



**Office of General Services
Procurement Services**

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Solicitation (REVISED 8/13/19)

**BIDS SHALL BE SENT TO THE ADDRESS LISTED IN SECTION 4.7 ONLY
(E-Mail or Facsimile Bid Submissions Are NOT Acceptable)**

BID OPENING DATE: Tuesday, September 10, 2019 TIME: 11:00 A.M. EST		TITLE: Group 38232 Hazardous Incident Response Equipment (HIRE) (Statewide) Classification Codes: 41, 42, 43, 46, 85, 92		
SOLICITATION NUMBER: 23173		SPECIFICATION REFERENCE: As Incorporated Herein and within the DHS AEL		
CONTRACT PERIOD: Upon Execution of Contract for a Period of Five Years				
DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.				
PRIMARY DESIGNATED CONTACTS:				
Bradford Deforge Contract Management Specialist 1 Telephone No. (518) 473-3876 E-mail address: bradford.deforge@ogs.ny.gov		Cheri McCullough Contract Management Specialist 2 Telephone No. (518) 402-5552 E-mail address: cheri.mccullough@ogs.ny.gov		
For MWBE Questions Only		For SDVOB Questions Only		
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For INSURANCE Questions Only				
Email Address: ogs.sm.insrev@ogs.ny.gov				
Leighann Brown		Phone No. (518) 457-6595		
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) <i>(check all that apply)</i>				
<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business	
If you are not bidding, place an "x" in the box and return this page only.				
<input type="checkbox"/> 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: _____	

RETURN THIS PAGE AS PART OF BID

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 180 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 Full Bidder Entity Name

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

Print Name of Signatory

Print Title of Signatory

Date

RETURN THIS PAGE AS PART OF BID

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SECTION 1 INTRODUCTION

1.1 Overview

This Solicitation is being issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Hazardous Incident Response Equipment. OGS is a New York State Agency authorized by law to establish Centralized Contracts for use by NYS Agencies and other Authorized Users, as that term is defined by State Finance Law Section 163(1)(k). The purpose of this Solicitation is to award multiple Contracts for Hazardous Incident Response Equipment (HIRE) as per the Department of Homeland Security Authorized Equipment List (DHS AEL) to responsive and responsible Bidders able to meet the terms and conditions of this Solicitation and the qualifications and requirements herein. The Contracts awarded as a result of this Solicitation will be for use by New York State Agencies and other Authorized Users (see Section 6.36 – *Non-State Agencies Participation in Centralized Contracts*). Accordingly, references to the State and its Agencies as Authorized Users under this Solicitation and the ensuing Contract(s) shall encompass all such entities within the definition of “Authorized User” set forth in Appendix B – *General Specifications*.

This Solicitation includes NYS Certified Minority-and Women-Owned Business (MWBE) Goals in five (5) DHS AEL Categories, and New York State Certified Service-Disabled Veteran Owned Business (SDVOB) Goals in three (3) DHS AEL Categories. See Sections 6.23 and 6.24.

This Solicitation outlines the terms and conditions and all applicable information required for submitting a Bid for the Products described herein. Bidders should pay strict attention to the Bid submission date and time, as noted in Section 1.4 – *Key Events/Dates*, to prevent disqualification. To ensure compliance with Bid requirements and prevent possible disqualification, Bidders should follow the format and instructions described in Section 4.4 – *Format and Content of Bid Submission*.

Bidders are strongly encouraged to read the language of this Solicitation thoroughly, and to precisely follow instructions included in the Solicitation and all Attachments.

1.2 Scope

It is the intent of this Solicitation and subsequent Award to provide Authorized Users with a means of acquiring various types of Hazardous Incident Response Equipment (HIRE) consistent with the Department of Homeland Security Authorized Equipment List (DHS AEL). The Authorized Equipment List (AEL) is a list of approved equipment types allowed under FEMA’s preparedness grant programs. The list consists of 21 equipment Categories, which are divided into Categories, Sub-Categories and then individual equipment items (Products). For purposes of this Solicitation, OGS has limited and/or excluded Categories, Sub-Categories and/or items within the DHS AEL. Bidders are to refer to Attachment 13 - *Department of Homeland Security Authorized Equipment List (DHS AEL)* for additional details regarding limitations and exclusions.

