NEW YORK STATE OF OPPORTUNITY. | Office of General Services
Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | https://ogs.ny.gov/procurement | customer.services@ogs.ny.gov | 518-474-6717

Solicitation (REVISED)

BID OPENING **DATE:** **TUESDAY, JUNE 4, 2019** **TIME:** 11:00 A.M. EST **SOLICITATION NUMBER:** 23141	**TITLE: GROUP 77200 - Public Safety Communications Equipment and Services (Two-Way Radios and Satellite Phones) (STATEWIDE)** **Classification Codes: 32, 46, 92**

CONTRACT PERIOD: AUGUST 27, 2019 TO AUGUST 26, 2024

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

Primary Designated Contacts

Lydia Walrath Contract Management Specialist Telephone No. (518) 473-6962 E-mail address: OGS.sm.PS.DataTeam@ogs.ny.gov	Kylesha Davis Team Leader Telephone No. (518) 486-1629 E-mail address: OGS.sm.PS.DataTeam@ogs.ny.gov

Bidder's Federal Tax Identification Number: *(Do Not Use Social Security Number)*	**NYS Vendor Identification Number:** *(See New York State Vendor File Registration Clause)*
Legal Business Name of Company Bidding:	
D/B/A – Doing Business As (if applicable):	

Street	City	State	County	Zip Code

E-mail Address:	Company Web Site:

If applicable, place an "x" in the appropriate box(es) *(check all that apply)*

☐ NYS Small Business # Employees	☐ Service Disabled Veteran Owned Business	☐ NYS Minority Owned Business	☐ 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 ☐ LETTER ☐ USB FLASH DRIVE ☐ # of Binders/Packages: _____

PURC. MEMO ☐ OTHER ☐ _____ Documented by: _____

RETURN THIS PAGE AS PART OF BID

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 365 days from the date of submission to the New York State ("NYS") Office of General Services ("OGS"), or for such longer period as is set forth in the Solicitation.

2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or Services as described in the Solicitation.

3. The Bidder has read and understands the provisions of the Solicitation, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).

4. The information contained in this Bid is complete, true, and accurate.

5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law Section 139-j and Section 139-k, and with OGS's procedures relating to permissible contacts during a procurement as required by State Finance Law Section 139-j(3) and Section 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

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CORPORATE, PARTNERSHIP, INDIVIDUAL OR LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF }
: **SS.:**
COUNTY OF }

On the ____ day of _____in the year 20 __ , before me personally appeared: _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides at _____, Town of _____,
County of _____ , State of _____ ; and further that:

[Check One]

(☐ **If an individual):** _he executed the foregoing instrument in his/her name and on his/her own behalf.

(☐ **If a corporation):** _he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(☐ **If a partnership):** _he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.

(☐ **If a Limited Liability Company):** _he is the _____ of _____ LLC, the Limited Liability Company described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.

_____
Notary Public

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

Attachment 1 – *NYS Pricing*
Attachment 2 – *NYS Required Certifications*
Attachment 3 – *Encouraging Use of NYS Businesses*
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Attachment 5 – *Bidder Information Questionnaire*
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Attachment 7 – *Proof of Past Sales Revenue*
Attachment 8 – *Reseller/Subcontractor List*
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SECTION 1: INTRODUCTION

1.1 OVERVIEW

This Solicitation is issued by the New York State ("NYS") Office of General Services – Procurement Services ("OGS") for Public Safety Communications Equipment and Services (Two-Way Radios and Satellite Phones) as specified herein for all Authorized Users eligible to purchase through this Solicitation. Contracts will be awarded to Manufacturers, Distributors, and Dealers of Public Safety Communications Equipment and Services who are responsive and responsible and that meet the terms and conditions of this Solicitation, as specified herein.

The purpose of this Solicitation is to establish multiple non-competitively established Centralized Backdrop Contracts that will require a competitive Second Tier Solicitation for certain Authorized User transactions (see Attachment 14 – *How to Use This Contract)*. Reseller participation is allowed. Pricing offered for Equipment must be Percent (%) Discount from List Price/MSRP, Total Hourly Rate for Maintenance, or a Percent (%) Markup Over the Prevailing Wage Rate and Supplemental Benefits for Installation and Integration. The resulting Centralized Backdrop Contracts shall be awarded by Lot and Region and will be for use by New York State Agencies and other Authorized Users statewide (see Section 6.39 – *Non-State Agencies Participation in Centralized Contracts*).

This Solicitation outlines the terms and conditions and all applicable information required for submitting a Bid. Bidders must read the language of this Solicitation thoroughly, pay strict attention to the Bid submission date and time, and precisely follow the instructions included in the Solicitation, attachments, and addendums, to ensure compliance with Bid requirements and prevent possible disqualification.

The resulting Award shall have an initial term of 5 years with extension options, not to exceed a total term of 10 years. This Procurement includes provisions for Periodic Recruitment.

Attachment 14 – *How to Use this Contract* provides guidance to both Bidders and Authorized Users on utilizing any resulting Award.

1.2 PARTICIPATION

A Bidder must be either:

1. an Original Equipment Manufacturer ("OEM") of the Equipment, or Equipment and Services, being bid; or
2. an authorized Distributor or Dealer of an OEM of the Equipment, or Equipment and Services, being Bid (see Section 2.2.1 – *Bidder Eligibility for more information*).

Bidders are permitted to identify Resellers to sell Equipment, and if applicable provide Services, under any resulting Contract (see Section 6.9 – *Utilization of Resellers*).

Bidders are permitted to identify Subcontractors to provide Services under any resulting Contract, if applicable (see Section 6.10 – *Utilization of Subcontractors*).

Contractors awarded a Contract as a result of this Solicitation may not be Resellers or Subcontractors on any other Contract awarded as a result of this Solicitation.

1.3 SCOPE

The Solicitation is limited to the items listed in the Lots set forth below. All other items are excluded from the scope of this Solicitation. Contracts will be awarded by Lot and by Region. Bidders may bid on up to two Lots. Bidders may bid one Region, multiple Regions, or Statewide for each Lot bid.

All Equipment and Services offered and sold under the resulting Award, must directly involve the provision of Public Safety Communications Equipment and Services. For example: The purchase of PC monitors must be for a use that directly supports the operation of a Public Safety Communication system.

The Services offered in this Solicitation and any Contracts resulting from it are subject to the Prevailing Wage Rate provisions of the NYS Labor Law. For more information, see Section 6.12 – *NYS DOL Prevailing Wage Rates*.

Contract(s) will be awarded by Lots as follows:

LOT 1: RADIO EQUIPMENT ONLY
LOT 2: RADIO EQUIPMENT AND SERVICES
LOT 3: SATELLITE PHONE EQUIPMENT ONLY

1.3.1 LOT 1: RADIO EQUIPMENT ONLY
(INCLUDES RADIO EQUIPMENT, ACCESSORIES, AND SITE HARDWARE EQUIPMENT)

1. **Radios:**
   A. Portable Radios (hand-held): Includes, but is not limited to: portable radios, single or multi-band (dual, triple, etc.), including amateur, aviation, and marine radios.
   B. Mobile Radios (vehicle-installed): Includes, but is not limited to: mobile radios, single or multi-band (dual, triple, etc.), including amateur, aviation, and marine radios.
   C. Desktop Radios: Includes, but is not limited to: desktop/console radios, single or multi-band (dual, triple, etc.).
   D. Microwave Radios: Includes Microwave radios.

2. **Radio Infrastructure:** Includes:
   A. base stations
   B. voting systems
   C. radio network hardware

3. **Repeaters:** Includes, but is not limited to:
   A. base station repeaters, single or multi-band
   B. in-vehicle repeaters

4. **Antennas:** Includes, but is not limited to:
   A. microwave antennas
   B. mobile antennas
   C. base station antennas
   D. repeater antennas
   E. satellite antennas

5. **Frequency Equipment:** Includes, but is not limited to:
   A. radio frequency (RF) transmission lines
   B. RF filtering equipment
   C. duplexers and multiplexers

6. **Dispatch Equipment:** Includes, but is not limited to:
   A. IP-based interoperability gateway devices
   B. Radio dispatch console systems

7. **Site Hardware for Two-Way Radio Systems:** Includes, but is not limited to:
   A. Uninterruptable Power Supply (UPS) equipment
   B. tower mounting equipment
   C. cable bridges
   D. cable trays
   E. lightning protection

8. **Accessories:**
   A. Portable Radio Accessories – Includes, but is not limited to:

      1. Batteries – includes, but is not limited to:
         a. Large capacity batteries
         b. Standard capacity batteries

c. Battery conditioners

2. Portable Antennas – Includes, but is not limited to:
    a. Stubby portable antennas
    b. Standard portable antennas

3. Chargers – Includes, but is not limited to:
    a. Rapid charge single chargers
    b. Standard single chargers
    c. Rapid multi-chargers
    d. Standard multi-chargers
    e. Vehicular chargers

4. Cables – Includes, but is not limited to:
    a. Coaxial and Fiber Optic cables
    b. Low Voltage Wiring
    c. Programming cables and Software
    d. AC or DC power cables

5. Body Accessories – Includes, but is not limited to:
    a. Belt clips/belt loops
    b. Swivel clips
    c. Lapel speaker/mics
    d. Headsets
    e. Earpieces

B. Mobile Radio Accessories – Includes, but is not limited to:
1. Handheld microphones
2. Microphones
3. Speakers
4. Programming cables and accompanying software
5. Mounts and kits for remote mounting
6. Key lock assembly
7. Charger guards
8. Diplexers
9. Triplexers
10. Multiplexers

C. Control Station Accessories – Includes, but is not limited to:
1. Microphones
2. Speakers
3. Enclosures and mounts
4. DC power supply
5. Headset
6. Programming cables

D. Radio Console Accessories – Includes, but is not limited to:
1. Core components
2. Racks
3. Intelligent workstations
4. Network equipment
5. Cabling
6. PCs and PC monitors

1.3.2 LOT 2: RADIO EQUIPMENT AND SERVICES (INCLUDES RADIO EQUIPMENT, INSTALLATION, INTEGRATION & MAINTENANCE)

1. **Radio Equipment, as outlined in Lot 1 – Radio Equipment Only.**

2. **Installation Service:** Involves physically Installing various types of Products as part of a Two-Way Radio System and/or adding new Products to an already existing Two-Way Radio System within the Scope of the applicable Job Title in Attachment 1 – *NYS Pricing*.

