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.service@ogs.ny.gov | 518-474-6717

Request for Proposals (Revised July 12, 2019)

BID OPENING **DATE:** July 24, 2019 **TIME:** 11:00 A.M. EST **RFP NUMBER:** 23171	**TITLE:** Group 79050 – Media Buying Services (Statewide) **Classification Codes:** 55, 80, 82
CONTRACT PERIOD: Five years with renewal options for up to five (5) additional years.	
DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139--j(2)(a)], the following individuals are the Designated Contacts for this RFP. All questions relating to this RFP must be addressed to the Designated Contacts.	

Joseph Popa Contract Management Specialist Telephone No. (518) 473-9746 E-mail address: joseph.popa@ogs.ny.gov	Doug Gordon Contract Management Specialist Telephone No. (518) 473-6853 E-mail address: douglas.gordon@ogs.ny.gov	Terri L. Allen Assistant Director Telephone No. (518) 474-7795 E-mail address: terri.allen@ogs.ny.gov

Bidder's Federal Tax Identification Number: *(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: _____

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 60 days from the date of submission to the New York State ("NYS") Office of General Services ("OGS"), or for such longer period as is set forth in the Request for Proposals.

2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Request for Proposals.

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

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

5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS's procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at https://ogs.ny.gov/acpl.

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

_____
Print Full Bidder Entity Name

By: _____
Signature of Person Authorized to
Legally Bind the Bidder

_____
Print Name of Signatory

_____
Print Title of Signatory

_____
Date

RETURN THIS PAGE AS PART OF BID

Table of Contents

1. INTRODUCTION....6
1.1 Overview....6
1.2 Scope....6
1.3 Estimated Quantities....7
1.4 Key Events/Dates....7
1.5 Bidder Questions....7
1.6 MWBE and SDVOB Interest in Participating with Bidders....8
1.7 NYS Contract Reporter....8
1.8 Summary of Policy and Prohibitions On Procurement Lobbying....8
1.9 Definitions....9
1.10 Appendices and Attachments....10
1.11 Conflict of Terms....10
2. BIDDER QUALIFICATIONS....10
2.1 Minimum Qualifications....10
3. SCOPE OF SERVICES....11
3.1 Performance Requirements....11
3.2 Deliverables....11
3.3 Confidential Information....15
3.4 Work Product....15
4. BID SUBMISSION....15
4.1 Notice to Potential Bidders....15
4.2 Performance and Bid Bonds....15
4.3 NYS Vendor File Registration....15
4.4 Bid Deviations....16
4.5 Incorporation....16
4.6 Bid Liability....16
4.7 Format of Bid Submission....16
4.8 Administrative Proposal Content....17
4.9 Technical Proposal....18
4.10 Cost Proposal....21
4.11 Bid Envelopes and Packages....21
4.12 Bid Delivery....22
4.13 Important Building Access Procedures....22
4.14 NYS Required Certifications....22
4.15 Electronic Bid Opening Results....22
4.16 NYS Reserved Rights....22
5. METHOD OF AWARD....23
5.1 Method of Award....23
5.2 Submission Review....24

5.3 Technical Evaluation 24
5.4 Cost Evaluation 24
5.5 Final Composite Score 24
5.6 Notification of Award 25
5.7 Periodic Recruitment 25
5.8 Procurement Instructions for Authorized Users 25
6. TERMS AND CONDITIONS 25
6.1 Contract Term and Extensions 25
6.2 Short term Extension 26
6.3 Rate 26
6.4 Ordering 26
6.5 Minimum Order 26
6.6 Invoicing and Payment 26
6.7 NYS Financial System (SFS) 27
6.8 Americans with Disabilities Act (ADA) 27
6.9 Insurance 28
6.10 Report of Contract Usage 28
6.11 Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women 28
6.12 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses. 33
6.13 NYS Vendor Responsibility 34
6.14 NYS Tax Law Section 5-a 35
6.15 Non-State Agencies Participation in Centralized Contracts 35
6.16 Extension of Use 35
6.17 New Accounts 36
6.18 Drug and Alcohol Use Prohibited 36
6.19 Traffic Infractions 36
6.20 Employee Information Required To Be Reported By Certain Consultant Contractors And Service Contractors 36
6.21 Subcontracting 37

APPENDICES

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

ATTACHMENTS

Attachment 1 – *Cost Proposal*
Attachment 2 – *NYS Required Certifications*
Attachment 3 – *Encouraging Use of NYS Businesses*
Attachment 4 – *Insurance Requirements*
Attachment 5 – *Bidder Information Questionnaire*
Attachment 6 – *Bidder Submission Checklist*
Attachment 7 – *Bidder Questions Form*

Attachment 8 – *Report of Contract Usage*
Attachment 9 - *Minimum Qualifications* (Revised July 12, 2019)
Attachment 10 – *Quantitative Factor Credit Questionnaire*
Attachment 11 - *Business Automobile Liability Insurance Attestation*

1. INTRODUCTION

1.1 Overview

This Request for Proposals (RFP) is being issued by the New York State Office of General Services, Procurement Services (OGS). OGS is a New York State Agency authorized by law to establish Centralized Contracts for use by NYS Agencies and other Authorized Users, as that term is defined by State Finance Law Section 163(1)(k).

The purpose of this RFP is to establish Centralized Contracts for Media Buying Services (Statewide). The contracts will be awarded for use by Authorized Users of NYS OGS Centralized Contracts (see Section 6.16, *Non-State Agencies Participation in Centralized Contracts*).

The RFP is a competitive establishment of multiple-award statewide centralized Contracts. Contract awards shall be made to the top five responsive and responsible Bidders who offer the best value based on the evaluation criteria as set forth in Section 5.1, *Method of Award*.

This RFP outlines the terms and conditions and all applicable information required for submitting a Bid. Bidders shall pay strict attention to the Bid submission date and time to prevent disqualification. Bidders are strongly encouraged to read the language of this RFP thoroughly and to precisely follow the instructions included in the RFP and all attachments.

1.2 Scope

The State of New York is charged with protecting the health, safety, productivity, and well-being of all New Yorkers through assisting individuals in accessing benefits and services. It is expected that the resultant Contracts will aid campaigns that seek to reach target audiences for specific campaigns in the most efficient and far reaching means available while accomplishing these key goals:

- Promote the health, safety, and well-being of all New Yorkers;
- Assure access to all essential benefits and services;
- Respond to emergencies and disasters;
- Inform New Yorkers of new laws and programs; and
- Raise awareness of New Yorkers to take action on time sensitive issues.