The following twenty-one (21) Categories are requested as follows:

1. Personal Protective Equipment (PPE)
2. Explosive Device Mitigation and Remediation Equipment
3. CBRNE Operational and Search and Rescue Equipment (Unmanned Aircraft/Drones Excluded)
4. Information Technology (Equipment Only (Example: Simulators such as Portable Meteorological Devices))
5. ~~Cyber Security Enhancement Equipment~~ (Entire Category Excluded)
6. Interoperable Communications Equipment (Limited to Satellite Phones/Communication & Accessories)
7. Detection Equipment
8. Decontamination Equipment
9. Medical Equipment (Pharmaceuticals Excluded)
10. Power Equipment
11. CBRNE Reference Materials (Databases Excluded)
12. CBRNE Incident Response Vehicles (Limited to All-Terrain Vehicles, 2-Wheeled Transports, Robot Trailers, Water Storage, Water Trailers, Foam Trailers, Storage Trailers, Pumpers & Accessories Only)
13. ~~Terrorism Incident Prevention Equipment~~ (Entire Category Excluded)
14. Physical Security Enhancement Equipment (Limited to Blast Resistant Receptacles/Systems, Jersey Walls/Barriers Only)

15. Inspection and Screening Systems
16. Animal and Plants (Equipment Only; Pharmaceuticals Excluded)
17. CBRNE Prevention and Response Watercraft (Limited to Fiberglass and Rigid-Hulled Inflatable Boats and their Parts and Accessories Only)
18. CBRNE Aviation Equipment (Limited to Night Vision Equipment, Forward Looking Infrared Equipment (FLIR), and Aircraft Mounted CBRNE Detection Equipment Only)
19. CBRNE Logistical Support Equipment
20. Intervention Equipment
21. Other Authorized Equipment (Maintenance, Calibration, & Training for Equipment Bid Only)

Exclusions/Limitations:

1. Category 5 and Category 13 are excluded from this Solicitation in their entirety.
2. Categories 3, 4, 5, 6, 9, 11, 12, 13, 14, 16, 17, 18 and 21 include exclusions and/or limitations.
3. Firearms; Ammunition; Unmanned Aircraft/Drones; Manned Aircraft/Helicopters and Planes; Motor Vehicles (including, but not limited to, Armored Vehicles and Command Centers) are excluded from the scope of this Solicitation.
4. Maintenance, Calibration, and Training are limited to a Product offering only.
5. Installation services are excluded from the scope of this Solicitation. (Authorized Users may purchase Products requiring installation from any resultant Contract; however, any installation shall be procured separately following the Authorized User's regular procurement procedures and considering any Public Works requirements. For questions about whether a proposed installation constitutes public work, Bidders should contact their local New York State Department of Labor's Bureau of Public Work district office.)

Products submitted must be within the scope of a specific DHS AEL Category (1-21), as listed above (limitations and/or exclusions apply). Each Category contains Sub-Categories. All Categories and Sub-Categories are listed within Attachment 13 - *Department of Homeland Security Authorized Equipment List (DHS AEL)* along with exclusions and limitations. Bidders will select the Category(s) each Product bid corresponds to within Attachment 1 – *Pricing* (see Section 6.3 - *Bid Pricing Information*). Bidders should pay strict attention to Category, Sub-Category and/or Product limitations and/or exclusions. Products submitted that fall within an excluded Category and/or Sub-Category will not be accepted. Bidders may be required to provide additional Product information to show that a Product is within the scope of the Solicitation. OGS reserves the right to exclude and/or remove, at any time, any Products deemed to be out of scope of this Solicitation.

In addition to Products included within the DHS AEL, which are eligible for federal funding, Bidders may propose Products not meeting federal funding requirements provided such Products are within scope of the Solicitation. For Personal Protective Equipment (PPE), and Detection Equipment, Section 3 - *Standards and Guidelines* details strict standards for equipment purchased with Federal Homeland Security grant funds.