3. **Integration Service:** Actions required to join an existing and New System into an Integrated application or to connect various components of new applications into a centralized System within the Scope of the applicable Job Title in Attachment 1 – *NYS Pricing*. Integration covers all commissioning, programming, consulting, network/field/system engineering, design, etc. performed as part of the provision of any Two-Way Radio System.

4. **Maintenance Service:** Includes, but is not limited to:
    A. Preventative Maintenance: Includes, but is not limited to, testing, inspecting, cleaning, software updates/patches, and scheduled repairs/replacements of Two-Way Radio Equipment.
    B. Remedial Maintenance: Involves either repair or replacement of Equipment/Systems in the event that an Equipment/System Malfunctions.

For additional information, see Section 7 – *Installation and Integration* and Section 8 – *Maintenance*.

1.3.3 LOT 3: SATELLITE PHONE EQUIPMENT ONLY (INCLUDES SATELLITE PHONES AND ACCESSORIES)

1. **Satellite Phones:** Mobile phones which connect to orbiting satellites instead of terrestrial cell sites that provide coverage within North America.

2. **Satellite Phone Accessories:** Includes, but is not limited to:
    1. Batteries
    2. Antennas
    3. Cables and Adapters
    4. Cases and Holsters
    5. Chargers
    6. Handsets
    7. Docking Stations
    8. Hands-free devices (Bluetooth)
    9. Mounting Solutions
    10. Networking Solutions (routers, repeaters, etc.)

1.3.4 LOT BIDDING RESTRICTIONS

1. Bidders may bid either Lot 1 or Lot 2, but not both. If a Bidder submits bids for both Lot 1 and Lot 2, OGS will require Bidder to indicate via email which Lot they are choosing to bid within two (2) Business Days of notification. Bidder will be required to withdraw its bid for the Lot not chosen. Failure to respond within two (2) Business Days shall result in disqualification of Bidder's Bid for Lot 1 and Lot 2.

2. Lot 3 may be bid alone or with another Lot.

1.4 REGIONS

Bidders may bid one Region, multiple Regions, or Statewide for each Lot bid. Regions will be referenced by Region name, and are determined as set forth below:

Region 1
Area: Long Island
Counties: Nassau, Suffolk

Region 2
Area: New York City
Counties: Bronx, Kings (Brooklyn), New York, Queens, Richmond (Staten Island)

Region 3
Area: Westchester
Counties: Dutchess, Putnam, Westchester

Region 4
Area: Ulster
Counties: Orange, Rockland, Sullivan, Ulster

Region 5
Area: Albany
Counties: Albany, Columbia, Delaware, Fulton, Greene, Montgomery, Otsego, Rensselaer, Schenectady, Schoharie

Region 6
Area: Adirondack
Counties: Clinton, Essex, Franklin, Hamilton, Saratoga, Warren, Washington

Region 7
Area: Syracuse
Counties: Cayuga, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence

Region 8
Area: Finger Lakes
Counties: Broome, Chemung, Chenango, Cortland, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Yates

Region 9
Area: Buffalo
Counties: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming

Region SW (Statewide)
Area: All Areas
Counties: All Counties

1.5 ESTIMATED SPEND AND QUANTITIES

The Contract(s) resulting from this Solicitation will be Indefinite Delivery, Indefinite Quantity (IDIQ) Contracts. No specific quantities are represented or guaranteed, the State provides no guarantee of individual Authorized User participation, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.

The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately $43.1 million 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. The Contractor must furnish all quantities actually ordered, at or below the Contract prices. See Appendix B, *Estimated/Specific Quantity Contracts* and

Participation in Centralized Contracts.

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. 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.

1.6 KEY EVENTS/DATES

Chart 1: Key Events/Dates

Event	Date	Time
Solicitation Release	*April 9, 2019*	N/A
Deadline for Submission of Intent to Bid	*April 17, 2019*	5:00 PM ET
Deadline for Submission of MWBE & SDVOB Interest in Partnership	*April 23, 2019*	5:00 PM ET
Closing Date for Bidder Questions	*April 23, 2019*	5:00 PM ET
OGS' Responses to Bidder Questions	*May 8, 2019*	N/A
Due date for Bids / Bid Opening	*June 4, 2019*	11:00 AM ET
Contract Approval Date / Award Publish Date	*August 27, 2019 (tentative)*	N/A

1.7 INTENT TO BID

A Bidder is encouraged, though not required, to indicate its intent to bid by sending an e-mail titled "INTENT TO BID-[BIDDER NAME]" to lydia.walrath@ogs.ny.gov on or before the date and time indicated in Section 1.6 - *Key Events/Dates*. The e-mail should include the Bidder's company name and a contact name and contact information.

Submission of the Intent to Bid is not a requirement to submit a Bid, nor does it disqualify a potential Bidder from submitting a Bid if they do not provide one.

1.8 BIDDER QUESTIONS

All questions regarding this Solicitation should be submitted using Attachment 11 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to lydia.walrath@ogs.ny.gov by the "Closing Date for Bidder Questions" as indicated in Section 1.6 - *Key Events/Dates*. 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 of updates to this Solicitation. For further instructions, see Section 1.11 – *NYS Contract Reporter Registration*.

1.9 BID DEVIATIONS

Bids must conform to the terms set forth in the 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 Question and Answer 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.

1.10 NYS VENDOR FILE REGISTRATION

All Bidders and any Bidders' Resellers should be registered or request to be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC) prior to bid submission. The Vendor File 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 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 the Bidder and/or the Bidder's Reseller(s) is not currently registered in the Vendor File, the Bidder and/or the Bidder's Reseller(s) must request assignment of a Vendor ID from OGS. To make the request, complete and submit the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) to OGS. Please send this document via email with the subject entitled "Vendor File Registration Request_Company Name" to the Designated Contact identified in the Solicitation. OGS will initiate the vendor registration process for all Bidders and 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.

Bidders should enter their Vendor ID on the first page of this Solicitation. In addition, each Reseller's Vendor ID number should be listed along with the Reseller information in Attachment 8 – *Reseller/Subcontractor List.* **NOTE TO BIDDERS: The Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.**

All Bidders and Bidder's resellers must be registered in the Vendor File prior to being awarded a Contract pursuant to this Solicitation.

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

1.11 NYS CONTRACT REPORTER REGISTRATION

Bidders must register with the New York State Contract Reporter ("NYSCR") at https://www.nyscr.ny.gov to receive notifications about this Solicitation. Navigate to the "I want to find contracts to bid on" page to register for your free account. 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. Any updates to this Solicitation will be posted and released through the NYSCR.

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

Be advised that submission of responses to the Solicitation that do not take into account updates to this Solicitation, may result in your Bid being deemed non-responsive to the Solicitation.

1.12 MWBE & SDVOB INTEREST IN PARTNERING WITH BIDDERS

NYS certified MWBE or SDVOB vendors are encouraged, but not required, to indicate interest in working with participating Bidders by sending an e-mail with the subject entitled "Solicitation 23141 MWBE or SDVOB INTEREST_COMPANY NAME" to lydia.walrath@ogs.ny.gov on or before April 23, 2019.

The e-mail content should include:

1. Company name
2. Contact Name and Contact Information, including Phone Number, Mailing Address, and E-mail Address

3. Brief description of the company and the Equipment and/or Services the company offers that are related to this Solicitation (ex: "Company ABC manufactures two-way radios")
4. NYS Certification type (Minority- and/or Women-Owned Businesses or SDVOB)
5. The location(s) in NYS where the company provides services

NYS certified MWBE and SDVOB vendors who have expressed interest in this Solicitation through the timely submission of such email will be included on the MWBE & SDVOB INTEREST IN PARTNERING WITH BIDDERS list. The resulting list will be made available to prospective Bidders through the publishing of a Purchasing Memorandum posted through the New York State Contract Reporter.

Bidders will have the option, but are not required, to utilize the vendors in the resulting MWBE & SDVOB INTEREST IN PARTNERING WITH BIDDERS list. Bidders may utilize NYS certified MWBE and SDVOB vendors that do not submit an email indicating interest in partnering with Bidders to OGS.