Media Buying Services include, but may not be limited to, the following:

1. strategic media planning, buying, and placement across all types of media platforms (video, digital, audio, social media, print, out-of-home, sports, arena-stadium, etc.) as listed in Section 3, *Scope of Services*;
2. provide planning and guidance for budgeting and planning purposes including strategy and demographic research;
3. deliver expert solutions in utilizing the most effective and efficient media for individual campaign goals and objectives as determined by the Authorized User;
4. monitor and maintain the effectiveness of every media buy, providing specific and detailed purchase information and post-buy analysis;
5. media campaigns can be statewide, regional, county, or even zip code based campaigns; and
6. Authorized Users may require media campaigns to be in any language and be multi-cultural.

The following services are specifically excluded from the scope of this RFP and resulting Contracts:

1. creation and production of media as creative work associated with the media buy;
2. branding services; and
3. campaigns targeting individuals, groups, or areas outside of the State of New York.

Authorized Users will make payments for media purchased plus the Contractor's commission based upon the net billing of the media purchased.

1.3 Estimated Quantities

A Contract resulting from this RFP shall be an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract rate. There is no current Centralized Contract for Media Buying Services. The anticipated dollar value of the award for this RFP is approximately $112,000,000 over five years which includes the cost of the media purchased. 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. Media buys requested by Authorized Users could range from a thousand dollar to a multimillion-dollar media campaign although it is anticipated that the majority of media campaigns will be under $100,000. Authorized Users will be encouraged to purchase from Contractors who offer the Services and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

Numerous factors could cause the actual quantities of Services purchased under a Contract resulting from this RFP to vary substantially from the estimates in the RFP. Such factors include, but are not limited to, the following:

- Such Contracts may be non-exclusive Contracts.
- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this RFP.

1.4 Key Events/Dates

EVENT	**DATE**	**TIME**
RFP Release	June 20, 2019	N/A
Closing Date for Bidder Questions	July 3, 2019	3:00 PM ET
Submission of MWBE and SDVOB Interest in Participating with Bidders	July 5, 2019	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	July 12, 2019	N/A
Bid Opening / Due date for Bids	July 24, 2019	11:00 AM ET
Contract Approval Date / Award Publish Date (tentative)	September 15, 2019	N/A

1.5 Bidder Questions

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

If Bidder intends to submit a Bid that deviates from the requirements of the RFP in any way, the proposed deviations should be submitted during the *Questions* period so that they may be given due consideration prior to the submission of Bids. See Section 4.4, *Bid Deviations*, herein for additional information.

1.6 MWBE and SDVOB Interest in Participating with Bidders

If a New York State certified MWBE or SDVOB would like to indicate its interest in working with participating Bidders, please send an e-mail entitled "RFP 23171 MWBE or SDVOB INTEREST [Your company name]" to joseph.popa@ogs.ny.gov on or before the date and time indicated in *Key Events/Dates*. The e-mail should include:

1. Company Name
2. Contact Name, Phone Number, Mailing Address, E-Mail Address
3. Brief description of the company and the products and/or services that the company offers that are related to this RFP (for example "Company ABC manufactures pencils").
4. The NYS Certification Type (Minority- and/or Women-Owned or SDVOB) as applicable.
5. Include what locations in NYS the company provides services in.

A list of the NYS certified MWBE and SDVOB vendors who have expressed interest in this RFP through the timely submission of such e-mail, will be made available to prospective Bidders through the publishing of a Purchasing Memorandum posted through the New York State Contract Reporter.

1.7 NYS Contract Reporter

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

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

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

1.8 Summary of Policy and Prohibitions On Procurement Lobbying

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

1.9 Definitions

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

"Authorized User(s)" As defined in Appendix B.

"Best Value" means the basis for awarding a contract for services to the Bidder which best optimizes quality, cost and efficiency among Responsive and Responsible Bidders. See State Finance Law § 163(1)(j).

"Bidder" shall refer to any business entity who submits a response to this RFP. At the time that the Bidder executes a Contract with the State for their services a Bidder shall become a "Contractor." See also "Contractor."

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

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

"**Client"** shall refer to as the party that engaged the Bidder to perform the media buy and paid the Bidder. The Client may be an Authorized User.

"Contractor" shall refer to a responsive and responsible Bidder who is working under an executed contract with New York State. Contractor is a general term.

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

"**n/a"** is a common abbreviation for *not applicable* or *not available*, used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.

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

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

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

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

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

"**SDVOB**" shall refer to a NYS-certified Service-Disabled Veteran-Owned Business

1.10 Appendices and Attachments

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

Appendix A – Standard Clauses for New York State Contracts (January 2014)
Appendix B – General Specifications (April 2016)

Attachment 1 – Cost Proposal
Attachment 2 – NYS Required Certifications
Attachment 3 – Encouraging Use of NYS Businesses
Attachment 4 – Insurance Requirements
Attachment 5 – Bidder Information Questionnaire
Attachment 6 – Bidder Submission Checklist
Attachment 7 – Bidder Questions Form
Attachment 8 – Report of Contract Usage
Attachment 9 – Minimum Qualifications (Revised July 12, 2019)
Attachment 10 – Quantitative Factor Credit Questionnaire
Attachment 11 - Business Automobile Liability Insurance Attestation

1.11 Conflict of Terms

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

1. Appendix A, Standard Clauses for New York State Contracts;
2. The RFP (Revised July 12, 2019);
3. Appendix B, General Specifications; and
4. All other appendices and attachments to the RFP.

2. BIDDER QUALIFICATIONS

Bidder is advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required. Procurement Services retains the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work. A Bidder shall meet the following qualifications set forth below. Failure to meet any of the qualifications in Section 2, *Bidder Qualifications*, in whole or in part, shall result in the rejection of the bid and the bidder being found non-responsive at the discretion of the State.

2.1 Minimum Qualifications

1. Experience purchasing various types of media platforms, including but not limited to, video, radio, print, out-of-home, sports, sponsorships, digital, social media, promotions and events, brand placement, public service, and new media in New York State media markets for a minimum of three (3) Clients within the past twenty-four (24) months from the date of the Bid Opening; and
2. Experience managing at least two (2) Clients that each have annual media billing in excess of $1 million which can be the result of more than one campaign. These two Clients may, but do not have to be, the same Clients identified to meet the first qualification. OGS reserves the right to request additional information if needed.

