



**Office of General Services
Procurement Services**

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

Solicitation (Amended July 3, 2019)

BID OPENING DATE: July 16, 2019 TIME: 11:00 A.M. EST SOLICITATION NUMBER: 23167	TITLE: Group 76000, Electronic Poll Book Systems Classification Codes: 43, 86 SPECIFICATION REFERENCE: As incorporated in the Solicitation
CONTRACT PERIOD: See "Contract Term" Clause	
DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.	
Karen Fowler, Marc Kleinhenz, Kylesha Davis, Tony Montes, Dewan Bristo, Allison White, Jordan Flores, Jessica LaFlamme, Katherine Dias Email Address: PS_SW_ITF@ogs.ny.gov	

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

<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> NYS Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business
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If you are not bidding, place an "x" in the box and return this page only.

WE ARE NOT BIDDING AT THIS TIME BECAUSE:

FOR PROCUREMENT SERVICES USE ONLY

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

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 120 days from the date of submission to the New York State ("NYS") Office of General Services ("OGS"), or for such longer period as is set forth in the Solicitation.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Solicitation.
3. The Bidder has read and understands the provisions of the Solicitation, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 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 Legal Business Name of Bidder

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

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF _____ }
: SS.:
COUNTY OF _____ }

On the _____ day of _____ in the year 20____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that ___ maintains an office at _____, and further that:

[Check One]

- If an individual):** ___ executed the foregoing instrument in his/her name and on his/her own behalf.
- If a corporation):** ___ is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, ___ is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, ___ executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- If a partnership):** ___ is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- If a limited liability company):** ___ is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public
Registration No.

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APPENDICES

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ATTACHMENTS

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Attachment 2 – *Administrative Information*

Attachment 3 – *Bidder's Insurance Requirements*

Attachment 4 – *Report of Contract Usage*

Attachment 5 – *Board of Elections Application for Approval*

Attachment 6 – *Bidder Questions Form*

SECTION 1 INTRODUCTION

1.1 OVERVIEW.

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Electronic Poll Book (E-Poll Book) Systems and related services, accessories, consumables, training, and Maintenance as specified herein for all Authorized Users eligible to purchase through this Solicitation.

The objective of this Solicitation is to provide Authorized Users with E-Poll Book Systems necessary to support their needs.

This Solicitation shall result in new Centralized Contracts to be awarded on a statewide basis. The Centralized Contracts shall be awarded for up to five (5) years with one five (5) year extension option.

This Solicitation and the resulting Centralized Contracts shall outline the procedures and methods used by Authorized Users, OGS, and Contractors to provide Authorized Users with a method for procuring E-Poll Book Systems. All Contractors will have the same terms and conditions for the duration of the Contract thus providing a fair and level playing field across the E-Poll Book System marketplace. It is highly recommended that Authorized Users procure E-Poll Book Systems via Request for Quotations (RFQ).

This Solicitation outlines the terms and conditions and all applicable information required for submitting a Bid. During the initial bidding process, Bidders should pay strict attention to the Bid submission date and time to prevent disqualification. Bidders are strongly encouraged to read the language of this Solicitation thoroughly and to precisely follow the instructions included in the Solicitation and all attachments. This Solicitation shall be awarded based on an evaluation of Bids and Bidder qualifications.

Following this initial bidding process and the subsequent award of initial contracts, Bidders will be permitted to submit a Bid via the Continuous Recruitment process for up to one (1) year. OGS may post a notice in the Contract Reporter to commence the Continuous Recruitment process. A Bidder will be provided with a Solicitation and will be allowed to submit a Bid. The proposal will be evaluated under the same terms and conditions of the original bids. If a Bid meets all the requirements of the Solicitation, a Contract will be awarded. Once a Contractor has been awarded a Contract, they must remain under the terms of their initial bid and will not be allowed to submit a new Bid under the Continuous Recruitment of Contractors provision. Following the conclusion of the Continuous Recruitment period, there may be subsequent Periodic Recruitments as OGS deems necessary during the remainder of the Contract Term.

1.2 SCOPE.

OGS is requesting proposals from established and qualified E-Poll Book Systems providers, to allow the individual New York State County Boards of Elections (CBOEs) to procure E-Poll Book Systems. The intent is to award multiple Contracts, and to provide CBOEs the ability to obtain various E-Poll Books Systems, either through a competitive Request for Quotation (RFQ), or by submitting a Purchase Order.

In March of 2019, NYS passed legislation to allow for Early Voting and the use of E-Poll Book Systems, and NYS intends to implement the E-Poll Book Systems from any resulting Contract for use at Early Voting locations as well as Election Day polling places in 2019 and future elections.

The NYS Board of Elections (SBOE) must approve any E-Poll Book System before it can be used by a CBOE in New York State. A vendor cannot be awarded a Contract for any E-Poll Book System that has not been approved by the SBOE. Attachment 5, *Board of Elections Application for Approval* has been included as a reference for the requirements as set forth by the SBOE. Vendors interested in the approval process should contact the Election Operations Unit of the State Board of Elections at Election_Ops@elections.ny.gov or 518-473-5086.

If a Bidder is awarded a Contract resulting from this Solicitation, the Bidder's E-Poll Book System(s) approved by the SBOE will be available for purchase under State contract by the local CBOE. Each CBOE will be responsible for the purchase of their own Equipment, and the implementation of the System, including training and support.

All qualified, responsive and responsible Bidders whose E-Poll Book System(s) have been approved by the SBOE and whose pricing indicates that the E-Poll Book Systems offered will be delivered at a reasonable price as determined by OGS are eligible for award.

Product shall be new, factory produced, assembled for the first time, and may contain new and/or recycled parts or components that have been fully inspected, tested and fully meet required Product performance specifications. Product must be newly serialized and the Authorized User must be the first end user of the Product. The Products must be commercially released Products and available for purchase through the Contractor's normal marketing channels. Alpha, beta, experimental or unannounced Equipment is outside the scope of this Contract. No Products at End-of-Life or within six months prior to End-of-Life are to be sold, except with prior written approval by the Authorized User.

1.3 OUT OF SCOPE.

The following items are out of Scope of the Solicitation:

- E-Poll Book Systems sold through other OGS Centralized Contracts
- Part/Stock Numbers that relate to blocks of hours
- Refurbished/ remanufactured Equipment

1.4 ESTIMATED QUANTITIES.

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

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

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

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

NYS anticipates that full implementation would entail between 12,000 and 20,000 E-Poll Book Systems across 62 CBOEs and across 15,005 election districts, with a full voter database of 11.7 million unique voter names and voter information. The current statistics of voters by election district by county can be found at the following link on the SBOE website (<https://www.elections.ny.gov/EnrollmentCounty.html>) and is current as of February 2019.

Please note that while this is the entire possible universe, Counties may decide to implement E-Poll Book Systems in part, in whole, or not at all, and neither this Solicitation nor any resulting contract guarantee any volume of sales under the solicitation. OGS anticipates that some Counties will want to implement the use of E-Poll Book Systems immediately.

1.5 KEY EVENTS/DATES.

EVENT	DATE	TIME
Solicitation Release	6/24/2019	N/A
Closing Date for Bidder Questions	7/1/2019	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	7/5/2019	N/A
Bid Opening / Due date for Bids	7/16/2019	11:00 AM ET
Contract Approval Date / Award Publish Date	8/1/2019(tentative)	N/A

1.6 NYS CONTRACT REPORTER.

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

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

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

1.7 BIDDER QUESTIONS.

All questions regarding this Solicitation should be submitted using Attachment 6, *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to PS_SW_ITF@ogs.ny.gov by the date and time indicated in the *Key Events/Dates* section. Questions submitted after the deadline indicated may not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter ("NYSCR"). Your company must select the "opt-in" option within the Contract Reporter ad to receive notification updates of this Solicitation.