1.13 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law Section 139-j and Section 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 Section 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 Section 139-j and Section 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/ .

1.14 DEFINITIONS

Capitalized terms used in this Solicitation shall be defined in accordance with Appendix B, *Definitions*, or as in Attachment 12 – *Glossary of Terms*.

1.15 APPENDICES AND ATTACHMENTS

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

1.16 ADDENDA

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

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

1.17 CONFLICT OF TERMS

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

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

SECTION 2: BIDDER QUALIFICATIONS

2.1 GENERAL QUALIFICATIONS

Bidder is advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the Work of the resulting Contract(s). Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can meet the minimum qualifications and perform the Work required under the Solicitation. Procurement Services retains the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work. **Any bidder who fails to meet the following minimum qualifications will be disqualified.**

2.2 MINIMUM QUALIFICATIONS

2.2.1 BIDDER QUALIFICATIONS

A Bidder must be either:

1. an Original Equipment Manufacturer ("OEM") of the Equipment, or Equipment and Services, being bid; or
2. a Distributor or Dealer of an OEM of the Equipment, or Equipment and Services, being Bid.

All Distributors or Dealers must provide a completed and signed Attachment 10 – *Manufacturer's Certificate* attesting that:

1. The Distributor or Dealer is authorized by the OEM to sell the Equipment and Services bid;
2. The OEM has agreed to supply such Distributor or Dealer with all quantities of Equipment required to fulfill its obligations under any resultant Contract with the State; and
3. The OEM has authorized such Distributor or Dealer to perform Installation, Integration, and/or Maintenance of the Equipment being bid (Lot 2 only).

2.2.2 CONTINUOUS OPERATION

A Bidder must have maintained an organization capable of performing work described in this Solicitation, in continuous operation, for a minimum of the 3 consecutive years immediately prior to the Bid opening date in Section 1.6 - *Key Events/Dates*. Bidders should list this information in Attachment 5 – *Bidder Information Questionnaire*.

2.2.3 FINANCIAL STABILITY

Bidder must be financially stable and able to demonstrate the financial stability of the company. In addition to sales history, current financial statements or other financial information, as requested and deemed appropriate by OGS, must be provided within 5 Business Days of request. New York State reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this Contract.

2.2.4 PROOF OF PAST SALES

For each Lot bid, Bidder is required to provide evidence of past sales with the Bid submission as described below using Attachment 7 – *Proof of Past Sales Revenue:*

1. **Bidders bidding 2 or fewer Regions are required to provide proof of:** at least $200,000.00 in prior sales to Government Entities and/or Authorized Users as defined herein, made during the three years (entire time period, not annually) immediately preceding the Bid opening date.

2. **Bidders bidding 3 or more Regions are required to provide proof of:** at least $600,000.00 in prior sales to Government Entities and/or Authorized User as defined herein, made during the three years (entire time period, not annually) immediately preceding the Bid opening date.

2.2.4.1 PROOF OF PAST SALES PROVISIONS

A. Proof of sales for Lot 1 and Lot 3 must include sales for Equipment only.
B. Proof of sales for Lot 2 must include sales for Equipment and each of the Services offered in Lot 2 (i.e. Installation, Integration, and Maintenance). Failure to show proof of sales for Equipment and all Services will result in disqualification from Lot 2. If a Bidder is disqualified from Lot 2, but meets the criteria for Lot 1, OGS may, at its discretion, award Lot 1 to such Bidder.
C. For the purpose of proving past sales, Bidder status as either a Prime Contractor, Distributor, Dealer, Reseller, or Subcontractor may be used to demonstrate proof of past sales, provided that Bidder can demonstrate direct sales to Government Entities (including NYS OGS) and/or Authorized Users were made during the three years (entire time period, not annually) immediately preceding the Bid opening date for each Lot bid.

2.3 ADMINISTRATIVE REQUIREMENTS

Bidder must provide required bid content as specified in Section 4.2 – *Content of Bid Submission (Administrative Requirements),* and in accordance with the directions/instructions listed within the Bid documents themselves.

2.4 PRICING

Bidder must provide proposed pricing as specified in Section 3 – *Pricing* and in accordance with the instructions tab listed within Attachment 1 – *NYS Pricing.*

SECTION 3: PRICING

3.1 PRICING REQUIREMENTS

Pricing must be provided at time of Bid submission. Any Bidder who does not provide pricing at the time of Bid submission will be disqualified for either their entire Bid or for the portions of their Bid (e.g. Product Lines, Services, Regions, etc.) where Procurement Services determined the Bidder did not provide pricing as required.

In addition, each Bidder must provide a current copy of the Manufacturer's Price List in effect at time of Bid submission, in electronic, searchable format (e.g. Excel), detailing current List Price/MSRP for the Equipment the Bidder is proposing in Attachment 1 – *NYS Pricing*. In no event can NYS Net Pricing in Attachment 1 – *NYS Pricing* exceed the List Price/MSRP contained in the Manufacturer's Price List.

New York State's determination of acceptable price lists shall be final. In the event Bidder is awarded a contract, **all approved NYS Pricing price lists and electronic Product catalogs (if provided), will be posted on the OGS Procurement Services website.**

3.2 LOT-SPECIFIC PRICING

Lot 2 Bidders must offer pricing for Equipment, Installation, Integration, and Maintenance as part of their bid. See Section 1.3 – *Scope* for more information.

3.3 PRICING STRUCTURE

Pricing offered must be as follows:

1. Equipment: Percent (%) Discount from List Price/MSRP
2. For Services and Job Titles not subject to Prevailing Wage Rate: Not-to Exceed Total Hourly Rate
3. For Services and Job Titles subject to Prevailing Wage Rate: Percent (%) Markup Over the Prevailing Wage Rate and Supplemental Benefits.
4. For Utilization of Subcontractors: Subcontractor Percent (%) Markup, as set forth in Section 6.10 – *Utilization of Subcontractors.*

All Net Prices must **include** all applicable shipping, handling, insurance, and associated delivery charges (F.O.B. Destination the dock/delivery location of the Authorized User). See Appendix B, *Shipping/Receipt of Product* and *Title and Risk of Loss for Products Other Than Technology Products*.

All Service rates must **include** travel time and costs associated with accessing the site of the Equipment to be serviced. Travel costs are limited to NYS rates approved by the NYS Office of the State Comptroller (OSC).

3.4 REASONABLENESS OF PRICE

Bidders must demonstrate Reasonableness of Price for the Equipment and Services they are Bidding. Bidders may demonstrate Reasonableness of Price by offering NYS equal to or better pricing than the following:

1. Pricing on any contracts awarded by GSA, Veteran's Administration (VA), Department of Defense (DOD), NYS OGS, and other government entities;
2. Pricing on other state('s) government contract; and/or
3. Pricing offered by Bidders to their Best Commercial Customer(s)

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

3.5 VOLUME DISCOUNTS

Bidders may, and are encouraged to, offer volume discounts, which shall apply to orders delivered to a single Authorized User at the same location and/or requested time. Volume discounts, if offered, shall be based on Products and pricing as submitted within the Bidder's Price List.

Volume discounts shall be entered within Attachment 1 – *NYS Pricing*.

Volume Discounts may be applied per Purchase Order, cumulatively per ordering entity, or cumulatively statewide. The Bidder shall indicate the basis for applying the volume discount(s) within Attachment 1 – *NYS Pricing*. Volume discounts shall be defined and applied as follows:

A. Purchase Order volume discounts shall be additional discounts applied to individual Purchase Orders over a specified dollar amount.

B. Cumulative agency volume discounts shall be additional discounts applied to all future orders made by an individual ordering entity once an established volume has been met by that entity.

C. Cumulative statewide volume discounts shall be additional discounts applied to all future orders for all state and non-state orders once an established volume has been met under the resulting Contract.

3.6 PROHIBITION ON LEASING/RENTING

Rental/Leasing is prohibited under the resulting Contract.

SECTION 4: BID SUBMISSION

4.1 NOTICE TO POTENTIAL BIDDERS

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

4.2 CONTENT OF BID SUBMISSION (ADMINISTRATIVE REQUIREMENTS)

A complete Bid consists of **one** complete copy of each of the following forms and any additional required documents specified in each form, in the format(s) specified:

Chart 2: Content of Bid Submission

	Bid Document	File Format	Electronic (USB)	Original hardcopy
A	Pages 1, 2, and 3 of the Solicitation (Revised)	**PDF**	**X**	**X**
B	Attachment 1 – NYS Pricing (Revised)	**Excel**	**X**	
C	Attachment 2 – NYS Required Certifications	**PDF**	**X**	**X**
D	Attachment 3 – Encouraging Use of NYS Businesses	**PDF**	**X**	
E	Attachment 4 – Proof of compliance with Insurance Requirements	**PDF**	**X**	
F	Attachment 5 – Bidder Information Questionnaire	**Excel**	**X**	
G	Attachment 6 – Bidder Submission Checklist (Revised)	**Excel**	**X**	**X**
H	Attachment 7 – Proof of Past Sales Revenue (Revised)	**Excel**	**X**	
I	Attachment 8 – Reseller/Subcontractor List	**Excel**	**X**	
J	Attachment 9 – List of Maintenance Facilities	**Excel**	**X**	
K	Attachment 10 – Manufacturer's Certificate– Distributors/Dealers ONLY	**PDF**	**X**	**X**
L	MWBE 100, MWBE Utilization Plan	**PDF**	**X**	**X**
M	Form EEO 100, Equal Employment Opportunity Staffing Plan	**PDF**	**X**	**X**
N	ST-220-CA, Contractor Certification	**PDF**	**X**	**X**
O	Certification that Standard Vendor Responsibility Questionnaire has been completed and submitted online	**PDF**	**X**	*Not required if submitted online*
P	Addenda acknowledgments issued for this Bid	**PDF**	**X**	

All forms, and any additional required documents as specified in each form, will be reviewed for completeness and accuracy at the time of the Bid Opening.