The same Client experience can be used to meet the requirements of both Paragraph (1) and (2) of this section. Bidders must demonstrate how they meet the minimum qualifications by completing Attachment 9 – *Minimum Qualifications* (Revised July 12, 2019). OGS cannot be listed as a Client.

3. SCOPE OF SERVICES

This Section describes the services that are required to be provided by the selected Contractor(s). The Contractors must be able to provide these services throughout the contract term. Bidders will be required to provide responses that address the requirements of this RFP as part of its Technical Proposal in Section 4.9.

3.1 Performance Requirements

The Contractor must provide media planning and buying services as set forth in this RFP and this section. The overall goals of the contract resulting from this RFP are to:

1. Provide strategic media planning, buying and placement for Authorized Users. Must have the ability to present proposed schedules for media buys (details on what the media buy would include and when and where it would run), based on current rating or circulations information, within twelve (12) hours upon request from the Authorized User. Please refer to Section 3.2.9 for more information.
2. Provide planning and guidance for budgeting and scheduling purposes including strategy and demographic research. Please refer to Section 3.2.9 for more information.
3. Deliver expert solutions in utilizing the most effective and efficient media for the individual campaign goals and objectives as determined by the Authorized User. Media campaigns can be statewide, regional, county, or even zip code-based campaigns. Media campaigns may be in any language and be multi-cultural. Campaign composition will be unique to the needs of the Authorized User. The Contractor will be expected to make appropriate recommendations with the input of the Authorized User. Please refer to Section 3.2.9 for more information.
4. Deliver an active broadcast, cable, and digital campaign with provided creative content from the Authorized User within the following timeframes: broadcast/cable - three (3) calendar days; digital – 8 to12 hours.
5. Monitor and maintain the effectiveness of every media buy, providing specific and detailed purchase information and post-buy analysis.

If Business Days are not specified for a Contractor deliverable in this Section 3, the time period for the Contractor deliverable is not limited to Business Days, and includes both hours and days (e.g. Saturday, Sunday, and NYS Holidays and federal holidays) not included within Business Days.

3.2 Deliverables

3.2.1 Account Management Team

The Contractor shall provide an experienced media account management team that will work collaboratively with Authorized Users to manage the daily activities of the account. The members of the account management team shall have at least two years of account management experience. The account team will be responsible for establishing regular communications between the Contractor and Authorized User to ensure seamless integration of the advertising programs. The members of the account management team shall be Contractor's employees.

The Contractor's account management team must provide the following specific services and activities to Authorized Users:

1. **Current Flowcharts** - The team is responsible for maintaining current flowcharts for all media activity. Detailed flowcharts for buys must specify media type, market tiers, length of time, creative rotation, and costs for each campaign. Budgets are to be broken out by campaign. Any time there is a change in media plans or activity, flowcharts must be updated and provided to the Authorized User within five (5) Business Days of the change in the media plans or activity.
2. **Campaign Status Report** - Bi-weekly to monthly campaign reports (as agreed upon per campaign between Authorized User and Contractor). The reports will include the recommended and actual executed media buy resulting from the review of digital status reports.

3. **Media Buy Schedule** - proposed schedules for media buys, based on current rating or circulation information must be provided to the Authorized User within twelve (12) hours from the launch of a campaign.
4. **Meeting Schedule** - Contractor will be responsible to meet with the Authorized User and report on buy status, present media campaign buy plans and media campaign results as needed. Authorized Users may request the Contractor to attend a meeting in-person at a location designed by the Authorized User.
5. **Availability** – Contractor will be available to the Authorized User on a 24 hour/7 days a week basis as needed. Contractor must notify OGS within five Business Days if its Account Management Team changes and provide an interim contact information until the position(s) is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist. Replacements for key personnel subject are subject to the Authorized User's approval and must meet same qualifications as original personnel.

3.2.2 Media Strategy

Contractor will provide strategic media campaign buy planning and execution on a seven-day-a-week, 52-week-a-year basis for the following media, including, but not limited to:

1. Video:
   a. Broadcast
   b. Cable
   c. TVE (TV Everywhere) - Video on demand (VOD)
   d. Streaming
2. Terrestrial Radio
3. Digital Radio
4. Print
   a. Dailies
   b. Magazines
   c. Community Newspapers
5. Out-of-Home
   a. Billboards
   b. Malls
   c. One-Sheets
6. Sports
   a. Arena – Stadium (Integrations, Signage)
7. Sponsorships
8. Digital
   a. Mobile
   b. Search
   c. Display
   d. Rich Media
   e. Video
   f. Audio
   g. Content/Blogs
   h. Native
9. Social
   a. Facebook
   b. Twitter
   c. Instagram
   d. LinkedIn
   e. Snapchat
   f. Other
10. Promotions and Events
    a. Transit
    b. Guerilla
    c. Street Teams
    d. Street Furniture
11. Brand Placement

12. Public Service
13. New Media

3.2.3 Strategic Media Planning

The Contractor will research, using analytical tools and other data at its disposal, to develop the most creative and effective media plans to achieve stated objectives. Contractor must provide Authorized User with:

1. analyses, evaluations and recommendations based on professional experience, market research and a strategic framework, including but not limited to:
   a. Audience size
   b. Audience demographics
   c. Audience behavior
   d. Media platforms to be used
   e. Number of impressions
2. geographical concentration of targeted audience market research for all media buys;
3. strategies and tactical details that support the marketing solution being proposed;
4. media flowcharts, plans and other data to illustrate the planned placement and costs associated with media buy;
5. time requirements and/or projections;
6. industry trends and/or new developments in media strategy, media planning and buying in order to employ new methods as they become available; and
7. measurements of success of the media plan/marketing solution.

3.2.4 Media Negotiation and Placement

The Contractor will be responsible for the placement and purchase of all media. In negotiating media purchases, the Contractor will notify the Authorized User of any savings that could be achieved through long-term commitments or other specialized programs. Contractor must:

1. provide media buying strategies that reach minority, multi-lingual and special needs populations, as requested by the Authorized User; and
2. provide detailed schedules for Authorized User approval. Provide detailed buys for each medium for approval. These schedules shall include an analysis showing why the specified media was chosen, the per unit basis, and the metric used, such as projected reach, frequency, and estimated cost and buying model (specifically for digital i.e. Cost per Click (CPC), Cost per Engagement (CPE).
3. Live posting, if required, is the responsibility of the Authorized User. The Contractor will be responsible for delivering the pre-scheduled posts to the social media platform.