Vendors with questions related to the SBOE's approval process should contact the Election Operations Unit of the State Board of Elections at Election_Ops@elections.ny.gov or 518-473-5086. All questions pertaining to the functional, security and challenge report requirements set forth by SBOE, or questions related to the approval

process for E-Poll Book Systems will be forwarded to the SBOE for their reply and will not be addressed in the question and answer document posted to the OGS website.

If Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the *Questions* period so that they may be given due consideration prior to the submission of Bids. See Section 4.8, *Bid Deviations* for additional information.

1.8 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING.

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

1.9 DEFINITIONS.

Capitalized terms used in this Solicitation shall be defined according to Appendix B, Definitions, or as below:

Term	Definition
Authorized User Agreement	Authorized User Agreement shall mean the document memorializing the Contractor’s obligations with respect to a given transaction with an Authorized User.
Bidder Submission	The complete response to this Solicitation submitted by a Bidder to provide Products described in the Solicitation.
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State Holidays or Federal Holidays.
Business Entity	Any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
CBOE	New York State County Boards of Election.
Continental United States (CONUS)	The 48 contiguous States, and the District of Columbia.
Contract Term	The initial term of the Contract and any renewals, or extensions, or both.
Data Breach	Acquiring of information by a person without valid authorization or through unauthorized acquisition.
Days	Unless otherwise specified reference to days in this Solicitation shall mean Business Days, not Calendar Days.
Device	A piece of electronic Equipment (such as a tablet, bar-code scanner, printer, or portable hot spot) adapted for a particular purpose. See also “Equipment.”
Discount	An allowance, reduction or deduction from a selling price or list price extended by a seller to a buyer in order for the net price to become more competitive.
Early Voting	An option available to the counties under NYS law which allows voters to cast their selections prior to Election Day in predetermined locations specified by the CBOE.
Election Day	A day legally established for the election of public officials.
Electronic Poll Book (E-Poll Book)	An electronic list (as opposed to a paper list) of the names and addresses of voters. It is used to check-in voters as they appear to vote and to attribute voting credit to that particular voter’s record.
Electronic Poll Book System (EPBS)	Includes all Software (e.g. operating systems, vendor applications, etc.) and connected Hardware (e.g. electronic poll books, laptops, and peripherals including scanners,

Term	Definition
	printers, signature pads, routers, servers, removable media devices, chargers, batteries, etc.), configured to support the creation of a computer generated registration list of voters for use during elections.
End-of-Life (EOL)	When a Product is no longer being marketed or sold.
Equal Employment Opportunity (EEO)	Policies and procedures of the jurisdiction to ensure non-discrimination against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status.
Equipment	An all-inclusive term which refers either to individual Devices or to a complete data processing System or subsystem, including its Hardware and operating Software (if any). See also "Device," and "Hardware."
General Services Administration (GSA)	The department within the U.S. government that is responsible for procurement of goods and services.
Government Entity	A federal, state, municipal entity or tribal government located in the United States.
Hardware	The physical aspect of E-Poll Book Systems. Hardware shall also include "Device" and "Equipment."
Maintenance	The upkeep of a Product that neither adds to its permanent value nor prolongs its intended life appreciably, but instead keeps it in an efficient operating condition.
Mandatory	Refers to items or information that the State has deemed that a Bidder must submit as compulsory, required and obligatory. These items or information are noted as such, or the requirements may be phrased in terms of "must" or "shall".
May	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "Should" and "Will."
Minority and/or Woman-Owned Business (MWBE)	A business certified with Empire State Development (ESD) as a Minority and/or Woman-Owned Business.
Must	Denotes the imperative in a Contract clause or specification. Means required, being determinative/mandatory, as well as imperative. Also see "Shall."
National Institute of Standards and Technology (NIST)	The federal technology agency that works with industry to develop and apply technology, measurements, and standards. http://www.nist.gov
Network	A group of two or more Devices that can communicate.
New York State Board of Elections (SBOE)	The State Board of Elections is the bipartisan agency vested with the responsibility for administration and enforcement of all laws relating to elections in New York State.
New York State Holidays (NYS Holidays)	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.
New York State Service-Disabled Veteran-Owned Business (SDVOB)	A NYS-certified Service-Disabled Veteran-Owned Business. Please refer to New York Executive Law Article 17-B for additional details.
New York State Small Business Enterprise (NYS SBE)	A company that is a resident to New York State, independently owned and operated, with 100 or fewer employees, and not dominant in its field. See State Finance Law §160(8).
New York State Statewide Financial System (SFS)	The NYS Enterprise Resource Planning (ERP) System.
New York State Vendor Identification (NYS Vendor ID)	The ten-character identifier issued by New York State when a vendor is registered on the Vendor File.
Non-State Agencies	Political subdivisions and other entities authorized by law to make purchases from OGS Centralized Contracts other than those entities that qualify as State Agencies. This includes all entities permitted to participate in Centralized Contracts per Appendix B,

Term	Definition
	§25(b), Non-State Agency Authorized Users and §25(c), Voluntary Extension and State Finance Law Section 163(1)(k).
Office of the State Comptroller (OSC)	The New York State Office of the State Comptroller.
Part/Stock Number	A unique identifier assigned to an individual Product and/or Service or part by the Contractor for that Product and/or Service; usually includes a combination of alpha and/or numeric characters or may be a unique product name or unique product description. Part/Stock Numbers must be unique and cannot be the same as any other Part/Stock Number on the price list.
Procurement Services	A business unit of OGS, formerly known as New York State Procurement (NYSPRO) and Procurement Services Group (PSG).
Quote	Contractor's response to an Authorized User's Request for Quotation (RFQ).
Security Incident	A violation or imminent threat of violation of computer security policies, acceptable user policies, or standard security practices. A computer security incident is also defined as any event that adversely affects the confidentiality, integrity, or availability of system and its data.
Shall	Denotes the imperative in a Contract clause or specification. Means required, being determinative/mandatory, as well as imperative. Also see "Must."
Should	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "May" and "Will."
Small Business	Please refer to State Finance Law section 160(8) for the definition of "small business concern" or "small business."
Software	A general term for the various kinds of programs used to operate E-Poll Book Systems and related Devices. Software shall also include authentication tools, security features, origin policy, updates, major and/or minor enhancements, versions, releases, corrections, or any other modifications, improvement or enhancements provided as part of any Contract resulting from this Solicitation.
Support Services	Technical services that include but are not limited to: help-desk support, enhanced help-desk support, on-site client support and E-Poll Book System implementation.
System	A collection of elements or components that are organized for a common purpose.
Training Services	Training options and materials offered by a Contractor for use by a CBOE under a Contract resulting from this Solicitation which will allow CBOE staff and polling inspectors to be trained in the use of the E-Poll Book System, where appropriate.
User Data	Any information, formula, algorithms, or other content that the Authorized User may directly or indirectly provide to the Contractor pursuant to the resulting Contract.
Will	Denotes the permissive in a Contract clause or specification. Also see "May" and "Should."
Written / Written Communication	Written Communication makes use of the written word. Examples of Written Communications include email, Internet websites, letters, proposals, and Contracts.