In the case of discrepancies between hardcopies and electronic copies (USB flash drive) where documents are required in both formats, the electronic copy shall take precedence over the hardcopy.

A Bidder should note that any indicators or messages that have been built into the attachments or other required documents are informational only and are provided solely to assist Bidders in completing the attachments.

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

4.3 FORMAT OF BID SUBMISSION

Bid materials must be submitted in original hardcopy, on USB, or both, as specified below in Section 4.2 – *Content of Bid Submission (Administrative Requirements).*

Bid materials should be placed in a two-pocket folder and organized in the following manner:

1. Bidder Submission Checklist and USB are to be placed in the left pocket of the two-pocket folder.
2. All other hardcopies are to be placed in the right pocket of the two-pocket folder, preferably in the order listed in Section 4.2 - *Content of Bid Submission (Administrative Requirements).*

The following are not acceptable and will result in disqualification of Bid:

1. **Bids submitted on CD**
2. E-mail or facsimile Bid submissions

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

Any Bid with documents or portions thereof submitted on USB flash drive that are incomplete or that cannot be opened/accessed may be rejected.

4.4 BID ENVELOPES AND PACKAGES

All delivery material (i.e. envelopes and packages containing Bid submission materials) must be labelled with the following information:

1. BID ENCLOSED (preferable bold, large print, all capital letters)
2. Solicitation number (Solicitation #23141)
3. Bid Opening Date and Time
4. The number of envelopes or packages (e.g., 1 of 2; 2 of 2)

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

4.5 BID DELIVERY

Bids shall be delivered to the following address on or before 11:00 a.m. EST, on or before the Bid opening date as stated in Section 1.6 – *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

The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening. 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.

4.6 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 without prior notice.

4.7 ELECTRONIC BID OPENING RESULTS

OGS 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 2 Business Days after the Bid opening.

The Bid Opening Results Page is available at: https://ogs.ny.gov/procurement/bid-opening-results-0.

4.8 BID LIABILITY

The State of New York will not be held liable for any cost incurred by the Bidder for work performed in the production of a Bid or for any work performed prior to the formal execution of a Contract.

4.9 FIRM OFFER

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

SECTION 5: METHOD OF AWARD

5.1 METHOD OF AWARD

Procurement Services intends to make multiple non-competitively bid Backdrop Contract awards on the basis of completeness and price reasonableness. Awards will be considered for responsive and responsible Bidders who meet all Bidder Qualifications as outlined in Section 2 – *Bidder Qualifications.*

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

5.2 REVIEW OF BIDS

After the Bid Opening, each Bid will be reviewed for conformance with the stated Bidder Qualifications, as set forth in Section 2 – *Bidder Qualifications,* completeness of the Bid submission documents including adherence to required formats, and price reasonableness. Any Bid not meeting any of the Bid requirements may be denied further consideration for Award.

Bids will be reviewed to ensure that the Bidder has provided all required documents and/or Attachments, completed in full, and in original hard copy where requested, as set forth in Section 4.2 – *Content of Bid Submission (Administrative Requirements)*. Failure by a Bidder to provide properly completed documents and/or Attachments may result in their Bid being deemed non-responsive and denied further consideration for Award.

Bidders may be requested by Procurement Services to clarify the contents of their Bids during bid review. Other than to provide such information as may be requested by Procurement Services, no Bidder will be allowed to alter its Bid or add information after the deadline for submission of Bids.

OGS reserves the right to give first consideration to Bids which are substantially complete over those that are not, and to make Awards on a rolling or staggered start basis, as per Section 6.55 - *NYS Reserved Rights*, as deemed necessary and determined solely by OGS.

5.3 NOTIFICATION OF AWARD

Tentative Award of the Contract shall consist of Written notice, via email, by OGS to selected Bidder, who shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible and has fulfilled all requirements of this Solicitation.

5.4 INCORPORATION

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

SECTION 6: TERMS AND CONDITIONS

6.1 CONTRACT TERMS AND EXTENSIONS

The Contract shall have an initial term of 5 years. The Contract Term shall commence after all necessary approvals, and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*).

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for up to 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.

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).

6.1.1 MAINTENANCE TERM

The Maintenance terms of the resulting Contract (i.e., those terms of the Contract related to Maintenance) will continue to be effective for a period of five (5) years after the original Contract termination date and will survive the original Contract term and any extensions. This includes Preventative Maintenance and Remedial Maintenance, as well as ongoing moves, additions and changes of equipment, and software upgrades to the basic system.

6.2 SHORT TERM EXTENSION

In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to 90 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. However, this extension automatically terminates should a replacement Contract be issued in the interim.

6.3 SURVIVAL OF AUTHORIZED USER AGREEMENTS

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

6.4 ADDITIONAL CONTRACTOR TERMS AND CONDITIONS WITHIN AN AUTHORIZED USER AGREEMENT

In accordance with Appendix B, *Modification of Contract Terms,* Contractors and Authorized Users are permitted to agree to additional terms and conditions within an Authorized User Agreement, provided that under no circumstances can Contractors or Authorized Users agree to terms and conditions which diminish or impair the terms and conditions of the Contract.

6.5 PROCUREMENT INSTRUCTIONS FOR AUTHORIZED USERS

Authorized Users must review Attachment 14 - *How to Use this Contract* for guidance on utilizing any resulting Award. Authorized Users must follow their internal procurement guidelines and Control Agency Requirements when utilizing the resulting Award and are responsible for documenting all decisions in their procurement record.

Procurement Services may modify Attachment 14 - *How to Use this Contract* or issue additional How to Use guidance during the Contract term.

6.6 PERIODIC RECRUITMENT

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

Once awarded a Contract, a Contractor may submit a Contract Amendment at time of Period Recruitment for future consideration to:

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

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

6.7 EMERGING TECHNOLOGIES

Under the periodic recruitment provisions of the Solicitation (Section 6.6 – *Periodic Recruitment*), Procurement Services reserves the right to modify the terms of the Solicitation at any time to allow for technologies not identified elsewhere under this document. If a need is identified for an "emerging technology," and Procurement Services feels it is warranted to contract for such technology, Procurement Services reserves the right to include such technology hereunder or to issue a formal modification or amendment to the Solicitation or existing contract. The Technology will have to have been in the commercial marketplace for a reasonable amount of time and have met with some degree of success among a substantial base of Issuing Entities to be considered by Procurement Services for inclusion in existing or awarding of a new Contract.

6.8 CONTRACT UPDATE PROCEDURES

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

OGS may propose amendments to Contract terms and conditions, including any Attachments or Appendices, at any time to serve the best interest of Authorized Users.

Notwithstanding the foregoing, OGS may unilaterally make revisions, changes, and/or updates to any templates, Appendices (excluding Appendices A and B) and/or Attachments to the Contract without processing a formal agreement and/or modification.

6.9 UTILIZATION OF RESELLERS

Contractors may utilize Resellers to sell Equipment, and if applicable provide Services. Resellers must be eligible to quote regionally or statewide, independently and lower than Manufacturer (Contract) pricing for procurements under resulting Contracts. Resellers must also be able to accept orders, invoice and receive payment.

6.9.1 DESIGNATION AND CONDITIONS OF RESELLER PARTICIPATION

All Bidders who propose to utilize Resellers must complete and provide to Procurement Services with Attachment 8 – *Reseller/Subcontractor List*, indicating the required information for each proposed Reseller.

Bidders must submit with their Bid a listing of Reseller(s) chosen to fulfill orders and payments under this Solicitation and subsequent Award within Attachment 8 – *Reseller/Subcontractor List.* All Resellers must be authorized by OGS.

The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Resellers and their participation under this Contract by Product Line, contracting program (e.g., government/educational sales), Region (as specified in Section 1.4 – *Regions*), size/sales volume, technical training or other criteria ("qualifying criteria"), provided that:

i. Such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
ii. All general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract Term;
iii. All qualifying criteria listed in Attachment 8 – *Reseller/Subcontractor List* that is met by the Reseller must be identified in Reseller designations (Attachment 8 – *Reseller/Subcontractor List*) at the time that Reseller approval is requested; and
iv. Immediate notice must be provided to OGS in the event that a change in a Reseller's status occurs during the Contract Term.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria.