3.2.5 Media Ordering Process and Procedures

In collaboration with the Authorized User, the Contractor must develop and maintain a media buy ordering process in order to effectively and efficiently manage the Authorized User account. The process must track a media buy from initial request to completion and identify an agreed upon schedule of deliverables such as flowcharts, detailed buys, advertisement sizing, and out-of-home (OOH) availabilities for each campaign. Please refer to Section 3.2.9, *Media Buy Request (MBR) Process*.

The Contractor will be responsible for account and financial management practices that allow each project to be successfully executed on time and at or below the estimated budget. In order to comply, the Contractor will be responsible for:

1. obtaining the size and format information for all ads based on placement;
2. negotiating best rates, added-value and make-goods and provide reports or summaries of the value additions and make-goods;
3. recommending potential cost reduction ideas for media buying plans;
4. electronic distribution of media (broadcast trafficking must be at fair market prices);
5. electronic distribution of print ads to the selected publications;
6. provision of internet statistics and adjustment of such internet buys, if needed, based upon the approved media campaign buy plan.

3.2.6 Placement Verification

The Contractor will be responsible for ensuring all media were broadcast or published according to placement instructions. The Contractor will provide:

1. affidavits of performance (a notarized document signed by a member of the account management team detailing which buys were run and when); air time logs; tear sheets; either hard copy or electronic, of print ads; completion photos of out-of-home ads and screenshots of internet ads; and/or
2. verification documents that indicate the run dates and/or times and the circulation or ratings achieved.
3. Authorized Users reserve the right to request additional supporting documentation as needed.

3.2.7 Post-Buy Analysis, Billing, and Reconciliation Services

Contractor must track and evaluate all media buys. Contractor activities include:

1. monitoring and maintaining the effectiveness of a media buy;
2. providing a post-buy analysis within forty-five (45) Business Days of the conclusion of each campaign that includes comparison to pre-campaign projections;
3. tracking the Authorized User individual buy plans to ensure buys stay within budget limitations. The campaign budget shall not be exceeded. Any cost overages are the responsibility of the Contractor unless prior written approval has been obtained from the Authorized User to exceed the budget;
4. providing costs of media on a per unit basis;
5. providing a billing reconciliation within forty-five (45) Business Days of the conclusion of each media buy campaign unless otherwise agreed upon between the Authorized User and Contractor; and
6. reducing the percentage commission rate by one (1) percentage point, if at the end of the media campaign, the post-buy analysis demonstrates that the proposed reach of the campaign does not fall within 15% of the reach of the executed campaign.

3.2.8 Trends

Contractors shall remain abreast of media buying trends and apply credible new practices, subject to the approval of Authorized Users, that may benefit New York State and their Authorized Users and drive improvements and efficiencies when spending public dollars.

3.2.9 Media Buy Request (MBR) Process

Throughout the life of the contract, Authorized Users will direct the contractor to implement new media buys/ campaigns, revise previously utilized campaigns and discontinue on-going campaigns. These requests will be initiated by the Authorized User utilizing a Media Buy Request **(MBR)** process.

The Authorized User will submit the MBR via email to the Contractor. Authorized Users are encouraged to obtain an MBR from all Contractors. The Contractor must draft a response to the MBR within twelve (12) hours of submission of the MBR by the Authorized User that includes a timeline, flowchart, and media plan for the request. The proposed media plan will include the requirements listed in Section 3.2.3, *Strategic Media Planning*. The Authorized User has the discretion to allow the Contractor additional time to respond to the MBR. Each campaign awarded by an Authorized User will be exclusive to one Contractor. Contractors will not have channel exclusivity across campaigns. Contractors are not required to submit a response in request to an Authorized User's Media Buy Request (MBR). If a Contractor decides not to provide an MBR, please inform the Authorized User and provide the reason.

Once the Authorized User has reviewed and approved the MBR from the Contractor (timeline, flowchart and media plan), the Contractor will be responsible for executing the steps as stated in Section 3.2.5, *Media Ordering Process and Procedures*. Only upon receipt of the Authorized User's written approval such as a Purchase Order (Section 6.4, *Ordering*) can the Contractor begin providing the services.

3.2.10 Contractor Deliverables; Time Period

If the time period for a Contractor deliverable in this Section 3 does not reference Business Days, then the time period for the Contractor Deliverable includes both hours and days (e.g. Saturday, Sunday, and NYS Holidays and federal holidays) not included within Business Days.

3.3 Confidential Information

Contractors agree to keep confidential all project information identified as confidential by an Authorized User. An Authorized User may require awarded Contractors to execute a non-disclosure agreement.

3.4 Work Product

Awarded Contractors must be able to provide reports in Word, Excel, PDF or another format acceptable to the Authorized User and be able to share documents with an Authorized User in electronic format via email or managed file transfer (for larger sized documents). All records produced by the Contractor shall be property of the Authorized User. At the conclusion of any engagement, either as a result of termination or the natural conclusion of the engagement, all records shall be turned over to the Authorized User or its designated recipient within a reasonable time period as specified by the Authorized User.

All information collected or otherwise obtained by the Contractor, the Contractor's staff and all subcontractors in performance under the Contract is proprietary and may not be disclosed to any party other than the Authorized User without the Authorized User's express written consent.

4. BID SUBMISSION

4.1 Notice to Potential Bidders

Receipt of Bid does not indicate that OGS 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 RFP.

4.2 Performance and Bid Bonds

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

4.3 NYS Vendor File Registration

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

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

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form

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

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

4.4 Bid Deviations

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

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

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

4.5 Incorporation

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

4.6 Bid Liability

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

4.7 Format of Bid Submission

The complete Bid package consists of a separately sealed administrative proposal, technical proposal, and cost proposal. This separation of information will facilitate the review of the material requested. No information beyond that specifically requested is required, and Bidders are requested to keep their submissions to the shortest length consistent with making a complete presentation of qualifications. Evaluations of the administrative, technical, and cost proposals received in response to this RFP will be conducted separately. Bidders are therefore cautioned not to include any cost Proposal information in the technical Proposal documents.

Bid packages must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be handled in accordance with Appendix B, *Late Bids*. Any Bid pricing or portions thereof submitted on CD or flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder.