1.10 APPENDICES AND ATTACHMENTS.

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

APPENDICES

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

Appendix B – *General Specifications* (April 2016)

Appendix C – *Contract Modification Procedure*

ATTACHMENTS

Attachment 1 – *Pricing*

Attachment 2 – *Administrative Information*
Attachment 3 – *Bidder's Insurance Requirements*
Attachment 4 – *Report of Contract Usage*
Attachment 5 – *Board of Elections Application for Approval*
Attachment 6 – *Bidder Questions Form*

1.11 CONFLICT OF TERMS.

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

1. Appendix A, *Standard Clauses for New York State Contracts*;
2. Attachment 5, *Board Of Elections Application for Approval*;
3. This Solicitation document;
4. Appendix B, *General Specifications*;
5. All other appendices and attachments to the Solicitation;

SECTION 2 BIDDER QUALIFICATIONS

2.1 GENERAL QUALIFICATIONS.

Bidder is advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable E-Poll Book Systems vendors perform the work of the resulting Contract. Bidder shall have the burden of demonstrating to the satisfaction of OGS Procurement Services and the SBOE that it can perform the work required. OGS 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. All statements made must be able to be independently verified by OGS.

Bidder is reminded to verify the contents of their Bidder Submission are true and accurate before submitting the same to OGS for consideration. Failure to do so may result in the Bidder's Bid being rejected by OGS which would result in a non-award for the Bidder. OGS reserves the right to contact Bidder as needed to obtain or clarify required information that may have been omitted from, or is not clear or possibly incorrect in, the Bidder Submission. If a Bidder fails to respond to OGS or resolve noted issues they may be found as non-responsive and will not be awarded a Contract in relation to this Solicitation.

2.2 NEW YORK STATE BOARD OF ELECTIONS APPROVAL.

The New York State Board of Elections has established an approval process with minimum security standards and redundancy procedures for Electronic Poll Book Systems. Please see Attachment 5, *Board of Elections Application for Approval*, *Functional Requirements* tab, *Security Requirements* tab, and *Challenge Report Requirements* tab for a comprehensive list of all the requirements for E-Poll Book System(s). A Bidder must obtain such approval for any E-Poll Book System(s) submitted and must include proof of approval with their Bid to qualify for Contract award under this Solicitation. A Bidder that has not provided proof of approval from the SBOE for an E-Poll Book System shall be ineligible for Contract award.

2.3 ADMINISTRATIVE REQUIREMENTS.

Bidder must provide required bid content as specified in Section 4.4, *Content of Bid Submission*, and in accordance with the directions/instructions listed within the Bid documents themselves.

2.4 PRICING.

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

SECTION 3 PRICING

3.1 PRICING REQUIREMENTS.

Pricing will be provided at the time of Bid Submission.

New York State's determination of acceptable price lists shall be final. In the event Bidder is awarded a contract, all approved NYS Contract price lists will be posted on the OGS Procurement Services website.

3.2 PROPOSED PRICE LIST.

A price must be provided for each Product listed in Bidder's Attachment 1, *Pricing*. The prices shown on Bidder's proposed price list shall reflect the complete cost of the Products. Bidder must submit an Attachment 1, *Pricing* according to the Instructions tab listed within Attachment 1, *Pricing*.

All NYS Net Prices must include all applicable shipping, handling, insurance, and associated delivery charges (F.O.B. Destination the dock/delivery location of the Authorized User). See Appendix B, *Shipping/Receipt of Product*.

A Part/Stock Number is to be provided for every Product on Attachment 1, *Pricing* and for all future offerings. Each Part/Stock Number must be unique. A Part/Stock Number may be the equal to the Product's Name. Part/Stock Numbers must be included in the "Part/Stock Number" Column for that Product on Attachment 1, *Pricing*. OGS will review Products listed on Attachment 1, *Pricing* as part of the review process.

OGS retains the right to modify the Attachment 1, *Pricing* to create a price list for the resulting Contract. OGS reserves the right in its sole discretion to remove any Products deemed to be out of scope of the Solicitation from Attachment 1, *Pricing* and from the Contract price list at any time during the term of the resulting Contract, upon notice to the Contractor.

Bidder's Attachment 1, *Pricing* shall only contain plain text. Bidder's Attachment 1, *Pricing* shall not include any marketing language or marketing materials. Bidder's Attachment 1, *Pricing* shall not include any additional terms and conditions.

3.2.1 Monetary Values.

All monetary values shall be in U.S. Dollar amounts and will be two decimal points (For Example - \$1.12).

3.2.2 Discount Percentage Values.

All Discount percentage values shall not exceed two decimal places (For Example - 20.25222% shall be rounded to nearest one hundredth 20.25%). A Discount Percentage value cannot be expressed as a range (For Example - 10%-20%, or "varies").

3.2.3 Volume Discounts.

Bidder is encouraged to offer Volume Discounts on their submitted Attachment 1, *Pricing*.

3.2.4 Discounts.

All Discounts shown on the Bidder's Attachment 1, *Pricing* shall not be decreased by the Contractor during the resulting OGS Centralized Contract, Authorized User Agreements, or Purchase Orders.

Discounts shown on the Bidder's Attachment 1, *Pricing* may be increased by the Contractor at any time during the resulting OGS Centralized Contract, Authorized User Agreements, or Purchase Orders.

3.2.5 Price Increases.

Pricing included in Attachment 1, *Pricing* submitted with the Bidder Submission shall remain in effect for a minimum of 1 year from the Bidder Submission due date or the date that OGS received the Bidder Submission. Thereafter, Contractor may request annual price increases to reflect price changes only once every 365 days per Product. Price increases are subject to all Contract update provisions included within Appendix C, *Contract Modification Procedures*.

3.3 PRODUCT CATEGORY SPECIFIC PRICING REQUIREMENTS.

3.3.1 E-Poll Book Systems.

A Bidder must complete the E-Poll Book System tab of Attachment 1, *Pricing*, providing firm prices for each component of the complete E-Poll Book System as submitted for approval by the SBOE. Bidder must provide all required information for each component that is included as part of the E-Poll Book System, including all reference fields related to the required proof of reasonableness of price. A Bidder must identify the E-Poll Book System(s) on this tab, specifying the E-Poll Book System name (including the model and version), included features, Software, Hardware, Maintenance and included accessories (such as batteries, stylus, stands, carrying case).

3.3.2 Related Products.

A Bidder may include any ancillary or related Products, as approved by SBOE, meant to enhance the approved E-Poll Book System as submitted for approval by the SBOE. On the Related Products tab of Attachment 1, *Pricing*, the Bidder shall list any optional upgrade items, ancillary Products, and consumable Products being offered to Authorized Users. Bidder must provide all required information for each related Product, including all reference fields related to the required proof of reasonableness of price.

3.3.3 New York State Counties.

Bidder must specify if on-site Training Services and/or in-person Support Services, as approved by SBOE, are offered statewide or must individually identify the New York State Counties where the Bidder can offer on-site Training Services and/or in-person Support Services on the New York State Counties tab of Attachment 1, *Pricing*. This information will be published for use by CBOE.

3.4 GSA ASSOCIATED DISCOUNTS.

Where the NYS Net Price is based upon an approved GSA supply schedule then New York State shall be entitled to all associated Discounts enumerated in the GSA supply schedule (including, but not limited to Discounts for additional sites and volume Discounts), as well as any other pricing or Discount terms as are expressly enumerated in this NYS Contract or GSA supply schedule, when calculating the NYS Net Price.

Bidder shall submit all associated Discounts enumerated in the GSA supply schedule via Attachment 2, *Administrative Information, Bidder Disclosures* tab.

3.5 GSA INDUSTRIAL FUNDING FEE.

GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee (IFF)". If the Bidder provides GSA pricing they shall identify the amount of the IFF.

Bidder shall submit all associated IFFs via Attachment 2, *Administrative Information, Bidder Disclosures* tab.