A Bidder shall indicate in Attachment 14 - *Category Matrix* the DHS AEL Category(s,) (1-21), offered within its Bid by marking an 'X' in each appropriate DHS AEL Category and submit the Attachment with its Bid pursuant to Section 4.4 – *Format and Content of Bid Submission*. Should there be a discrepancy between a Bidders Attachment 1 – *Pricing* and Attachment 14 – *Category Matrix*, Attachment 1 – *Pricing* will take precedence.

1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$30,000,000 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B - *Estimated/Specific Quantity Contracts and Participation in Centralized Contracts*.

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

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

Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

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

1.4 Key Events/Dates

EVENT	DATE	TIME
Solicitation Release Date	Wednesday, June 26, 2019	N/A
Deadline for Submission of Intent to Bid Form	Tuesday, July 16, 2019	11:00 AM ET
Closing Date for Submitting Questions to OGS	Tuesday, July 16, 2019	5:00 PM ET
OGS Response to Vendor Questions	Tuesday, August 13, 2019 (approximate)	N/A
Bid Submission Deadline and Bid Opening	Tuesday, September 10, 2019	11:00 AM ET
Anticipated Award Date	Friday, May 29, 2020	N/A

1.5 Intent to Bid

Bidders are encouraged, though not required, to submit a completed Attachment 9 - *Intent to Bid Form* to OGS.sm.PSGHIRE_Renewals@ogs.ny.gov by the due date listed in Section 1.4 - *Key Events/Dates*. Submission of the form allows OGS to begin a Vendor Responsibility review in advance of receipt of Bids. It also allows OGS to gauge prospective Bidder interest in participating in this Solicitation. Submission of the Intent to Bid form is not a requirement to submit a Bid, and failure to submit an Intent to Bid Form will not result in Bidder disqualification. Furthermore, submission of an Intent to Bid Form does not obligate the prospective Bidder to submit a Bid.

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 documents and/or information may result in a Bidder’s Bid being deemed non-responsive to the Solicitation.

1.7 Bidder Questions

All questions concerning this Solicitation must be addressed to the following Procurement Services Designated Contact(s):

PRIMARY CONTACT	SECONDARY CONTACT
Bradford Deforge, Contract Management Specialist 1	Cheri McCullough, Contract Management Specialist 2
NYS Office of General Services	NYS Office of General Services
Corning Tower – 38 th Floor	Corning Tower – 38 th Floor
Empire State Plaza	Empire State Plaza
Albany, NY 12242	Albany, NY 12242
E-mail: bradford.deforge@ogs.ny.gov	E-mail: cheri.mccullough@ogs.ny.gov

All questions regarding this Solicitation should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be submitted, via e-mail, to: OGS.sm.PSGHIRE_Renewals@ogs.ny.gov by the date and time indicated in Section 1.4 – *Key Events/Dates*. Questions submitted after the deadline indicated may not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document, which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter (“NYSCR”). Your company/Bidder must select the “opt-in” option within the Contract Reporter ad to receive notification updates of this Solicitation.

If a 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 *Bidder Questions* period so that they may be given due consideration prior to the submission of Bids. See Section 4.11 - *Bid Deviations* for additional information.

Bidders are advised that OGS will not entertain any deviations to Appendix A. Deviations to Appendix B are strongly discouraged. OGS will also not entertain any exceptions to the Solicitation that are of a material or substantive nature.

1.8 MWBE & SDVOB Interest in Partnering with Bidders

If a New York State certified MWBE or SDVOB would like to indicate its interest in working with participating Bidders, please send an e-mail entitled “*Solicitation 23173 MWBE or SDVOB INTEREST_COMPANY NAME*” to OGS.sm.PSGHIRE_Renewals@ogs.ny.gov on or before Tuesday, July 16, 2019, 11:00 AM ET. The e-mail should include:

1. Company Name;
2. Contact Name and Contact Information such as Phone Number, Mailing Address and E-Mail Address;
3. Brief description of the company and the Products and/or services that the company offers that are related to this Solicitation (for example “Company ABC manufactures pencils”);
4. The NYS Certification Type (Minority and/or Women-Owned or SDVOB); and
5. Include the locations in NYS where the company provides the commodities and/or services.

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

1.9 Summary of Policy and Prohibitions on Procurement Lobbying

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

1.10 Definitions

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

“**Authorized User**” shall be used as is described in Appendix B.