Situations resulting in immediate Disqualification include:

- Email or facsimile Bid submissions are not acceptable, and
- Absent Attachment 1 – *Cost Proposal* is not acceptable.

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

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

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

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

4.8 Administrative Proposal Content

An administrative proposal that does not provide all the information requested below may be subject to rejection. Your administrative proposal must contain sufficient information to assure the Office of General Services of its accuracy. A complete administrative proposal consists of the following:

1. Two (2) USB flash drives each containing:
   a. Pages 1 and 2 of the RFP (signed and scanned) (PDF);
   b. Completed Attachment 2 – *NYS Required Certifications* with original ink signatures (PDF);
   c. Completed Attachment 3 – *Encouraging Use of NYS Businesses* (PDF);
   d. Completed Attachment 5 – *Bidder Information Questionnaire* (Excel);
   e. Completed Attachment 6 – *Bidder Submission Checklist* (Excel);
   f. Completed Attachment 9 – *Minimum Qualifications* (Revised July 12, 2019) in accordance with Section 2.1, *Minimum Qualifications* (Excel);
   g. Completed ST-220-CA, Contractor Certification, notarized with original ink signatures (PDF);
   h. Completed MWBE 100, MWBE Utilization Plan (if applicable) (PDF) available at https://ogs.ny.gov/mwbe/forms;
   i. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF) available at https://ogs.ny.gov/mwbe/forms; and
   j. Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF);
   k. Proof of compliance with Attachment 4 – *Insurance Requirements*.

2. One (1) Original paper versions of each of the following (to be placed in a loose-leaf binder and tabbed):
   a. Pages 1 and 2 of the RFP with original ink signatures;
   b. Completed Attachment 2 – *NYS Required Certifications* with original ink signatures;
   c. Completed Attachment 3 – *Encouraging Use of NYS Businesses*;
   d. Completed Attachment 5 – *Bidder Information Questionnaire*;
   e. Completed Attachment 6 – *Bidder Submission Checklist*;
   f. Completed Attachment 9 – *Minimum Qualifications* (Revised July 12, 2019) in accordance with Section 2.1, *Minimum Qualifications* (Excel);
   g. Completed ST-220-CA, Contractor Certification, notarized with original ink signatures;
   h. Completed MWBE 100, MWBE Utilization Plan (if applicable) (PDF) available at https://ogs.ny.gov/mwbe/forms;
   i. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF) available at https://ogs.ny.gov/mwbe/forms; and
   j. Standard Vendor Responsibility Questionnaire (completed and signed) or Certification that Questionnaire has been completed online.
   k. Proof of compliance with Attachment 4 – *Insurance Requirements*.

4.9 Technical Proposal

The purpose of the technical proposal is to provide Bidders with an opportunity to demonstrate their qualifications, competence, and capacity to undertake the services described herein, in a manner which complies with the requirements of the RFP. A technical proposal shall specifically detail the Bidder's qualifications and experience in providing the services described herein.

A technical proposal that does not provide all the information requested below may be subject to rejection or fewer points awarded. Your technical proposal must contain sufficient information to assure the Office of General Services of its accuracy. Cost information cannot be included in the technical proposal.

A complete technical proposal consists of two (2) USB flash drive in either PDF or Word format and four (4) original paper versions (to be placed in a loose-leaf binder and tabbed) containing:

4.9.1 Title Page

Submit a Title Page providing the RFP subject and number; the Bidder's name and address, the name, address, telephone number, and email address of the Bidder's contact person; and the Bid Opening date.

4.9.2 Table of Contents

The Table of Contents should clearly identify all material (by section and page number) included in the technical proposal.

4.9.3 Executive Summary

Bidder should prepare a narrative providing OGS with a collective understanding of the contents of the technical proposal. This summary should briefly summarize the strengths, key features, and approaches the Bidder has to offer.

4.9.4 Corporate Organization

Bidder should provide an organization of its company. If the company is a subsidiary of a parent company, the organization chart should be that of the subsidiary company.

4.9.5 Operation and Experience

Bidder should describe their operations and technical qualifications and experience relevant to the performance of the services described in this RFP in Section 3, *Scope of Services*.

1. Bidder should describe their ability to effectively handle fast-paced, labor intensive accounts with needs for long-term and short-term planning/buying.
2. Summarize their business approach to providing the media services described in Section 3, *Scope of Services*, highlighting the guiding philosophy and the cultural identity and foundation of the bidder's agency. Bidder should explain how they will address the deadlines contained in Section 3.1, *Performance Requirements*.
3. Provide a detailed description of multi-platform media buys conducted for at least two (2) Clients/accounts with annual billings over $1 million dollars each.
    a. Description should be segmented by media type;
    b. Provide purchasing weights by net dollar and percentage of overall agency spend on individual mediums including, but not limited to, broadcast and cable television, radio, OOH, digital (including sub-groupings, such as social, search and banner), print (dailies, weeklies, magazine, trade publications, periodicals, etc.), sports, event, guerilla, etc.;
    c. Include the campaign goal, target audience, the added value (if any) negotiated on the Client's behalf, and the measurable outcome of each campaign; and
    d. Describe the strategies and methods utilized in the media buying process for these campaigns, including all relevant rate negotiation, value additions and how these approaches would benefit Authorized Users.

4. If subcontractors will be used for engagements under this award, name the subcontractors, their address, and their proposed duties and responsibilities. Please explain how the subcontractor's performance will be monitored and how the subcontractor will be held accountable.
5. Describe your company's experience targeting specific economic, cultural and language groups. Explain how your company targets individuals who meet all of the following criteria:
   a. Married bi-lingual homeowners,
   b. between the ages of 28-45 years old,
   c. having a household Income between $35K - $65,000,
   d. with 3 children between the ages of 3-10,
   e. who lives in an urban area,
   f. owns 2 vehicles, and
   g. enjoys youth soccer, professional basketball, and gardening.

6. Explain how your company matches targets to platforms or channels.

4.9.6 Account Management Staffing

Bidders should provide a full and complete listing of proposed personnel who would be assigned to work on engagements for Authorized Users. The staff proposed in the Technical Proposal shall be the only staff that will work on engagements unless otherwise approved by OGS and the Authorized User in accordance with Section 3.2.1, *Account Management Team*. This should include on-site and off-site employees who will interface on accounts. Location of buying offices and buyers should be provided. Bidder shall address the deliverables contained in Section 3.2.1, *Account Management Team*.