3.6 PROMPT PAYMENT DISCOUNTS.

If a Bidder offers a Discount for prompt payment, the Contractor shall include the terms of the Discount on all invoices, the amounts which are due if the Authorized User meets the terms, and the number of days for which the June 2019 [\(Amended July 2019\)](#)

prompt payment Discount offer applies. Bidder will submit their prompt payment Discount percentage and time frame to OGS via Attachment 2, *Administrative Information, Bidder Disclosures* tab.

3.7 REASONABLENESS OF PRICE.

NYS Net Pricing offered in Attachment 1, *Pricing* will be reviewed by OGS to assess reasonableness of price. Bidders are encouraged to offer their best possible pricing. Bidders shall submit one or more forms of acceptable documentation of reasonableness of price set forth below. Subject to OGS' reserved rights in the Solicitation, the Contract pricelists referenced below will be accepted as documentation of reasonableness of price. Bidders should carefully read the instructions to Attachment 1, *Pricing* to be sure that all information requested therein is provided and that proposed pricing is equal to or better than the applicable pricelist referenced below.

To determine reasonableness of price for a Product, OGS will compare the price of the Part/Stock Number listed on Attachment 1, *Pricing* with the price of the same Part/Stock Number (handwritten or otherwise) found on one of the acceptable forms of documentation listed in Section 3.7.1 below. Bidder shall complete Columns N through R using the information from the reasonableness of price documentation for each Part/Stock Number submitted on Attachment 1, *Pricing*. The price of the Part/Stock Number listed on Attachment 1, *Pricing* must be equal to or less than the price of the same Part/Stock Number (handwritten or otherwise) as found on documentation. Any Part/Stock Number not meeting reasonableness of price may be removed from Bidder's Attachment 1, *Pricing*.

OGS reserves the right to conduct additional research and request additional information to assess the reasonableness of price. If reasonableness of price is not demonstrated to OGS' satisfaction, the Bidder Submission may be deemed non-responsive and ineligible for Contract award. Additionally, OGS reserves the right to require the Bidder to lower its offered pricing to that which OGS has determined to be reasonable price and to remove items from Bidder's pricelist for which pricing is determined not to be reasonable.

All required information contained in reasonableness of price documentation should be free of restrictions on confidentiality or claims of confidentiality. OGS will not enter into a Non-Disclosure Agreement (NDA) for Bidders who assert that information contained in their reasonableness of price documentation is confidential.

3.7.1 Acceptable Documentation Of Reasonableness Of Price.

Acceptable documentation of reasonableness of price, in order of preference, is the following:

1. FEDERAL CONTRACT PRICELIST

- a. Contract must have been executed by the Government Entity;
- b. Contract pricelist will be the most currently approved or the pricelist in effect at contract expiration;
- c. If contract has expired, the expiration date of the contract shall be no more than 1 year prior to the Bid Submission due date or the date that OGS received the Bidder Submission; and
- d. Contract and contract pricelist (both in searchable PDF or Excel spreadsheet) will be included with Bidder Submission.

2. OTHER GOVERNMENT ENTITY OR NYS CONTRACT PRICELIST

- a. Contract must have been executed by NYS or the Government Entity;
- b. Contract pricelist will be the most currently approved or the pricelist in effect at contract expiration;
- c. If contract has expired, the expiration date of the Contract shall be no more than 1 year prior to the Bid Submission due date or the date that OGS received the Bidder Submission; and
- d. Contract and contract pricelist (both in searchable PDF or Excel spreadsheet) will be included with Bidder Submission.

3. PAID INVOICES OR RECEIPTS FROM GOVERNMENT ENTITIES

1. Product(s) invoices must be paid (i.e. amounts have been paid and funds have been collected by the Government Entity);
2. Paid invoices are to be provided in searchable PDF;

3. Sufficient information must be included on the invoice to identify the Product(s), including the following:
 - a) Government Entity;
 - b) Description of Product(s);
 - c) Part/Stock Number or unique Product name, or unique detailed description of Product; and
 - d) Net price of each Product;
4. Invoice date must be no more than 12 months prior to the Bid Submission due date or the date that OGS received the Bidder Submission; and
5. All paid invoices will be included with Bidder Submission.

4. NYS CENTRALIZED CONTRACT PRICELIST OR SALES REPORTS

1. Contract must have been executed by NYS;
2. Contract pricelist will be the most currently approved or the pricelist in effect at contract expiration;
3. An itemized Sales Report for an OGS Centralized Contract would be accepted in lieu of the pricelist as well;
4. If contract has expired, the expiration date of the Contract shall be no more than 1 year prior to the Bid Submission due date or the date that OGS received the Bidder Submission;
5. Contract and either the contract pricelist or the Sales Report (both in searchable PDF or Excel spreadsheet) will be included with Bidder Submission.

5. MANUFACTURER SUGGESTED RETAIL PRICE (MSRP) PRICE LIST

1. Only acceptable if proof from options 1 – 4 is not available for the Product(s);
2. MSRP (or equivalent) must be available to Bidder's commercial customers;
3. MSRP pricelist must be submitted as a searchable PDF;
4. OGS retains the right to reject MSRP as justification of price.

3.8 BIDDER'S INSURANCE REQUIREMENTS.

Bidder is to procure at its sole cost and expense and provide electronically with its Bidder Submission all proof of required insurance as detailed in Attachment 3, *Bidder's Insurance Requirements*, and maintain in force at all times during the term of any Contract resulting from this Solicitation, policies of insurance pursuant to the requirements outlined.

3.9 DESIGNATED PERSONNEL / CONTACT INFORMATION.

The Bidder will provide the following Designated Personnel for the duration of the resulting Contract at no charge to the State. Information regarding the Designated Personnel will be set forth in Attachment 2, *Administrative Information, Contractor Information* tab. Duplicated contact information is not recommended but will be accepted.

During the Contract Term and until the end of any related Authorized User Agreements or Purchase Orders, Contractor must notify OGS within five (5) Business Days if its Designated Personnel change and provide interim contact personnel until the position is filled. Contractor may submit a Designated Personnel change electronically via email per the instructions contained in Appendix C, Contract Modification Procedure. The Designated Personnel must have the authority to act on behalf of the Contractor.

3.9.1 Contract Administrator.

The Contract Administrator shall be responsible for the updating and management of the resulting Contract on a timely basis. The Contract Administrator shall serve as the Single Point of Contact (SPOC) for the Authorized User for all issues regarding Products. The Contract Administrator must also serve as the SPOC for any additional Products that may be added to the resulting Contract.

3.9.2 Account Manager.

The Account Manager shall be responsible for the overall relationship with the State during the Contract Term and shall act as the central point of contact.

3.9.3 Sales Manager.

The Sales Manager shall be responsible for the overall relationship with the Authorized Users for matters relating to RFQs or Purchase Orders, or both.

3.9.4 Billing Contact.

The Billing Contact shall be responsible for serving as the single point of contact between the Contractor and the Authorized User for matters related to invoicing, billing and payment.

3.9.5 Emergency Contact.

The Emergency Contact shall be responsible for being available 24 hours a day, 365 days per year for emergencies occurring after business hours or on weekend/holidays.

3.9.6 Toll Free Number.

Contractor shall provide a toll-free telephone number for use by Authorized Users. Contractor shall staff this toll-free number at a minimum from 9:00 AM to 5:00 PM Monday through Friday Eastern Time, excluding New York State or federal holidays. This number shall be provided at no cost to the State.