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

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

“**CBRNE**” shall refer to Chemical, Biological, Radiological, Nuclear, and Explosives.

“**DHS**” shall refer to the Department of Homeland Security.

“**DHS AEL**” shall refer to the Department of Homeland Security Authorized Equipment List.

“**Manufacturer**” shall refer to an organization or Business Entity that creates, makes, manipulates, produces, processes, or fabricates Equipment or something of value by changing a raw material or commodity from one form to another or creates a new product or commodity.

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

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

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

“**OGS**” shall refer to the New York State Office of General Services.

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

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

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

“**Manufacturer’s Price List**” shall refer to the price at which a Manufacturer or Distributor recommends their Products be sold commercially, either nationally or regionally. This definition applies even if the Manufacturer or Distributor names this recommended pricing differently.

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

“**State**” shall have the meaning set forth in section 2(gg) of Appendix B.

“**Volume Discount**” shall refer to the discount offered for purchases of Products above quantity one, and as per the Contractor’s specified amounts in Attachment 10 – *Contractor Information*.

1.11 Appendix A

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this Solicitation as if set forth at length herein. Please retain this document for future reference and do not return to OGS as part of the Bid submission.

1.12 Appendix B

Appendix B, General Specifications, dated April 2016, attached hereto, is hereby expressly made a part of this Solicitation as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. Please retain this document for future reference and do not return to OGS as part of the Bid submission.

1.13 Appendix C

Appendix C, Contract Modification Procedure, attached hereto, is hereby expressly made a part of this Solicitation as fully as if set forth at length herein. Please retain this document for future reference/use and do not return to OGS as part of the Bid submission.

1.14 Attachments

Attachments 1-16, listed on page 7 and attached hereto, are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

1.15 Conflict of Terms

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

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Solicitation;
3. Appendix B, General Specifications;
4. All other Appendices and Attachments to the Solicitation; and
5. The Bidder’s Bid.

SECTION 2 BIDDER QUALIFICATIONS AND PERFORMANCE REQUIREMENTS

2.1 Qualifications

Bidder is advised that the State’s intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Any Bid not meeting these requirements may be deemed non-responsive and denied further consideration for award. Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can meet the performance requirements of the resulting Contract. Procurement Services retains the right to request any additional information pertaining to the Bidder’s ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work. A Bidder shall meet the following qualifications:

2.1.1 Bidder Qualifications

- A. A Bidder must be either:
 1. An established Manufacturer of the Products bid, or
 2. An established Authorized Reseller of an established Manufacturer of the Products bid.
- B. Any Authorized Reseller of a Manufacturer hereby guarantees that:
 1. It is an Authorized Reseller of the Manufacturer, and
 2. The Manufacturer has agreed to supply such Authorized Reseller with all quantities of Product required to fulfill its obligations under any resultant Contract with the State, and

3. The Authorized Reseller will provide an Attachment 15 - *Manufacturer's Certificate*, acknowledging this level of support, with the Bid. If such Manufacturer's Certificate is not submitted with the Bid, Bidder must provide upon request by OGS.
- C. A Bidder must have maintained an organization capable of providing the Products described in this Solicitation, in continuous operation, for a minimum of three (3) years immediately prior to the Bid opening date in Section 1.4 - *Key Events/Dates*. By the Bid opening date, such organization must have adequate inventories of the Products offered and must be capable of processing and shipping large numbers of orders to various destinations Statewide and potentially Nationwide; See Section 6.37 - *Extension of Use*. The Commissioner may require a certificate from the Bidder showing the number of years the Bidder has been active in selling the Products offered and the size and location of the inventories regularly maintained; Bidder must provide such certificate to OGS upon request.
- D. A Bidder must currently hold at least one Government Entity Contract (GSA contract, State contract, Local Governmental Entity contract, BOCES contract, Governmental Cooperative contract, etc.) for Product(s) included in Section 1.2 - *Scope*, at the time of the Bid opening date in Section 1.4 - *Key Events/Dates*.

Proof of Government Entity Contract shall be a copy of a current active contract showing contract number and description, contract term dates, copy of current contract price list and/or discount structure, contact name, telephone number and e-mail address of the contracting entities' contract administrator. Bidder shall submit such proof of currently held Government Entity contract with the Bid. If proof is not submitted with the Bid, Bidder must provide upon request by OGS.