6.9.2 CONTRACTOR'S OBLIGATION FOR RESELLER PARTICIPATION

Contractor shall not, directly or indirectly, by agreement, communication, or any other means, restrict any Reseller's participation or ability to participate or compete in an Authorized User Second Tier Solicitation (RFQ) for which the Reseller is qualified to participate or compete in.

6.9.3 RESELLER VENDOR RESPONSIBILITY

If the proposed Reseller has more than $100,000 in sales as specified in Section 6.36.1 – *Reseller/Subcontractor Vendor Responsibility,* Contractor must have Reseller register with OSC Vendor Responsibility System in accordance with Section 6.36 – *NYS Vendor Responsibility.*

6.9.4 ADDING AND DELETING RESELLERS

Requests from the Contractor to add, modify, or delete Reseller(s) must be submitted by the Contractor for prior approval of OGS using Appendix C – *Contract Modification Form and Procedures*. Submissions for the addition, modification, and/or deletion of Reseller(s) may occur at any time throughout the term of the Contract, **except** within the last six months of the Contract expiration.

Contractors must utilize Appendix C – *Contract Modification Form and Procedures* and Attachment 8 – *Reseller/Subcontractor List* for each submission. OGS reserves the right to give first consideration to substantially complete submissions, as well as to deny revisions to a Contractor's Reseller List whereas the Contractor is delinquent regarding administrative requirements, including, but not limited to, the submission of Attachment 13 - *Report of Contract Usage*, and/or proof of Insurance requirements.

6.9.5 RESPONSIBILITY FOR REPORTING RESELLER PERFORMANCE

Contractor shall be fully liable for Reseller(s) performance and compliance with all Contract terms and conditions. Equipment and Services purchased through Reseller(s) must be reported by Contractor in the required quarterly sales reports to the State as a condition of payment. In addition to inclusion of Reseller(s) volume in the Contractor's sales reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with reports of the individual Authorized User's Contract activity with Reseller.

6.9.6 APPLICABILITY OF CONTRACT TERMS

Equipment and Services ordered directly through Reseller(s) shall be limited to Equipment or Services currently approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

6.10 UTILIZATION OF SUBCONTRACTORS

1. Contractors awarded Lot 2 are permitted to charge a Subcontractor Percent (%) Markup for all work performed by Subcontractors on Authorized User Agreements provided the Contractor has an approved Subcontractor Percent (%) Markup in its pricing pages on the OGS website. This Subcontractor Percent (%) Markup covers all back-office costs including, but not limited to, all of the following:

    A. Developing a scope of work for the Subcontractors;
    B. Procuring Subcontracting Services including, but not limited to, walkthroughs as necessary;
    C. Managing and verifying Subcontractor project documents including, but not limited to, timesheets, certified payroll, payments, as-built documents, and project close out documents;
    D. Coordinating project activity between trades;
    E. Overall responsibility for Subcontractor meeting project plans and specifications;
    F. Verifying Subcontractor compliance with any Prevailing Wage Rate requirements;
    G. Documenting and Verifying Subcontractor compliance with any licensing, certification, etc. requirements.

2. Prior to the execution/entering into any Authorized User Agreement which includes the use of Subcontractors, Contractor must provide Authorized Users with a copy of the quote from the Subcontractor to the Contractor for the Subcontractor's portion of the work for this Authorized User Agreement. Subcontractors shall not execute or enter into any Authorized User Agreement.

3. When applying for payment which involves Work performed by a Subcontractor, Contractor must include a copy of the Subcontractors' invoice to the Authorized User and clearly list the Subcontractor (%) Percent Markup.

4. Subcontractors must provide Services either on a Fixed Price/Lump Sum or Time & Material basis as required by the Authorized User, and the Contractor is responsible for verifying compliance with this.

5. Even if the Subcontractor is performing work on a Fixed Price/Lump Sum basis, the Contractor must provide the Subcontractor's proposed Total Hourly Rate to the Authorized User as part of the Contractor's Proposal.

6.11 CONTRACTOR RESPONSIBILITY REGARDING SUBCONTRACTORS

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

1. The Contractor shall not in any way be relieved of any responsibility under the Contract by any Subcontractor.

2. The Contractor shall be solely responsible to the State and Authorized User for the acts or defaults of its Subcontractors and of such Subcontractors' officers, agents, and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract.

3. Any Equipment or Service provided or furnished by a Subcontractor shall be deemed for purposes of the Contract to be provided or furnished by the Contractor and must be on the Contractor's published price list on the OGS website.

4. The Contractor shall inform each Subcontractor fully and completely of all provisions and requirements of the Contract, including:

    A. those relating either directly or indirectly to the Equipment and Services to be provided pursuant to its respective subcontract;

B. to maintain and protect against any unauthorized disclosure of records with respect to Work performed under the subcontract in the same manner as required of the Contractor;
C. those relating to the State's rights to audit records; and
D. to cooperate with any investigation, audit, or other inquiry related to the Contract or any litigation relating thereto.

5. The Contractor shall pay all Subcontractors for all Work performed by such Subcontractors in accordance with the terms of their respective subcontracts. If and when required by the State or Authorized User, the Contractor shall submit satisfactory evidence that it has made such payment.

6. The Contractor shall, within 5 Business Days of the State or Authorized User Written request, file promptly with the requestor a copy of any subcontract providing services for an Authorized User Agreement.

7. The Contractor shall require that the Subcontractor pass through all terms and conditions of the Contract, including but not limited to Appendix A, to any Sub-Subcontractors.

8. The Contractor and all Subcontractors shall work in harmony with the applicable trades by complying with any collective bargaining agreement to which the Contractor or Subcontractor(s) are a party with the trades when performing work under This Award.

9. Contractor shall not engage in any Bid Shopping.

10. All employees of the Contractor, or of its Subcontractors, who shall perform Work under an Authorized User Agreement, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All Subcontractors that perform Work under the Contract on behalf of Contractor shall comply with all applicable Federal, State, and local laws concerning employment in the United States.

11. Contractor is responsible for ensuring that Subcontractors use and do not charge more than the Total Hourly Rates on the Contractor's pricing published on the OGS website to develop its Authorized User Total Hourly Rates for all Services on Contract.

12. Contractor is responsible for ensuring that Subcontractors meet current Prevailing Wage Rate mandates for their respective trade.

13. Contractor is responsible for ensuring that Subcontractors only offer Equipment or Services that are listed on the Contractor's pricing published on the OGS website.

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

15. No subcontract shall impair the rights of the State or Authorized User or create any contractual relationship between the Subcontractor and the State or Authorized User.

6.12 NYS DOL PREVAILING WAGE RATES

6.12.1 OVERVIEW

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

For bidding purposes, the applicable Prevailing Wage Rate Schedule for this Solicitation is PRC# 2018009500.

IMPORTANT NOTE: Authorized Users **must** obtain a separate PRC # for each purchase from this Award where prevailing wage rates apply. The PRC # 2018009500 provided in this Solicitation is for information and evaluation purposes only. The requested PRC number **must** be noted on all Authorized User Agreements issued for purchases from any Contract resulting from this Solicitation.

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

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

Certain Equipment/Systems which are not hardwired/affixed to facilities may not require the payment of Prevailing Wage Rates and Supplemental Benefits.

6.12.2 ELIGIBLE JOB TITLES

The Job Titles, including those subject to NYS DOL Prevailing Wage Rates, available under this Contract are limited to those listed in Attachment 1 – *NYS Pricing.* A complete description of all Job Titles can be found in Attachment 1 – *NYS Pricing.*

6.12.3 LIVING WAGE LAW

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

6.13 PRODUCT LINES

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

6.14 DEFERRED PAYMENT PLAN (DPP)

Contractor may offer Authorized Users a deferred, extended payment plan ("DPP") for equipment purchased under this Contract at any time during the course of the Contract. A DDP is a deferred purchase agreement, not a lease. The Contractor shall not charge interest for a DPP. The Authorized User shall receive title upon acceptance of the equipment in accordance with the Contract terms. In accordance with §41 of NYS Finance Law, the customer shall have no liability under the DPP Agreement to the Contractor or anyone else beyond funds appropriated and available for the DPP Agreement. A Contractor who wishes to offer a DPP must agree to OGS standard DPP terms and conditions (supplied upon request), and receive prior approval from OGS. The warranty period (and all accompanying provisions) as required by Appendix B, *Warranties* shall also commence with the transferring of title.

6.15 PRICE LIST UPDATES

Contractor may update their Price List as follows:

1. **Scheduled Price List Updates:** Commencing with the first anniversary date of the Bid Opening (see Section 1.6 – *Key Events/Dates*), and annually thereafter, the Contractor may request an update to their price list to reflect Contractor price changes and the addition/deletion of Products. These submissions for price adjustment requests will be accepted during a two-week period (calendar week), which will be determined solely by OGS; for example, between July 2nd through July 16th.

   Contractors will be notified via email by the OGS Contract Management Specialist in advance of the allowable timeframe for submissions, and be provided with the current information and template(s) for the update. Contractors shall adhere to the information in the provided Appendix C - *Contract Modification Form and Procedures* for all price adjustment requests.

   OGS reserves the right to give first consideration to substantially complete Price List update submissions, as determined solely by OGS, as well as to deny price adjustments to Contractors that are delinquent regarding administrative requirements, including, but not limited to, the submission of Attachment 13 - *Report of Contract Usage*, and/or proof of insurance requirements.