SECTION 4 BIDDER SUBMISSION

4.1 NOTICE TO POTENTIAL BIDDERS.

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

4.2 NYS VENDOR FILE REGISTRATION.

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

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

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

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

4.3 FORMAT OF BID SUBMISSION (INITIAL RECRUITMENT ONLY).

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

Situations susceptible to disqualification may include:

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

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

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

4.4 CONTENT OF BID SUBMISSION.

A complete Bid consists of three (3) complete copies (Electronic and Original) of each of the following forms and any additional required documents specified in each form, in the format(s) specified:

#	Bid Document	File Format	Electronic (USB)	Original (Hard Copy)
1.	Pages 1, 2, and 3 of the Solicitation, <u>completed and notarized with original ink signatures</u>	PDF	X	X
2.	Proof of SBOE approval of E-Poll Book System configurations, consisting of approval notification from SBOE	PDF	X	
3.	Completed Attachment 1, <i>Pricing</i>	Excel	X	
4.	Documentation of reasonableness of price (per Section 3.7)	PDF	X	
5.	Completed Attachment 2, <i>Bidder Information</i> tab	Excel	X	
6.	Completed Attachment 2, <i>Bidder Agreements</i> tab	Excel	X	
7.	Completed Attachment 2, <i>Bidder Disclosures</i> tab	Excel	X	
8.	Completed Attachment 2, <i>Supply Questions</i> tab	Excel	X	
5-9.	Completed Attachment 2, <i>NYS Required Certifications</i> tab	PDF	X	X
10.	Completed Attachment 2, <i>Bidder Checklist</i> tab	Excel	X	
6-11.	Completed Attachment 2, <i>Encouraging Use of NYS Businesses in Contract Performance</i> -tab	PDF Excel	X	
12.	Completed Attachment 2, <i>Freedom of Information Law (FOIL) Redaction</i> tab	Excel	X	
7-13.	Completed Attachment 2, <i>Bidder Information Use of Service Disabled Veteran-Owned Businesses</i> tab	Excel	X	
8-14.	Completed Attachment 2, <i>Bidder Checklist Contractor Designated Personnel</i> tab	Excel	X	
9-15.	Proof of compliance with Attachment 3, <i>Bidder's Insurance Requirements</i>	PDF	X	
10-1.	Completed ST-220CA, Contractor Certification, notarized with original ink signatures	PDF	X	X

11-1	Completed Form EEO100, Equal Employment Opportunity Staffing Plan	PDF	X	X
12-1	Standard Vendor Responsibility Questionnaire or certification that Questionnaire has been completed online	PDF	X	Not required if submitted online
13-1	Addenda acknowledgements issued for this Solicitation	PDF	X	

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

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

4.5 BID DELIVERY (INITIAL RECRUITMENT ONLY).

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 1.5, *Key Events/Dates*:

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

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

4.6 IMPORTANT BUILDING ACCESS PROCEDURES.

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

4.7 NYS REQUIRED CERTIFICATIONS.

Bidder is required to submit the signed New York State Required Certifications (Attachment 2, *Administrative Information*, *NYS Required Certifications* tab) with its Bid.

4.8 BID DEVIATIONS.

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

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

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

4.9 ELECTRONIC BID OPENING RESULTS.

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

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

4.10 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.

4.11 FIRM OFFER.

Bids must remain an effective offer, firm and irrevocable, for at least 120 calendar days from the date the Bid was received by OGS, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 120 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

4.12 RESERVED RIGHTS.

4.12.1 NYS Reserved Rights.

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

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;

- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State; and
- T. Conduct Contract negotiations with -the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products.
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing.
- W. Reject an E-Poll Book System that has not been approved by the SBOE.
- X. Add templates for use by the Authorized User, such as an RFQ template or a How-to-Use document.

4.12.2 Authorized User Reserved Rights.

The Authorized User shall have the above rights when requesting a quote.

SECTION 5 METHOD OF AWARD

5.1 METHOD OF AWARD.

OGS intends to award statewide Contracts to all qualified, responsive, and responsible Bidder(s) who offer an SBOE approved E-Poll Book System and meet all other minimum requirements listed in Section 2, *Bidder Qualifications* and whose pricing indicates that Products offered shall be delivered at a reasonable price as determined by OGS.

Contracts will be awarded on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation. Bidder Submissions which do not require the submission of clarifying information or documentation from the Bidder will be awarded first. Bidder Submissions which require clarification will be awarded as issues are resolved. It is OGS' intent to award at least three (3) Contracts or twenty percent (20%) of the total Bidder Submissions, whichever is greater, during the initial phase of awards.

5.2 REVIEW OF BIDS.

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

Bids will be reviewed to ensure that the Bidder has provided all required documents and/or Attachments, completed in full, and in original hard copy where requested, as set forth in Section 4.4, *Content of Bid Submission*. Failure by a Bidder to provide properly completed documents and/or attachments may result in their Bid being deemed non-responsive and denied further consideration for Award.

Bidders may be requested by Procurement Services to clarify the contents of their Bids during bid review.

5.3 NOTIFICATION OF AWARD.

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

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

5.4 INCORPORATION.

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

SECTION 6 EVALUATION METHOD

A Bidder responding to this solicitation is advised that each Bid will undergo an initial administrative review for completeness. In order for a Bid to be evaluated, it must include all required documents for a complete Bid (see Section 4.4, *Content of Bid Submission*.)

Evaluation of Bidder Submissions shall consist of two (2) separate parts: (1) Administrative Review and (2) a Financial Review.

6.1 ADMINISTRATIVE REVIEW (PASS/FAIL).

Bidder Submissions will undergo an initial administrative review for completeness. For the evaluation of a Bidder Submission to proceed beyond the initial administrative review, it must be complete. All required information, forms, and signatures must be included. See Section 4, *Bidder Submission* for additional information.

6.2 FINANCIAL REVIEW (PASS/FAIL).

The Bidder Submission shall include a completed Attachment 1, *Pricing* document, with all necessary fields completed in accordance with the instructions. All prices submitted are subject to a reasonableness of price evaluation as outlined within Section 3.7, *Reasonableness of Price*. Prices that are determined by OGS to not be reasonable may result in a failure to meet the financial requirements and therefore an unresponsive Bid.

SECTION 7 TERMS AND CONDITIONS

7.1 CONTRACT TERM AND EXTENSIONS.

The term of each Contract awarded as a result of this Solicitation shall commence upon execution of the ~~of the~~ Contract by OGS as evidence by the date accompanying the OGS Signature line. Unless terminated in accordance with the Contract, the term of each contract, including those awarded during any subsequent periodic recruitment, shall be a maximum of five (5) years commencing on the date the first Contract is executed by OGS.

All OGS Centralized Contracts resulting from this Solicitation shall have a coterminous end date, including those Contracts awarded during the continuous recruitment period or any periodic recruitment period. At the State's option, the Contract may be extended for an additional 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).

7.2 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.

7.3 CONTINUOUS RECRUITMENT.

There will be a Continuous Recruitment period for up to one (1) year following the initial award of Contracts resulting from this Solicitation. OGS may post a notice in the Contract Reporter to commence the Continuous Recruitment process. Under the Continuous Recruitment of Contractors concept (once the initial bidding process is completed and the initial round of Contracts are awarded) a Bidder will be provided with a Solicitation and allowed to complete and submit a full Bid proposal. This proposal will be evaluated under the same terms and conditions as the original Bids. If the Bidder's Submission is accepted, a Contract will be awarded. Once a Contractor has been awarded a Contract, they must remain there under the terms of their initial bid and will not be allowed to submit a new Bid under the Continuous Recruitment of Contractors provision.

For Contracts that are awarded under Continuous Recruitment, the Contract Term will commence upon execution of the Contract by OGS as evidenced by the date accompanying the OGS signature line. Contracts will co-terminate on the then current end date of the Contract, or at the end of any approved extension or renewal period.