For all management, supervisory, and account personnel, provide their names, titles, and resumes or professional vita summarizing education and relevant experience. Indicate the responsibilities that everyone will have if awarded a contract and their tenure with your company. Provide an organizational chart indicating lines of authority, with names and titles, of all individuals proposed to be utilized on this account, in any capacity.

4.9.7 Media Planning and Placement

Bidder should describe the process utilized for researching creative and effective media methods available to achieve Clients' desired objectives and outcomes. This should include their process for developing a media strategy and placement decisions. Bidders should include the type of information and data sources used for making these media buying decisions and any analytical tools being utilized. (e.g.: Scarborough, Arbitron/Tapscan, Nielson, Mediabank, Mediamark, Donavan, Marketron, Mediapost, Experian, MRI, SRDS, SQAD, Comscore, Strata, Rentrak, Jupiter, Datatrack, Media Day, etc.)

4.9.8 Media Ordering

Bidder should describe their proposed approach to developing and maintaining a media buy ordering process. The approach should describe:

- the strategic process to get the best possible pricing and placement;
- how orders for all mediums are placed and confirmed;
- how they plan to meet the responsibilities outlined in Section 3.2.4.1, *Media Negotiation and Placement*, in the RFP.

4.9.9 Trends

Bidder should describe how they are adapting or may adapt to new media buying trends, methodologies and technologies, current capabilities in utilizing these new buying techniques, for both premium and remnant inventory and future planning and hardware/software/partnerships/personnel acquisitions your company intends to make to support new and emerging optimization methodologies as they relate to traditional and new media.

4.9.10 Key Performance Indicators (KPI)

1. Bidder should describe how they utilize KPI for both traditional and new media. Bidder should also explain how they utilize KPIs to improve performance of media buying to achieve the goals and objectives of this RFP.
2. Bidders should submit samples of the type of measurements typically provided to Clients for each type of media platform.

4.9.11 Media Buy Request (MBR) Approach

The Bidder should describe in detail its proposed approach to fulfill the Authorized User's requests for a new media buy/campaign and/or modification to a media buy. The response should include:
1. Campaign strategy for reaching the target audience
2. Budget
3. Timeframe
4. Measurement of reach and frequency of media placements, and
5. Rationale for such decisions.

4.9.12 Sample Media Buy Request

Based on the scenario below, the Bidder should propose a media plan which includes the following:
1. The counties the proposed media placements will be in;
2. Analyses, evaluations and recommendations based on professional experience, market research and a strategic framework, including, but not limited to:
   a. Media platforms to be used;
   b. Weight of each platform in the overall buy;
   c. Cost for each element of the media buy;
   d. A list of sizes and formats of recommended media elements;
   e. Audience size;
   f. Audience demographics; and
   g. Number of impressions anticipated;
3. Strategies and tactical details that support the marketing solution being proposed;
4. Media flowcharts, plans and other data to illustrate the planned placement and costs associated with the media buy (where and when placements will be made);
5. Time requirements and/or projections;
6. Measurements of success of the media plan/marketing solution (provide examples); and
7. Rationale for decision making on the media buys.

Media Buy Request Scenario

Campaign: On March 1, 2020, the sale of single-use plastic bags will be banned in New York State. In order to prepare shoppers for the new law and encourage the use of re-usable bags, New York State would like to educate consumers about the pending change and benefits of eliminating single-use bags using a multi-media public service campaign. This campaign will be English and Spanish language.

Length of campaign: February 1, 2020 – February 15, 2020

Budget: $500,000 outside NYC
$1,000,000 inside NYC

Location of campaign: Throughout New York State. New York City is defined as the five boroughs of Brooklyn, Bronx, Manhattan, Queens and Staten Island.

Demographic: Supermarket and retail shoppers of all ages and income brackets.

The following material available for use in the media buy. It is not required that all of these elements are used in the media buy:
- 6 second video
- 15 second video
- 30 second video

- 30 second voiceover
- Any size static collateral that will be required for print, online, social media, or out-of-home materials recommended for the media buy.

4.9.13 Attachment 10 – Quantitative Factor Credit Questionnaire

Bidders that are small businesses, NYS certified minority – or women-owned business enterprises, and/or service-disabled veteran-owned business enterprises must submit a completed Attachment 10 – *Quantitative Factor Credit Questionnaire* in accordance with Section 5.3.1, *MWBE, SDVOB, or Small Business Status*, and attach any applicable proof of eligibility as an addendum to this form to support the certification or qualification if they are to receive credit. Otherwise, if Attachment 10 is missing from the technical proposal, no credit will be given to the Bidder.

4.9.14 Executive Order Number 190 – Incorporating Health Across All Policies

On November 14, 2018, Governor Cuomo signed Executive Order Number 190, entitled "Incorporating Health Across All Policies." The Executive Order requires all affected State Entities to incorporate the New York State Prevention Agenda priorities and the WHO Eight Domains of Livability, where practicable and feasible, into State plans, plans submitted to the federal government, as well as agency guidance, policies, procedures, and best value procurements, with guidance from the Health Across All Policies Ad Hoc Committee in order to further the goals of the Health Across All Policies initiative declared in the 2017 State of the State.

The Bidder shall describe 1) how it encourages its employees to participate in community activities and services; 2) how it engages with local community and partners to increase opportunities for volunteering; and (3) its organizational policies to support employees who are caregivers.

4.10 Cost Proposal

The Cost Proposal shall include the Bidder's percentage commission to provide all services herein. The Bidder must propose only a not-to-exceed commission rate that will be billed upon net billing of the actual media purchased. The commission rate shall cover any other costs Bidder plans to bill as part of this Contract, such as travel, materials, research, equipment, overhead, profit, and labor. The commission rate will be rounded to two decimal places. The proposed commission rate shall not change for the term of the Contract. A cost proposal that does not provide all the information requested may be subject to rejection. Your cost proposal must contain sufficient information to assure the Office of General Services of its accuracy. A complete Cost Bid consists of the following:

1. Two (2) USB flash drives containing:
   a. Completed Attachment 1 – *Cost Proposal* for all services offered in the Bid (Excel);

4.11 Bid Envelopes and Packages

The Administrative Proposal, Technical Proposal, and Cost Proposals should be submitted in three (3) separate, clearly labeled packages. The three sealed proposals may be combined in as many mailings as needed.