2. **Non-Scheduled Price List Updates:** Contractors may also, at their discretion, after the first anniversary date of the Bid Opening, submit up to two nonscheduled price list update requests per year outside of the scheduled two-week period determined by OGS. These nonscheduled price list updates may only be used to add or remove Products: prices cannot be changed during a nonscheduled price list update. Should a Contractor choose to submit these nonscheduled price list updates, they must use the provided Appendix C – *Contract Modification Form and Procedures*.

   Contractors shall be permitted to increase their discount rates, and/or decrease total hourly rates and percent markups any time during the Contract Term.

   The discount offered on any new Products added to price lists shall be no lower than the minimum established Product category discount. Contractors shall submit their updated price list to the OGS Contract Management Specialist pursuant to the requirements of this section for review and Written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves the right to request copies of existing contracts or price lists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

   All approved price list updates shall apply prospectively upon approval by OGS. Total price increases for price list updates in a single year of the Contract shall not exceed the escalation cap as set forth in Escalation Cap subdivision, below. All percentage discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract.

3. OGS reserves the right to deny price adjustment requests for any reason, including Contractor's failure to adhere to administrative requirements.

6.15.1 ESCALATION CAP / MAXIMUM PRICE INCREASE

In a single year of the Contract, the maximum price increase for each individual item on contract shall not exceed the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series ID: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI-U data may be obtained at www.bls.gov.

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
Result multiplied by 100	0.022 x 100
Equals percent change	**2.2**

The "CPI for current period" shall be the index in effect at the time the Contract price list update request is received; "CPI for previous period" shall be the index in effect when the Contract price list was last updated. Increases are not cumulative. Price increases are limited to the prior year prices only.

6.16 BEST PRICING OFFER

During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

6.17 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.

6.18 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).

6.18.1 MINIMUM ORDER

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

6.19 INVOICING AND PAYMENT

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order.

At a minimum, the following fields must be included on each invoice:

1. Contractor Name
2. Contractor Billing Address
3. Contractor Federal ID Number
4. NYS Vendor ID Number
5. Account Number
6. NYS Contract Number

7. Name of Authorized User indicated on the Purchase Order
8. NYS Agency Unit ID (if applicable)
9. Authorized User's Purchase Order Number
10. Order Date
11. Invoice Date
12. Invoice Number
13. Invoice Amount
14. Product Descriptions
15. Unit Price of Equipment or Service
16. Quantity
17. Unit of Measure
18. Dates of Service (if applicable)

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

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

A. Employee's full legal name
B. Classification(s) in which the worker was employed
C. Hourly wage rate(s) paid
D. Supplemental Benefits paid or provided
E. Daily and weekly number of hours worked in each classification

NYS DOL has issued the following sample Certified Payroll:
https://www.labor.ny.gov/workerprotection/publicwork/PDFs/PW-12%20Contractor%20Payrolls%20Cert%20.pdf

To substantiate the certified payroll and invoice, paychecks, W-2s, and time sheets must be submitted to the Authorized User and/or the State upon request. If Subcontractors are used, agreements between the Contractor and Subcontractor must be submitted in accordance with the Requirements of Appendix B and Article 8 of the New York State Labor Law. Additional documentation not listed above that may be required to support a payment, included, but is not limited to, documentation to substantiate information contained in Certified Payroll, such as Personnel records, and documentation to substantiate legal names. Confidential information or items of a sensitive nature should be redacted.

For additional information, please see Attachment 14 – *How to Use This Contract.*

6.20 PRODUCT DELIVERY

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

6.21 PRODUCT RETURNS AND EXCHANGES

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

Equipment shall be replaced within 10 Business Days of Written notification to the Contractor of the Authorized User's intent to return or exchange the Equipment with no restocking charge. 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.

6.22 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/.

6.23 AMERICANS WITH DISABILITIES ACT (ADA)

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidder is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not mandatory for Bidder to have the Equipment in order to receive an award, it is necessary to identify any such Equipment offered that fall into the above category using Attachment 1 – *NYS Pricing*.

6.24 INSURANCE

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

6.25 PERFORMANCE AND PAYMENT BONDS

There are no bonds for this Contract. However, Authorized Users may require a Performance or Payment Bond as a requirement of a Second Tier Solicitation or Direct Engagement.

6.26 REPORT OF CONTRACT USAGE

Contractor shall submit Attachment 13 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all Resellers, if any, no later than 20 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 Resellers are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBEs), Small Business Enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

The report in Attachment 13 – *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.

6.27 CONTRACT ADMINISTRATOR OR EMERGENCY CONTACT

As specified in Attachment 5 – *Bidder Information Questionnaire,* Bidder must provide the following in support of the resulting Contract:

1. A dedicated Contract Administrator to support the updating and management of the Contract on a timely basis.
2. Customer Service employees who are knowledgeable and responsive to Authorized User needs.
3. An Emergency Contact for emergencies occurring After Business Hours or on weekends/holidays.

6.27.1 CHANGE IN CONTRACT ADMINISTRATOR OR EMERGENCY CONTACT

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.

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

6.28.1 NEW YORK STATE LAW

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

6.28.2 GENERAL PROVISIONS

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

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

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

6.28.3 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

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

1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance

of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.

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

B. **FORM EEO 100 – STAFFING PLAN**

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

6.28.3.1 ADDITIONAL GUIDANCE ON COMPLETING THE EEO 100 FORM FOR THIS SOLICITATION

Pursuant to Section 6.28.3 of this Solicitation, a Bidder must complete EEO 100 (Equal Employment Opportunity Staffing Plan) in its entirety, sign and submit with its Bidder Submission.

The link to this form on the OGS website is as follows: http://ogs.ny.gov/MWBE.

Use the following information to complete EEO 100 for this Solicitation:

1. Under Solicitation Number, enter the Solicitation Number.

2. Under the Reporting Entity, check the "Contractor" box.

3. Under Report Includes Contractors," check the "Contractor's work force to be utilized on this contract" box.

4. In the table requesting the total number of employees for each classification, a Bidder should identify all staff that will be utilized specifically for the resulting Contracts, if known. At a minimum, a Bidder must account for the following:

    A. All management level staff that will oversee the Bidder's execution of the Contract
    B. All employees who will be performing Installation, Integration and Maintenance (for Lot 2 Contracts)
    C. All staff involved in Contract Management Activities (e.g. preparing and submitting contract updates, proposals, etc.)
    D. All staff responsible for accounts payable and receivable
    E. All clerical staff that will assist the individuals above

C. **FORM EEO 101 – WORKFORCE UTILIZATION REPORTING FORM (COMMODITIES AND SERVICES) ("FORM EEO-100-COMMODITIES AND SERVICES")**

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

2. Separate forms shall be completed by Contractor and any subcontractor.

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

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

6.28.4 CONTRACT GOALS

A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.

B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528. The MWBE Regulations are located at 5 NYCRR §140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses Enterprises. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

C. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

6.28.5 MWBE UTILIZATION PLAN

A. In accordance with 5 NYCRR §142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.

B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR §140.1, may be

applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.

D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.

E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within 7 business days of receipt, by submitting to OGS a Written remedy in response to the notice of deficiency. If the Written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:

1. If a Bidder fails to submit an MWBE Utilization Plan;
2. If a Bidder fails to submit a Written remedy to a notice of deficiency;
3. If a Bidder fails to submit a request for waiver; or
4. If OGS determines that the Bidder has failed to document good faith efforts.

G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.

H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

6.28.5.1 ADDITIONAL GUIDANCE ON COMPLETING MWBE UTILIZATION PLAN FOR THIS SOLICITATION

For the purposes of a response to this Solicitation, the MWBE 100 should be completed in full and submitted with the Bid, unless the Bidder is submitting a Waiver request.

The MWBE 100 form and waiver can be found on the OGS website at:
http://ogs.ny.gov/mwbe.

Use the following information to complete either the MWBE 100 or an MWBE waiver for this Solicitation:

1. Under Contract/Solicitation Number, enter the Solicitation Number "23141".

2. Under MWBE Goals in Contract, enter "15%" for MBE and "15%" for WBE.

3. Under Certified MWBE Subcontractor/Supplier Name, enter a minimum of one (1) MBE and one (1) WBE Subcontractor which you will work with if awarded a Contract.

4. Under Detailed Description of Work, describe the nature of subcontracts/supplies/services the Bidder intends to obtain from each identified MWBE.

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

6.28.6 REQUEST FOR WAIVER

A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.

B. In accordance with 5 NYCRR §142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a Written notice of acceptance or denial within 20 business days of receipt.

C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

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

6.28.7 REQUIRED GOOD FAITH EFFORTS

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

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.

6.28.8 MONTHLY MWBE CONTRACTOR COMPLIANCE REPORT

A. In accordance with 5 NYCRR §142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors

use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at https://ny.newnycontracts.com/. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.

B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

C. To assist in the use of NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: **"Introduction to the System - Vendor training"** and **"Contract Compliance Reporting - Vendor Training"** to become familiar with the NYSCS. To view the training schedule and to register visit: https://ny.newnycontracts.com/events.asp.