After the initial period of Continuous Recruitment, there may be subsequent Periodic Recruitments as OGS deems necessary during the remainder of the Contract Term.

7.4 SUBSEQUENT PERIODIC RECRUITMENT.

During the term of the Contract, the State reserves the right to conduct subsequent future Periodic Recruitments. The purpose of future Periodic Recruitments will be to:

- Add additional Products and/or emerging technologies; and
- Add additional Contractors.

OGS will formally announce when a periodic recruitment Solicitation is issued. Periodic recruitments will be issued at the discretion of the OGS. A Bidder shall be required to submit such Submission documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the periodic recruitment. For Contracts that are awarded under periodic recruitment, the Contract Term will commence upon execution of the Contract by OGS as evidenced by the date accompanying the OGS signature line. Contracts will co-terminate on the then current end date of the Contract, or at the end of any approved extension or renewal period.

7.5 CONFLICT OF TERMS - CONTRACT.

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

- Appendix A, *Standard Clauses for New York State Contracts*;
- Approval package from SBOE, comprising of an approval notification from SBOE, an approved vendor application and SBOE Vendor Assessment Report, and any other SBOE evaluation reports;
- Attachment 5, *Board of Elections Application for Approval*;
- Contract;
- Appendix B, *General Specifications*;
- All other appendices and attachments to the Contract;
- All vendor submissions, artifacts and documents submitted to the SBOE during the application process, including completed application.

7.6 PRICE UPDATES.

Contractor may update their price list as follows:

Commencing with the first anniversary date of the date that the Contractor's Bid was opened by OGS, and annually thereafter, the Contractor may update the pricelist to reflect Contractor price changes, once every 365 days per Product, and the addition/deletion of Products.

Requests for price adjustments and new items shall be submitted 30 days prior to the anniversary date of date that the Contractor's Bid was opened by OGS and annually thereafter. Requests from Contractor(s) for price increases at any other time will not be granted. The Contractor shall provide OGS with one electronic copy of the updated pricing. No Price Updates will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or any other documentation that is required under the resulting contract.

Contractors shall be permitted to reduce their pricing any time during the Contract Term.

The Discount offered on any new Products added to pricelists shall be no lower than the minimum established product category Discount. Contractors shall submit their updated pricelist to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves the right to request copies of existing contracts or price lists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

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

7.6.1 Pricelist Format.

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2016 or lower version) spreadsheet on USB flash drive or via e-mail to the OGS Procurement Services contract administrator. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

- Price increases;
- Price decreases;
- Products being added; and
- Products being deleted.

7.6.2 Contractor's Submission of Contract Updates.

In connection with any Contract pricelist update, OGS reserves the right to:

- Request additional information;
- Reject Contract updates;

- Remove Products from Contracts;
- Remove Products from Contract updates; and
- Request additional Discounts for new or existing Products.

7.6.3 Maximum Price Increase.

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

The following example illustrates the computation of percent change:

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

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

7.6.4 Cover Letters

All Contract pricelist updates shall be accompanied by a cover letter describing the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA Schedule or NASPO Value Point Contract pricing update, to add/delete Products, etc., subject to any applicable caps).

7.7 BEST PRICING OFFER.

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

7.8 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.

7.9 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 or Authorized User Agreement 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).

7.10 PURCHASING CARD ORDERS.

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

7.11 MINIMUM ORDER.

There is no minimum order for this Contract.

7.12 INVOICING AND PAYMENT.

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

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

- Contractor Name;
- Name of Authorized User indicated on the Purchase Order or Authorized User Agreement;
- Product Descriptions;
- Quantity; and
- Invoice Amount.

If Contractor fails to include the above information, then an Authorized User must reject the invoice, and notify the Contractor within one (1) Business Day to resubmit a proper invoice with the necessary information. Contractor must not receive payment until a proper invoice is submitted and processed by an Authorized User.

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

- Contractor Billing Address;
- Contractor Federal ID Number;
- NYS Vendor ID Number;
- Account Number;
- NYS Contract Number;
- NYS Agency Unit ID (if applicable);
- Authorized User's Purchase Order Number or Authorized User Agreement number;
- Order Date;
- Invoice Date;
- Invoice Number;
- Unit Price;
- Unit of Measure; and
- Dates of Service (if applicable).

If Contractor fails to include the above information, then an Authorized User may work with Contractor to obtain the above information or return the invoice to the Contractor for correction. When an Authorized User returns an invoice for a Contractor to correct these items, the Authorized User should notify the Contractor within one (1) Business Day to resubmit a proper invoice with the necessary information. Contractor must reject the invoice and notify the Contractor within one (1) Business Day to resubmit a proper invoice with the necessary information. Contractor may not receive payment until an invoice with the above requested information is submitted and processed by an Authorized User.

Contractors should note that the Authorized Users that use the Statewide Financial System (SFS) will require a unique invoice number. The Statewide Financial System (SFS) requires Authorized Users to enter a unique invoice number on each Contractor's payment voucher. The SFS has automated validations that prohibit Authorized Users from processing and paying duplicate invoices. Contractor may not receive payment until an invoice with a unique invoice number is submitted and processed by an 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>.

7.13 PRODUCT DELIVERY.

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

7.14 CONTRACT ADMINISTRATION.

Contractor shall provide and maintain the following personnel: Contract Administrator, Account Manager, Sales Manager, Billing Contact, and Emergency Contact. Contractor must notify OGS within five Business Days if its designated Contract Administrator, Account Manager, Sales Manager, Billing Contact, or Emergency Contact employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

7.15 NYS FINANCIAL SYSTEM (SFS).

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

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

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

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

7.16 ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY.

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities. The following language is incorporated into any Contract resulting from this Solicitation:

Any web-based information and applications development, or programming delivered pursuant to the Contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that State Agency web-based information and applications are accessible to persons with

disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005. Quality assurance testing may be conducted by the State and the results of such testing, if performed, must be satisfactory to the State before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.

7.17 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.

7.18 N.Y. STATE FINANCE LAW § 139-L.

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

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

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

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, OGS may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

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

7.19 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 3, *Bidder's Insurance Requirements*.

7.20 REPORT OF CONTRACT USAGE.

Contractor shall submit Attachment 4, *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, *no later than 10 days after the close of each calendar quarter*. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the *quarterly* report.

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

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

The report in Attachment 4, *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.

7.21 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NYS CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN.

I. NEW YORK STATE LAW

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

II. GENERAL PROVISIONS

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

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

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

B. Form EEO 100 – Staffing Plan

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

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

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

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

IV. CONTRACT GOALS

A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.
Additionally, following Contract execution, Contractor is encouraged to contact the Division of
Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-
8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

V. FRAUD

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

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

I. New York State Law

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

II. General Provisions

- ~~A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.~~
- ~~B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New~~

~~York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State or local laws.~~

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

~~III. Equal Employment Opportunity (EEO)~~

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

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

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

~~B. Form EEO 100 - Staffing Plan.~~

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

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

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

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

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

~~subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.~~

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

IV. Contract Goals

- ~~A. OGS hereby establishes an overall goal of 0% for MWBE participation, 0% for Minority-Owned Business Enterprises ("MBE") participation and 0% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.~~
- ~~B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR § 140—145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority and Women Owned Businesses Enterprises. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.~~
- ~~C. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).~~

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 an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.~~
- ~~C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.~~

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- ~~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 an 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 shall contact the Designated Contacts listed on page 1 of this document for guidance.~~
- ~~B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) Business Days of receipt.~~
- ~~C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.~~
- ~~D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within 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, copies of such solicitations and any responses thereto.~~
- ~~2. A list of the certified MWBEs appearing in the Empire State Development (“ESD”) MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.~~
- ~~3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.~~
- ~~4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.~~
- ~~5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.~~
- ~~6. Other information deemed relevant to the request.~~

