calculated by first determining the index point change between the two readings and then the percent change. The price adjustment shall be calculated as follows: Take the CPI value for January 2019 and subtract the CPI value for January 2018. The difference is then divided by the previous period CPI value and this result is then multiplied by 100 to equal the percent change which is the price adjustment value. This percentage change (increase or decrease) shall be applied to the next Contract year, upon release of a Contract Addendum from OGS Procurement Services.

The following example illustrates the computation of percent change for a hypothetical April 2019 Bid Opening calculation:

CPI for current period (January 2019)	185.2
Less CPI for previous period (January 2018)	181.7
Equals index point change	3.5
Divided by previous period CPI	181.7
Equals	0.0192
Result multiplied by 100	<u>0.019 x 100</u>
Equals percent change/ price adjustment value	1.9%

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 shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, *Savings/Force Majeure*.

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

6.7 Ordering

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

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

6.8 Purchasing Card Orders

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

6.9 Minimum Order

There is no minimum order for this Contract.

6.10 Invoicing and Payment

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

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

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

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

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

6.11 Product Delivery

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

6.12 Product Returns and Exchanges

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

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

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

6.13 Contract Administration

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

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

6.14 NYS Financial System (SFS)

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

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

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

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

6.15 N.Y. State Finance Law § 139-I

Pursuant to N.Y. 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 N.Y. State Labor Law § 201-g.

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

Pursuant to N.Y. State Finance Law § 139-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.

6.16 Insurance

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements*.

6.17 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, no later than 10 days after the close of each calendar quarter. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the quarterly report.

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

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

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

6.18 Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

I. New York State Law

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

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/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 any subcontractor.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

D. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic

characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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: <https://ogs.ny.gov/MWBE>

6.19 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

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

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

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

Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

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

6.20 Use of Recycled or Remanufactured Materials

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

6.21 Bulk Delivery and Alternate Packaging

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

6.22 Consumer Products Containing Mercury

Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Contract.

6.23 Diesel Emission Reduction Act

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the “Law”), it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology (“BART”) and ultra-low sulfur diesel fuel (“ULSD”). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by Contractors “on behalf of” State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

6.24 Preferred Source Products

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in the resultant Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

6.25 NYS Vendor Responsibility

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

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

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

In order to assist the State in determining the responsibility of the Bidder prior to Contract award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the Bid due date. A Bidder’s Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is

recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the Bid opening to provide sufficient time to complete the Questionnaire.

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

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

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

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

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

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

6.26 NYS Tax Law Section 5-a

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

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

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

6.27 "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.

6.28 Non-State Agencies Participation in Centralized Contracts

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

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

6.29 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.

6.30 New Accounts

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references.

6.31 Drug and Alcohol Use Prohibited

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

6.32 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.

6.33 Instruction Manuals

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

6.34 Samples

- A. **Bidder Supplied Samples** - The Commissioner reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a Contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of the Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Solicitation or Contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period, the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Commissioner as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

- B. **Enhanced Samples** - When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.
- C. **Conformance with Samples** - Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Solicitation. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Solicitation, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.
- D. **Testing** - All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Solicitation, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.