D. As soon as possible after the Contract is approved, Contractor should visit https://ny.newnycontracts.com and click on **"Account Lookup"** to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing **"Change Info."** It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through **"Request New User."** When identifying the person responsible, please add **"-MWBE Contact"** after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for **"Contact Us & Support"** then **"Technical Support"** on the NYSCS website.

E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

6.28.9 BREACH OF CONTRACT AND LIQUIDATED DAMAGES

A. Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.

B. Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within 60 days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR §142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

6.28.10 FRAUD

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

ALL FORMS ARE AVAILABLE AT: https://ogs.ny.gov/MWBE.

6.29 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, or suppliers for the resulting Award. 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.

6.30 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.*

6.31 BULK DELIVERY AND ALTERNATE PACKAGING

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

6.32 SURPLUS/TAKE-BACK RECYCLING

A. A State Agency is reminded of its obligation to comply with the NY State Finance Law § 167, *Transfer and Disposal of Personal Property*, and § 168, *The Management of Surplus Computer Equipment*, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.

B. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section 6.32D below for specific requirements governing electronic equipment recycling.

C. The NYS Department of Environmental Conservation ("DEC") Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, *Electronic Equipment Recycling and Reuse*), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: http://www.dec.ny.gov/chemical/65583.html.

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

6.33 ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4

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

6.34 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.

6.35 PREFERRED SOURCE PRODUCTS AND SERVICES

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

6.36 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:

1. 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.

2. 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.

3. 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.

4. 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.

6.36.1 RESELLER/SUBCONTRACTOR VENDOR RESPONSIBILITY

Whenever a Contractor proposes to add a Reseller or a Subcontractor, Contractor must review and document if the Reseller or Subcontractor:

1. Has sales on contracts within the previous 2 years of at least $100,000 as per the "State Contracts" section of OpenBook at http://wwe2.osc.state.ny.us/transparency/contracts/contractsearch.cfm; or
2. Has received payments from NYS of at least $100,000.00 in the previous 2 years as per the "State Payments" section of OpenBook at http://wwe2.osc.state.ny.us/transparency/checkbook/chkbkMain.cfm.

If the proposed Reseller or Subcontractor has more than $100,000 in sales as specified above, Contractor must have Reseller or Subcontractor register with OSC Online Vendor Responsibility System in accordance with Section 6.36 - *NYS Vendor Responsibility.*

6.37 NYS TAX LAW SECTION 5-A

NYS 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.

6.38 "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.

6.39 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.

6.40 EXTENSION OF USE

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

6.41 NEW ACCOUNTS

Contractor may ask State Agencies and other Authorized Users to provide information 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.

6.42 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.

6.43 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.

6.44 INSTRUCTION MANUALS

At the time of delivery to the Authorized User all Equipment shall be furnished, at no extra charge, with one complete set of standard operator instruction manuals and documentation (hard copy, CD/DVD or web link) as would normally accompany such Equipment. Contractor shall also ensure that the part numbers and NYS Net Prices associated with the documentation are available to the Authorized User and included in Attachment 1 – *NYS Pricing*, should an Authorized User purchase additional sets of technical manuals. Where documentation is provided in electronic format, an Authorized User shall be entitled to make copies to the extent necessary to fully enjoy the rights granted under this Contract provided that the Authorized User reproduces the copyright notice and any other legend of ownership on any copies made.

6.45 RECALLS

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

6.46 REMOVAL OF RECORDS FROM PREMISES

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

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

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

6.48 DRAWINGS

6.48.1 DRAWINGS SUBMITTED DURING THE CONTRACT TERM

Where required to develop, maintain, and deliver diagrams or other technical schematics regarding the scope of Work, Contractor shall do so as required by the Authorized User Agreement and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User's representative.

6.48.2 ACCURACY OF DRAWINGS SUBMITTED

All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of Equipment, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing Equipment, or carrying out any other requirements of the intended scope of work.

6.49 FEDERAL FUNDING

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

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

6.50 REQUIREMENTS OF NYS FINANCE LAW §139-L

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

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

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

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the Bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration

of such statement, OGS may reject the Bid or may decide that there are sufficient reasons to accept the Bid without such certification.

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

6.51 AUTHORIZED AND/OR CERTIFIED TECHNICIANS

Contractors must use Authorized Technicians to perform all Services in Lot 2. If obtaining Installation, Integration, or Maintenance, Authorized Users may require the Contractor to provide a list of Certified Technicians who will be performing Work and these individual's qualifications, including, but not limited to:

A. Number of years of experience
B. Licenses (as applicable)
C. Certifications (e.g. from the Manufacturer for a Product Line), as applicable

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

6.52 ONGOING COMPLIANCE REGARDING EQUIPMENT AND SERVICE OFFERINGS

Contractors may only provide Equipment and/or Services for items that are offered on their NYS Net Pricing Pages. Contractors cannot use the Job Titles on their Contract to perform Services on Equipment not offered on their Contract.

6.53 POOR PERFORMANCE

An Authorized User should notify OGS Procurement Services Customer Services promptly if the Contractor fails to meet the requirements of this Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services
New York State Procurement Services
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242
Customer Services Coordination E-mail: customer.services@ogs.ny.gov
Telephone: (518) 474-6717

6.54 OVERLAPPING CONTRACT EQUIPMENT AND SERVICES

Equipment and Services available under the resulting Contracts may also be available from other New York State Contracts. Authorized Users shall select the most cost-effective procurement alternative that meets their program requirements and to maintain a Procurement Record documenting the basis for this selection.

6.55 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 any or all Bids;
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;
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. Give first consideration to Bids which are substantially complete over those Bids that are not;
S. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
T. Reject an obviously unbalanced Bid as determined by the State;
U. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
V. Make no award for any Product, Region, or Lot, as applicable, for reasoning 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:
W. 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;
X. Give first consideration to Bids which are substantially complete over those Bids that are not; and
Y. 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

6.56 AUTHORIZED USER RESERVED RIGHTS

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

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

SECTION 7: INSTALLATION AND INTEGRATION

This section shall cover any Installation and Integration performed under a Contract awarded for Lot 2.

7.1 GENERAL REQUIREMENTS

7.1.1 REQUIREMENTS FOR COMPLYING WITH NYS LAWS, CODES, RULES, AND REGULATIONS

Contractors and Authorized Users must comply with all state and local building codes, rules, and regulations, and where necessary, obtain approval from the appropriate Building Manager prior to any work commencing.

Where required, applicable NYS Department of Labor Prevailing Wage Rates and Supplemental Benefits under Article 8 of the NYS Labor Law must be paid.

7.1.2 INSTALLATION AND INTEGRATION LABOR

Unless specifically requested by the Authorized User, Installation and Integration work shall be performed during Business Hours. Authorized Users and Contractors shall comply with any requirements regarding Required Shift Differentials, Overtime, Premiums, etc. during Business Hours or at any other time.

7.2 FRONT-END DOCUMENTS

For Installation/Integration projects, Authorized Users may have specific documents which address the conditions and requirements of the project. These include, but are not limited to:

1. Progress/Milestones for completion/payment
2. Staging/Mobilization requirements
3. Retainage
4. Performance/Payment Bonds for both the Contractor and (if applicable) Subcontractors
5. Coordination with other Contractors/Authorized User staff
6. As-Built Document Requirements

OGS is collectively referring to these as “Front-End Documents.”

In accordance with Appendix B, *Modification of Contract Terms*, Contractors and Authorized Users are permitted to agree to the terms and conditions of the aforementioned Front-End Documents provided that under no circumstances can Contractors or Authorized Users agree to terms and conditions which diminish or impair the terms and conditions of any resulting contract.

When issuing a final purchase order/agreement, an Authorized user may either:

1. Incorporate Front-End Documents into an Authorized User Agreement, or
2. Affix Front-End Documents to the purchase order.

Once incorporated into the Authorized User Agreement or affixed to the purchase order, these Front-End Documents are part of the Agreement between the Contractor and Authorized User and are binding on the Contractor.

Authorized User should provide any Front-End Documents when making the initial request for a proposal from the Contractor, so the Contractor can prepare their Proposal for the Authorized User accordingly. Contractors are not permitted to charge more than the Quantifiable Maximum Not-to-Exceed Pricing on the contract to comply with Front-End Documents.

7.3 SITE VISIT/WALKTHROUGH AND EXAMINATION OF SPECIFICATIONS

At the discretion of the Authorized User and prior to the receipt of Proposals from a Contractor, Contractors may be required to perform a site visit at the associated Installation/Integration location to become familiar with any local condition, which may in any manner affect the work to be done, as well as Equipment, labor, or services required. Contractors are required to examine carefully the specifications and to familiarize themselves thoroughly concerning any

conditions and requirements that may in any manner affect the work to be performed under the contract. During the site visit, the Authorized User will indicate placement of all Equipment. In addition, Contractors should specify if there are any required modifications or additions to the site, which are required to ensure proper operation of the Product. If changes are required, they must be included in the Contractor's quote/response to the Authorized User.

No allowances will be made because of lack of knowledge of these conditions. Ignorance of the requirements will not relieve the Contractors of their liability and obligations under the Authorized User Agreement.

At the request of the Authorized User, Contractors shall provide drawings of typical Product room layouts, specifying floor space and electrical outlet requirements for each System, assuming maximum System capacities are ordered.