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, 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 – Vendor training”** and **“Contract Compliance Reporting – Vendor Training”** to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>~~

- ~~D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on “**Account Lookup**” to identify the Contractor’s account by company name. Contact information should be reviewed and updated if necessary by choosing “**Change Info**.” It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through “**Request New User**.” When identifying the person responsible, please add “**MWBE Contact**” after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for “**Contact Us & Support**” then “**Technical Support**” on the NYSCS website.~~
- ~~E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month’s activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.~~
- ~~F. It is the Contractor’s responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.~~

~~IX. Breach of Contract and Liquidated Damages~~

- ~~A. Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.~~
- ~~B. Such liquidated damages shall be calculated as an amount equaling the difference between:~~
- ~~1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and~~
 - ~~2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.~~
- ~~C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.~~

~~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>~~

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

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

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

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

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

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

7.227.23 USE OF RECYCLED OR REMANUFACTURED MATERIALS.

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

7.237.24 BULK DELIVERY AND ALTERNATE PACKAGING.

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

7.247.25 SURPLUS/TAKE-BACK/RECYCLING.

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

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

III. The NYS Department of Environmental Conservation ("DEC") Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic Equipment covered by the Act, Contractor agrees to

comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>

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

7.257.26 ENVIRONMENTAL ATTRIBUTE AND NYS EXECUTIVE ORDER NUMBER 4.

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

7.267.27 CONSUMER PRODUCTS CONTAINING MERCURY.

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

7.277.28 DIESEL EMISSION REDUCTION ACT.

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

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

7.287.29 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.

June 2019 ([Amended July 2019](#))

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.

7.297.30 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.

7.307.31 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS.

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

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

7.347.32 EXTENSION OF USE.

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

7.327.33 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.

7.337.34 CENTRALIZED CONTRACT MODIFICATIONS.

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "E-Poll Book Systems Updates," as defined in Appendix C, *Contract Modification Procedure*, are changes related to a SBOE approved E-Poll Book System. All such changes are subject to the prior approval of SBOE, proof of which must be provided by the Contractor along with the Appendix C, Contract Modification Form. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. All modifications proposed by Contractor shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.

E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of Contract Terms*.

7.347.35 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.

7.357.36 TRAFFIC INFRACTIONS.

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

7.367.37 INSTRUCTION MANUALS.

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

7.377.38 EMBEDDED SOFTWARE/FIRMWARE; UPDATES.

Contractor shall provide at no charge all updates to any embedded Software or firmware in the Product offered to customers generally.

7.387.39 TRAVEL.

When provided for in the Authorized User Agreement or Purchase Order, the Authorized Users may reimburse travel expenses. Travel costs are limited to NYS rates approved by the NYS Office of the State Comptroller (OSC). All rules and regulations associated with this travel can be found at <http://osc.state.ny.us/agencies/travel/travel.htm>. In no case will any travel reimbursement be paid for charges that exceeds the per diem rates provided at the above link. All travel will be paid only as specified within the Authorized User Agreement or Purchase Order and must be billed with the associated services on the same invoice with receipts attached.

The Contractor shall receive prior approval from the Authorized User for any travel that occurs during the term of an Authorized User Agreement or Purchase Order. Parking fees and/or parking tickets shall not be paid by an Authorized User.

Unless otherwise specified in writing by the Authorized User, a vehicle will not be provided by Authorized User to the Contractor for travel. Therefore, the Contractor will be responsible for ensuring that the Contractor has access

to an appropriate vehicle (e.g., personal vehicle or rental vehicle) or common carrier with which to carry out any necessary travel.

For the Contractor to obtain reimbursement for the use of a rental vehicle, such use must be justified as the most cost-effective mode of transportation under the circumstances (including consideration of the most effective use of time).

The Contractor is responsible for keeping adequate records to substantiate any claims for travel reimbursement.

All services provided under the resultant Authorized User Agreement or Purchase Order must be performed within CONUS.

7.397.40 POOR PERFORMANCE.

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

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

SECTION 8 E-POLL BOOK SYSTEM SPECIFIC TERMS AND CONDITIONS.

8.1 E-POLL BOOK SYSTEM.

Any E-Poll Book System is subject to SBOE and/or CBOE acceptance. Acceptance shall be in accordance with SBOE or CBOE policy. The SBOE or CBOE may publish such acceptance policy which may include the E-Poll Book System being subject to audit by the SBOE or CBOE. If no acceptance policy has been outlined by the SBOE or CBOE, acceptance shall be in accordance with Appendix B, Section 61, *Product Acceptance*.

For the duration of an Authorized User Agreement or Purchase Order, the E-Poll Book System shall meet and maintain compliance with all functional, security and challenge report requirements as approved by the SBOE and conform to the E-Poll Book System manufacturer's specifications, Documentation, performance standards (including applicable license duration, warranties, guarantees, Service Level Agreements, service commitments, and credits). OGS reserves the right to suspend sales of any E-Poll Book System following a change in approval status of the E-Poll Book System by SBOE. Further, OGS reserves the right to remove any E-Poll Book System from a Contractor's NYS Price List following SBOE's removal of a Contractor's E-Poll Book System from the list of approved systems.

The SBOE or CBOE reserve the right to audit any E-Poll Book System sold under a Contract resulting from this Solicitation at any time to ensure compliance with all functional, security and challenge report requirements as approved by the SBOE.

In accordance with Election Law Section 1-104, subsection 38, the SBOE shall approve and certify that the network or system to which the E-Poll Book System is connected is compliant with the minimum security standards. Authorized Users should be familiar with such minimum security standards as set forth in Attachment 5, *Board of Elections Application for Approval*. Authorized Users shall not implement any E-Poll Book System until approval of compliance has been obtained from the SBOE.

Authorized User will notify Contractor of its approved connectivity strategy prior to implementation and work with Contractor to ensure that minimum security standards are met.

8.2 PROTECTION OF DATA, INFRASTRUCTURE AND SOFTWARE.

Contractor is responsible for providing physical and logical security for all User Data, infrastructure (e.g. Hardware, Network, physical Devices), and Software related to the services the Contractor is providing under the Authorized User Agreement or Purchase Order.

All User Data security provisions agreed to by the Authorized User and Contractor within an Authorized User Agreement or Purchase Order may not be diminished for the duration of the Authorized User Agreement or Purchase Order without prior written agreement by the parties amending the Authorized User Agreement or Purchase Order.

8.3 SECURITY POLICIES AND NOTIFICATIONS.

8.3.1 Security Policies and Procedures.

New York State considers the protection of sensitive and confidential information and business systems to be of the utmost importance. The information collected and maintained by SBOE and CBOEs is protected by a myriad of Federal, State and local laws and regulations. Access to and use of sensitive and confidential information is limited to authorized government employees and legally designated agents, for authorized purposes only.

The Contractor and its personnel shall review and be familiar with all Authorized User's security requirements (e.g. laws, policies, procedures and directives) currently existing or implemented during the term of the Contract. If required within the Authorized User Agreement or Purchase Order, Contractor will provide verification of compliance with Authorized User security requirements.

8.3.2 Security Incidents.

Upon identification and classification of a Security Incident affecting SBOE and/or CBOE User Data in the Contractor's possession, the Contractor shall immediately notify the SBOE and any potentially affected CBOE. The CBOE and/or SBOE will handle the incident in accordance with established SBOE Cybersecurity Incident Notification Reporting procedures.