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

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Bid Number (RFP #23171)
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

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

4.12 Bid Delivery

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

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

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

4.13 Important Building Access Procedures

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

4.14 NYS Required Certifications

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

4.15 Electronic Bid Opening Results

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

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

4.16 NYS Reserved Rights

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

A. Reject any or all Bids received in response to the RFP;
B. Withdraw the RFP at any time at the sole discretion of the State;
C. Make an award under the RFP in whole or in part;
D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the RFP;
E. Seek clarifications and revisions of the Bid;
F. Amend the RFP 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 RFP 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 RFP requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the RFP;
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 RFP;
P. Accept and consider for Contract award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
S. Reject an obviously unbalanced Bid as determined by the State; and
T. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
U. 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.
V. Unilaterally make revisions, changes and/or updates to any templates, Appendices (excluding Appendices A and B) and/or Attachments to the proposed contract without processing a formal amendment and/or modification, and
W Award contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this RFP.

5. METHOD OF AWARD

5.1 Method of Award

In accordance with New York State Finance Law Article 11, it is the intent of OGS to award Centralized Contracts for Media Buying Services based on the "Best Value" of the proposals submitted by responsive and responsible Bidders meeting the minimum qualifications established in this RFP and offer reasonable not-to-exceed pricing (Attachment 1 – *Cost Proposal*) as determined by OGS.

OGS, at its sole discretion, will determine which proposal(s) best satisfies its requirements. All proposals deemed responsive to the requirements of this RFP will be evaluated and scored for technical qualities and cost. Proposals failing to meet the requirements of this RFP may be eliminated from consideration. The evaluation process will include separate technical and cost evaluations, and the result of each evaluation shall remain confidential until both evaluations have been completed and a selection of the winning proposal(s) are made.

The evaluation process will be conducted in a comprehensive and impartial manner, as set forth herein, by an Evaluation Committee. The Technical Proposal and compliance with other RFP requirements (other than the Cost Proposal) will be weighted **70%** of a proposal's total score (70 points for Technical Evaluation) and the information contained in the Cost Proposal will be weighted **30%** (30 points) of a proposal's total score. The Bidders with the top five (5) highest total scores will be awarded contracts, if applicable.

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

In the event of a tie, the determining factors for award, in descending order, will be (1) highest cost score and (2) highest proposed percentage of MWBE participation.

5.2 Submission Review

OGS will examine all proposals that are received in a proper and timely manner to determine if they meet the proposal submission requirements, as described in Section 4, *Bid Submission* and include the proper documentation, including all documentation requested for the Administrative Proposal, as stated in this RFP. Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of OGS, may be rejected.

5.3 Technical Evaluation

The evaluation process will be conducted in a comprehensive and impartial manner. A Technical Evaluation Committee comprised of program staff of OGS will review and evaluate all proposals.

The Technical Evaluation Committee members will independently score each Technical Proposal that meets the submission requirements of this RFP.

The technical evaluation is worth **70%** (up to 70 points) of the final composite score.

5.3.1 MWBE, SDVOB, or Small Business Status

State Finance Law Section 163(1)(j) was amended to allow, when making a Best Value determination, for the inclusion of a quantitative factor for offerers that are NYS small businesses, or NYS Certified Minority or Women-Owned Business Enterprises (MWBEs) as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the Executive Law or Service-Disabled Veteran-Owned Business Enterprises as defined in subdivision one of section three hundred sixty-nine-h of Executive Law. Bidders should submit a completed Attachment 10 - *Quantitative Factor Credit Questionnaire* and attach any applicable proof of eligibility as an addendum to this form to support the certification or qualification. Although, a Bidder may meet more than one of the criteria, a Bidder may only receive up to 3.5 points (or 5% of the technical evaluation). A Bidder will either receive full credit or no credit for this category.

5.4 Cost Evaluation

The Cost Evaluation Committee will examine the Cost Proposal document. The Cost Proposals will be opened and reviewed for responsiveness to cost requirements. If a cost proposal is found to be non-responsive, that proposal may not receive a cost score and may be eliminated from consideration.

Each proposal that meets the submission requirements and meets the cost proposal requirements will receive a cost score. The Cost Proposals will be scored based on a maximum cost score of 30 points. The maximum cost score will be allocated to the proposal with the lowest all-inclusive not-to-exceed maximum price. All other responsive proposals will receive a proportionate score based on the relation of their Cost Proposal to the proposals offered at the lowest final cost, using this formula:

C = (A/B)* 30 percent
A is Total price of lowest cost proposal;
B is Total price of cost proposal being scored; and
C is the Cost score.

The cost evaluation is worth **30%** (up to 30 points) of the final composite score.

5.5 Final Composite Score

The final composite score will be calculated by OGS by combining the Technical Proposal score with the Cost Proposal score. The proposals will then be ranked based upon each Bidder's Final Composite Score. Tentative contract awards will be issued to up to the top five highest Final Composite Scores.

5.6 Notification of Award

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

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

5.7 Periodic Recruitment

This RFP 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 not resubmit a Bid for future consideration for Media Buying Services covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

5.8 Procurement Instructions for Authorized Users

1. The resultant Contracts will be issued under a multiple award structure. Authorized Users shall procure their Media Buy Requests (MBR) in accordance with Section 3.2.9, Media Buy Request (MBR) Process, that best meet their form, function, and utility requirements.

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

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

6. TERMS AND CONDITIONS

6.1 Contract Term and Extensions

The Contracts will be in effect for a term of five (5) years. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*). Any purchases issued against this Contract may survive up to one year from the date expiration of the Contract, the terms and conditions of which will apply throughout the extended term.

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

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

6.2 Short term Extension

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

6.3 Rate

The Contractor shall not charge more than the cost of media (net billing) purchased plus the commission based upon the net billings. The Contractor's commission rate cannot exceed its approved not-to-exceed commission. The Contractor's not-to-exceed commission rate will not change during the life of the Contract, including all extensions.

6.4 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).

6.5 Minimum Order

The minimum order, or Media Buy Request (MBR), for this Contract is $1,000.00. Contractor may elect to honor orders less than the minimum order.

6.6 Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*, and Section 3.2.7, *Post-Buy Analysis, Billing, and Reconciliation Services*. Invoices shall be submitted to the Authorized Users after the Contractor has provided the Authorized User a billing reconciliation within forty-five (45) Business Days of the conclusion of each media buy campaign unless otherwise agreed upon between the Authorized User and Contractor. Authorized Users will make payment for approved actual media purchased (net billing) plus the Contractor's commission based upon the net billing.