All costs incurred related to the development of a Contractor's proposal, including but not limited to site visits, are solely borne by the Contractor and must not result in any additional cost to the Authorized User.

SECTION 8: MAINTENANCE

The following apply to all Contracts awarded for Lot 2.

8.1 GENERAL PROVISIONS

1. There are two distinct types of maintenance: Preventative Maintenance, and Remedial Maintenance. Please see Attachment 12 – *Glossary of Terms* for the definitions of each.

2. If an Authorized User elects to purchase any System or Equipment to be provided as a result of this Award, all required Remedial Maintenance and scheduled repairs and replacements will be provided under the warranty provisions during the first year subsequent to Acceptance of the Equipment/System.

3. Contractor may offer Legacy Maintenance/support Services on End-of-Life, or obsoleted Equipment, that is not being offered under this Contract, provided that the equipment fits within the scope of the Contract. Legacy Maintenance/support options must be included in Attachment 1 – *NYS Pricing*. A description of each type of Legacy Maintenance/support option shall be provided in Attachment 1 – *NYS Pricing*.

8.2 PREVENTATIVE MAINTENANCE

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

8.3 REMEDIAL MAINTENANCE

Whenever an Authorized User enters into any Maintenance Agreement with a Contractor under this Award, the Contractor automatically becomes responsible for the performance of Remedial Maintenance. Authorized Users cannot waive the Remedial Maintenance and Remedial Maintenance Response Requirements listed in this Section.

Whether the Authorized User elects to subscribe to monthly Maintenance, prepaid annual Maintenance, or Time and Materials (T&M), Remedial Maintenance must be performed after the Authorized User notifies the Contractor that the Equipment-System is inoperable or unsuitable for operation. The Contractor will be responsible for ensuring that Service for each request is provided in accordance with the following:

Chart 3: Remedial Maintenance Descriptions and Requirements

Level of Service	Description	Response Time
Priority Emergency Service	A "Priority Emergency" is a situation involving a Major Malfunction of the Two-Way Radio Equipment or System.	The Contractor shall respond **within 2 continuous hours** following notification by the Authorized User. **NOTE:** Authorized Users reserve the right to require a more stringent definition of a Priority Emergency at time of purchase.
Emergency Service	An "Emergency" is a situation involving a "critical" System Malfunction of the Two-Way Radio System or Equipment in the opinion of the Authorized User.	The Contractor shall respond **within 2 continuous hours** after Authorized User notifies Contractor of the emergency.
Non-Emergency Service	A "Non-Emergency" is a situation involving a System Malfunction of Two-Way Radio Equipment or System, of a scope less than that described for an Emergency.	The Contractor shall respond **within 4 continuous hours** after Authorized User notifies Contractor of the Malfunction.

Routine Service (Onsite)		The Contractor shall respond **within 2 days** after Authorized User notifies Contractor of the Malfunction.
Routine Service (Maintenance Center)		The Authorized User to ship or arrange pickup/drop-off with Contractor representative. Service to be **completed 6 Business Days after shipping** from Authorized User or drop off with Contractor representative.

The above Response requirements include Travel Time and Site Access Time.

Remedial Maintenance must be available twenty-four hours per day, seven days per week, including New York State legal holidays.

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

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

Bidders bidding Lot 2 must offer Remedial Maintenance at all levels of Service listed in Chart 3: Remedial Maintenance and Requirements with the specified response times. Bidders can only Bid a Region if they are capable of meeting all the specified response times within that Region.

Bidders must submit Attachment 9 – *List of Maintenance Facilities*. Maintenance Facilities do not have to be located within a Region bid, but they must be capable of meeting all of the specified response times listed in Chart 3: Remedial Maintenance and Requirements within that Region.

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

8.4 REMOTE MAINTENANCE/REMOTE SUPPORT

To meet the Remedial Maintenance Response requirements, and perform certain Preventative Maintenance, Contractors may utilize Remote Administration and/or Remote Maintenance/Support Services arrangements. Connections to an Authorized User's networks/Systems must be performed in a manner prescribed by the Authorized User to preserve the integrity of the Authorized User's network, confidentiality and integrity of information transmitted over that Authorized User's network/System, and the availability of the network/System.

Furthermore, the Authorized User must specifically grant permission for the Contractor to access the System for each instance of Remote Administration and/or Remote Maintenance/Support Service.

8.5 MAINTENANCE SERVICES FOR EQUIPMENT PURCHASED OUTSIDE OF THE CONTRACT

Maintenance for Products not purchased, Installed, and/or Integrated from resulting Contracts awarded as a result of this Solicitation may be purchased from Lot 2 Contractors, but only if the following criteria are met:

1. The Equipment receiving Maintenance is on the Contractor's NYS Net Price Pages.
2. The Contractor must use the Total Hourly Rates in its NYS Net Pricing Pages to develop the Total Hourly Rates for the Maintenance of Equipment purchased outside of this Award.

The Contractor shall inspect the Equipment/Systems to make a determination as to whether or not they wish to provide the Authorized User Maintenance for Equipment not purchased, installed, integrated as a result of the resulting Award. **Any such inspection shall be at no cost to the Authorized User**. Contractors are not obligated to provide Maintenance for Equipment not purchased, Installed, and Integrated from this Award.

8.6 MAINTENANCE SHEETS

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

1. **Preventative Maintenance** – The Maintenance Service sheets for Preventative Maintenance must include, at a minimum, the following information for each performance of Service:

    A. Date and time of arrival and departure
    B. Equipment/Systems tested, inspected, cleaned, etc.
    C. Any scheduled repairs or replacements performed
    D. Any deficiencies, malfunctions, etc. identified
    E. Date and time all testing, inspection, cleaning, scheduled repairs & replacements, etc. were complete
    F. Charges for Services and Equipment, if applicable (Authorized User Total Hourly Rate and Authorized User NYS Net Pricing)
    G. Name(s) of technician(s) performing Maintenance on Equipment/System

2. **Remedial Maintenance** – The Maintenance Service sheets for Remedial Maintenance must include, at a minimum, the following information for each request for Service:

    A. Date and time notified
    B. Date and time of arrival and departure
    C. Description of malfunction/failure reported
    D. Diagnosis of malfunction/failure and work performed
    E. Charges for Services and Equipment, if applicable (Authorized User Total Hourly Rate and Authorized User NYS Net Pricing)
    F. Name of technician(s) performing Maintenance on Equipment/System

The Maintenance Service report must be supplied upon completion of Maintenance whenever it is performed.

8.7 MAINTENANCE RESPONSIBILITY

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

In no instance shall the failure to resolve the issue of responsibility relieve any Contractor of their obligation to restore Problem Free System operation. The Authorized User shall have the right to adjust such matters after the fact and validate charges and/or Maintenance credits (as specified in Section 8.8 – *Maintenance Guarantee*) applicable to the provisions of the Contract and Maintenance Agreement. The specific Maintenance responsibilities are described in this Solicitation and include the delineation of responsibility.

8.8 MAINTENANCE GUARANTEE

Contractor guarantees that repairs/replacements must be successfully completed within forty-eight (48) continuous hours of its Response for any Remedial Maintenance as provided above, and that Problem Free System operation must be fully restored so long as the Malfunction is attributable to Contractor's Equipment//Services. Upon the Contractor's failure to provide such Maintenance Service to correct the Malfunction within the forty-eight (48) hour time period, the Authorized User shall be entitled to a Maintenance credit of 10 percent of the monthly Maintenance cost, but not less than one hundred ($100.00) dollars for every hour beyond the forty-eight (48) hour time period.

During the first year of warranty or T&M conditions, any such credit shall be levied against any Preventative Maintenance charges incurred by the Authorized User with the Contractor, and thereafter against any future purchase, including, but not limited to any Maintenance Agreement. Should the Equipment/System Malfunction for a period of more than forty-eight (48) consecutive hours or fail to be restored to Problem Free operation after two corrective Maintenance Services, the Authorized User shall have the option of requesting, and Contractor shall provide on a temporary basis, replacement Equipment of the same or similar design and equal to or better performance pending successful repair of the Equipment.

Should these measures fail to lead to a satisfactory resolution within sixty (60) days of their commencement, the Authorized User shall be entitled, at its option, to replace the malfunctioned Equipment with new, reliable Equipment of the same or similar design and equal to or better performance at no cost to the Authorized User. The terms and conditions of the Contract shall be equally applicable to such replacement Equipment.

8.9 FAILURE TO COMPLY

Should the selected Contractor fail to satisfactorily Maintain Equipment, the Authorized User reserves the right to terminate the Maintenance Agreement without any penalty whatsoever after a Written notice to said Contractor and providing said Contractor thirty-day (30) days to correct all Malfunctions and Maintenance Agreement issues. Failure to correct these Malfunctions and Maintenance Agreement issues identified in the Written notice may result in NYS or the Authorized User seeking damages equal to the cost of Equipment repair/replacement or any charges incurred in having the identified Malfunctions or Maintenance Agreement issues corrected. These costs are not limited to Equipment repair or replacement costs, and may also include charges for Installation, Integration, Maintenance, training etc. Contractor will be required to refund the total amount of any prepaid Maintenance.

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

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