8.4 DATA BREACH.

8.4.1 Required Contractor Actions.

Unless otherwise provided by law, in the event of a Data Breach, the Contractor shall:

- i. notify the SBOE and any potentially affected CBOE(s), or their designated contact person for SBOE and any potentially affected CBOE, by telephone as soon as possible, but in no event more than 24 hours from the time the Contractor confirms Data Breach.;
- ii. consult with and receive authorization from the SBOE and, where applicable, CBOE as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by the SBOE, CBOE or statute;
- iii. coordinate all communication regarding the Data Breach with the SBOE and, where applicable, CBOE (including possible communications with third parties);
- iv. cooperate with the SBOE and where applicable, CBOE and any Contractor working on behalf of the SBOE and/or CBOE in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches;
- v. take such corrective actions that the Contractor deems necessary to contain the Data Breach. Contractor shall provide Written notice to the SBOE and, where applicable, CBOE as to all such corrective actions taken by the Contractor to remedy the Data Breach. If Contractor is unable to

complete the corrective action within the required timeframe, the remedies provided in Appendix B, Section 52, *Remedies for Breach* shall apply and (i) the SBOE and/or CBOE may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the SBOE and/or CBOE, or until the SBOE or CBOE has completed a new procurement for a replacement service System; (ii) and the Contractor will be responsible for the reasonable cost of these services during this period; and

- vi. provide Written documentation to the SBOE and, where applicable, CBOE, as to all such corrective actions taken by the Contractor to remedy the cause of the Data Breach and mitigate against a repeat of the Data Breach.

Nothing herein shall in any way (a) impair the authority of the OAG to bring an action against Contractor to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Contractor's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

8.5 DATA OWNERSHIP, ACCESS AND LOCATION.

8.5.1 Data Ownership.

The Authorized User shall own all right, title and interest in User Data.

8.5.2 Authorized User Access to Data.

The Authorized User shall have access to its User Data at all times, through the term of the Authorized User Agreement or Purchase Order, plus the applicable period as specified in Section 8.9, *Expiration, Termination or Suspension of Services*.

The Authorized User shall have the ability to import or export User Data in piecemeal or in its entirety at the Authorized User's discretion at no charge to the Authorized User. This includes the ability for the Authorized User to import or export User Data to/from other Contractors. This can, if specified within the Authorized User Agreement or Purchase Order, be carried out by providing application programmable interface or other such efficient electronic tools.

8.5.3 Contractor Access to Data.

The Contractor shall not copy or transfer User Data unless authorized by the Authorized User. In such an event the User Data shall be copied and/or transferred in accordance with the provisions of this Section. Contractor shall not access any User Data for any purpose other than fulfilling the service. Contractor is prohibited from data mining, cross tabulating, monitoring Authorized User's User Data usage and/or access, or performing any other analytics other than those required within the Authorized User Agreement or Purchase Order. At no time shall any User Data or processes (e.g. workflow, applications, etc.), which either are owned or used by the Authorized User be copied, disclosed, or retained by the Contractor or any party related to the Contractor. Contractors are allowed to perform industry standard back-ups of User Data. Documentation of back-up must be provided to the Authorized User upon request. Contractor must comply with any and all security requirements within the Authorized User Agreement or Purchase Order.

8.5.4 Source Code Escrow for Licensed Product.

At the request of the Authorized User, Contractor shall either: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the Authorized User, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the Authorized User; or (iii) will certify to the Authorized User that the Product manufacturer/developer has named the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named

and identified to the Authorized User and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the Authorized User in writing. Contractor shall identify the escrow agent upon commencement of the Contract Term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause.

The Authorized User may release the Source Code to Licensees under any Contract resulting from this Solicitation or any Authorized User Agreement or Purchase Order who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

8.6 TRANSFERRING OF DATA.

8.6.1 General.

Except as required for reliability, performance, security, or availability of the services, the Contractor will not transfer User Data, unless directed to do so in Writing by the Authorized User. All data shall remain in CONUS.

At the request of the Authorized User, the Contractor will provide the services required to transfer User Data from existing databases to physical storage Devices, to facilitate movement of large volumes of User Data.

8.6.2 Transfer of Data at End of Contract and/or Authorized User Agreement/Purchase Order Term.

At the end of the Contract and/or Authorized User Agreement/Purchase Order term, Contractor may be required to facilitate transfer User Data to a new Contractor. This transfer must be carried out as specified by the Authorized User in the Authorized User Agreement or Purchase Order.

8.6.3 Transfer of Data; Charges.

Contractor must include pricing for the transfer of User Data in the Authorized User Agreement or Purchase Order.

8.6.4 Transfer of Data; Contract Breach or Termination.

Notwithstanding Section 8.8.3, in the case of Contract breach or termination for cause of the Contract, all expenses for the transfer of User Data shall be the responsibility of the Contractor.

8.6.5 Transfer Format.

Transfer may include, but are not limited to, conversion of all User Data into or from an industry standard format or providing application programmable interface.

8.7 REQUESTS FOR DATA BY THIRD PARTIES.

Unless prohibited by law, Contractor shall notify the Authorized User in Writing within 24 hours of any request for User Data (including requestor, nature of User Data requested and timeframe of response) by a person or entity other than the Authorized User, and the Contractor shall secure Written acknowledgement of such notification from the Authorized User before responding to the request for User Data.

Unless compelled by law, the Contractor shall not release User Data without the Authorized User's prior Written approval.

8.8 EXPIRATION, TERMINATION OR SUSPENSION OF SERVICES.

8.8.1 Return of Data.

The Contractor shall return User Data in a format agreed upon within the Authorized User Agreement or Purchase Order or as agreed to with the Authorized User. The Contractor must certify all User Data has been removed from its System and removed from backups within timeframes established in the Authorized User Agreement or Purchase Order or as agreed to with the Authorized User.

8.8.2 Suspension of Services.

During any period of suspension of service, the Authorized User shall have full access to all User Data at no charge. This can, if specified within the Authorized User Agreement or Purchase Order, be carried out by providing an application programmable interface or other such efficient electronic tools. The Contractor shall not take any action to erase and/or withhold any User Data, except as directed by the Authorized User.

8.8.3 Expiration or Termination of Services.

Upon expiration or termination of an Authorized User Agreement or Purchase Order, the Authorized User shall have full access to all User Data for a period of 60 calendar days. Unless noted in the original Authorized User Agreement or Purchase Order, this period will be covered at no charge. This can, if specified within the Authorized User Agreement or Purchase Order, be carried out by providing application programmable interface or other such efficient electronic tools. During this period, the Contractor shall not take any action to erase and/or withhold any User Data, except as directed by the Authorized User.

8.9 ACCESS TO SECURITY LOGS AND REPORTS.

Upon request, the Contractor shall provide access to security logs and reports to the State or Authorized User in a format as specified in the Authorized User Agreement or Purchase Order.

8.10 MODIFICATION TO APPROVED E-POLL BOOK SYSTEM.

Changes of any size or scope to an approved E-Poll Book System require SBOE approval prior to implementation. Proposed changes must first be provided to SBOE in the manner prescribed by the SBOE. Following approval of the changes, changes to any E-Poll Book System included on the Contractor's NYS Price List must be submitted to OGS via Appendix C, Contract Modification Procedures.

8.11 APPLICATION PROGRAM INTERFACE (API) OR SELF-SERVICE ELECTRONIC PORTAL.

Except as otherwise provided for in this Section 8, Contractor may offer an API or self-service electronic portal for such purposes as allowing the Authorized User to access security logs, reports, and audit information, to import or export User Data, and for such other purposes as agreed to in the Authorized User Agreement or Purchase Order.