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

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Media Buy as described in the Media Buy Request
- Commission
- Quantity
- Unit of Measure
- Dates of Service

All invoices must include required supporting documentation and be able to be verified through means detailed in Section 3.2.6, *Placement Verification*, such as station logs, completion photos, affidavits of performance, tear sheets, etc. Original media invoices from media outlets must be included. Authorized Users reserve the right to request additional supporting documentation as may be needed to support invoice charges.

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

6.7 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning 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 is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: http://sfs.ny.gov and http://www.osc.state.ny.us/agencies/guide/MyWebHelp/.

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

6.9 Insurance

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

6.10 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total hours billed to each Authorized User of this Contract, no later than 10 days after the close of each calendar quarter. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract hours billed for this fractional period should be included in the quarterly report.

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

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

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

I. New York State Law

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

II. General Provisions

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

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State Certified minority- and women-owned business enterprises ("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. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

III. Equal Employment Opportunity (EEO)

A. Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over $25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.

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

B. Form EEO 100 - Staffing Plan.

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

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

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

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

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

D. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not

discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. Contract Goals

A. 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 and Community Relations. 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).

V. 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 a MWBE, and performance dates of each component of the Contract that the Bidder intends to be performed by a 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 NYS Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.

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

E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) Business Days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) Business

Days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

(a) If a Bidder fails to submit a MWBE Utilization Plan;
(b) If a Bidder fails to submit a written remedy to a notice of deficiency;
(c) If a Bidder fails to submit a request for waiver; or
(d) If OGS determines that the Bidder has failed to document good faith efforts.

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

VI. Request for Waiver

A. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Businesses and Community Relations for guidance.**

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

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

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

VII. 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 and copies of such solicitations and any responses thereto.

2. A list of the certified MWBEs appearing in the Empire State Development 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.

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

C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "Introduction to the System for Vendors" 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.

IX. Breach of Contract and Liquidated Damages

A. In accordance with Executive Law Section 316-a and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.

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, after Contractor has been afforded due process to respond to the allegation that it willfully or intentionally failed to comply with the MWBE participation goals, OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by the OGS, Contractor shall pay such liquidated damages to the OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law, in which event the liquidated damages shall be payable if the Director renders a decision in favor of the OGS.

X. 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

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

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

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

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

Bidder/Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

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

6.13 NYS Vendor Responsibility

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

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

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

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

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

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

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

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

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

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

6.14 NYS Tax Law Section 5-a

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

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

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

6.15 Non-State Agencies Participation in Centralized Contracts

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

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

6.16 Extension of Use

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in any

resultant Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

6.17 New Accounts

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

6.18 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.

6.19 Traffic Infractions

Neither the State nor Authorized Users shall 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.

6.20 Employee Information Required To Be Reported By Certain Consultant Contractors And Service Contractors

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning Contract Employees working under State Agency service and consulting Contracts. State Agency consultant Contracts are defined as "Contracts entered into by a State Agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*" ("covered consultant Contract" or "covered consultant services"). The amendments also require that certain Contract Employee information be provided to the State Agency awarding such Contracts, OSC, Division of Budget (DOB) and Department of Civil Service (CS). The effective date of these amendments was June 19, 2006. The requirements will apply to the covered Contracts awarded on and after such date. To meet these requirements, the Contractor agrees to complete:

A. **Form A - Contractor's Planned Employment Form**, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information.

B. **Form B - Contractor's Annual Employment Report**. Throughout the term of the Contract by May 15**th** of each year the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such Contract was in effect during such prior State fiscal year Contractor reports the:

1. Total number of Employees employed to provide the consultant services, by employment category.
2. Total number of hours worked by such Employees.
3. Total compensation paid to all Employees that performed consultant services under such Contract.*

*N**OTE:** The information to be reported is applicable only to those Employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to Employees of Subcontractors who perform any part of the service Contract or any part of the covered consultant Contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an Employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information to CS and OSC as designated below:

Department of Civil Service Alfred E. Smith State Office Building Albany, NY 12239	**Office of the State Comptroller** Bureau of Contracts 110 State St., 11th Floor Albany, New York Attn: Consultant Reporting Fax: (518) 474-8030 or (518) 473-8808

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual Employee names or social security numbers are set forth on a document, the State Agency making such disclosure is obligated to redact both the name and social security number prior to disclosure. Further information is available in Section XI.18.C of the Office of the State Comptroller's Guide to Financial Operations (http://www.osc.state.ny.us/agencies/guide/MyWebHelp/), "Consultant Disclosure Legislation."

6.20.1 Instructions for Completing Form A and B

Form A and Form B should be completed for Contracts for consulting services in accordance with Section XI.18.C of the Office of the State Comptroller's Guide to Financial Operations (http://www.osc.state.ny.us/agencies/guide/MyWebHelp/), "Consultant Disclosure Legislation," and the following:

A. Form A - **Contractor's Planned Employment Form (**available from and submitted to the using Agency, if necessary.) (Form AC-3271-S: http://www.osc.state.ny.us/agencies/forms/index.htm)

B. Form B - **Contractor's Annual Employment Report** (to be completed by May 15th of each year for each consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year and submitted to the CS, OSC and procuring Agency.) (Form AC-3272-S: http://www.osc.state.ny.us/agencies/forms/index.htm)

Scope of Contract: choose a general classification of the single category that best fits the predominate nature of the services provided under the Contract.

Employment Category: enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describes the Employees providing services under the Contract. *(Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)*

Number of Employees: enter the total number of Employees in the employment category employed to provide services under the Contract during the report period, including part time Employees and Employees of subcontractors.

Number of Hours: enter the total number of hours worked during the report period by the Employees in the employment category.

Amount Payable under the Contract: enter the total amount paid by the State to the State Contractor under the Contract, for work by the Employees in the employment category, for services provided during the report period.

6.21 Subcontracting

Contractors may propose the use of a subcontractor. The Contractor shall obtain prior written approval from the Authorized User before entering into an agreement for services to be provided by a subcontractor. The Contractor is solely responsible for assuring that the requirements of the Contract are met by all subcontractors. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of the Contract, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the Contract. The Authorized User reserves the

right to request removal of any Contractor’s staff or subcontractor’s staff if, in the Authorized User's discretion, such staff is not performing in accordance with the Contract.