- E. A Bidder must have past Government Entity sales revenue for Products within the scope of this Solicitation (see Section 1.2 – *Scope*). Past sales revenue must be in excess of \$300,000.00 annually, for a minimum of three (3) consecutive years immediately prior to the Bid opening date, to one or more Government Entities (GSA, State, Local, BOCES, Governmental Cooperative, etc.) and/or those Authorized Users as defined herein who are eligible to use State contracts (Political Subdivisions, Schools, Not for Profits, etc.). Only direct sales by the Bidder, where the Bidder is/was a contract holder, or sales via use of an Authorized Reseller(s) under the contract to satisfy contract orders, where the Bidder is/was the contract holder, will be accepted.

A Bidder must submit required proof of past sales revenue in Excel format, using Attachment 16 – *Proof of Past Sales*. Bidder shall provide annual sales reported under a current or previous Government Entity contract(s); (GSA contract(s), State contract, Local Governmental Entity contract(s), BOCES contract(s), Governmental Cooperative contract(s), etc.). Proof of past sales shall contain, at a minimum, the Contract Name and Number the sale(s) were made under, name of the Government Entity the Product(s) was sold to directly, or was shipped to via the use of Authorized Reseller(s) under the contract, Product identifying number(s) and description, date(s) of sale, list price(s), discount percentage(s), and net sale amount(s). Bidder shall provide additional information, as deemed necessary by OGS, upon request.

2.2 Performance Requirements

2.2.1 Delivery

- A. Prices bid shall include all customs, duties, and charges and be net, F.O.B. destination any point within New York State (statewide) as designated by the ordering agency, including dock delivery and tailgate of load, which means bringing the truck to the loading dock or loading area and bringing the load to the tailgate of the truck for agency personnel to remove the load without entering the truck.
- B. Delivery shall be expressed in number of calendar days required to make delivery after receipt of a Purchase Order. Product is required as soon as possible, and guaranteed delivery may be considered in making award. Delivery shall be made in accordance with instructions from the Authorized User included on the Purchase Order. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the Authorized User and, if applicable, from OGS Procurement Services.
- C. The Bidder may allow multiple delivery points within New York State, from the same Authorized User, at the Authorized User's discretion, at the time the order is placed, and/or prior to delivery. Additional delivery fees may not be charged.
- D. Upon agreement between the Authorized User and Contractor, delivery locations may be expanded per the "Extension of Use" clause (see Section 6.37). Deliveries made outside of New York State are at the discretion of the Bidder/Contractor. Additional fees for shipping may be charged for deliveries to other participating states

per the Extension of Use Section. Additional shipping charges will be actual shipping charges, F.O.B destination, pre-paid and added only.

2.2.2 Authorized Resellers

- A. Bidders may utilize approved Authorized Resellers to participate as alternate distribution sources under the resulting contract. Authorized Resellers may be added at any time during the Contract term, or extension, provided that the Awarded Bidder complies with all of the Reseller Requirements set forth below. There are no set minimum or maximum number of Authorized Resellers who may be used; however, such participation is subject to the following conditions:
- B. “Reseller” shall refer to alternate distribution sources (distributors or dealers) for a manufacturer that are authorized and designated by said manufacturer, subject to approval by New York State.
- C. Designation of Authorized Reseller(s): Bidder/Contractor shall specify within Attachment 12 – *Contractor Reseller Distributor Information Sheet*, whether orders must be placed directly with Bidder/Contractor or may be placed directly with Authorized Reseller(s). If Authorized Reseller(s) are designated to fulfill orders under this Contract, issue invoices, and receive payment, and do not possess a New York State Vendor ID number, the Bidder/Contractor must provide OGS, in advance, with an Office of the State Comptroller (OSC) Substitute W-9 form http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf which should be completed by each of the Authorized Reseller(s) and submitted to the Office of General Services. OGS will initiate the vendor registration process for all Bidders/Contractors recommended for Contract Award and their Authorized Reseller(s). Once the process is initiated, such registrants will receive an e-mail from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application. All Authorized Reseller(s) must be approved in advance by OGS.
- D. If the Bidder/Contractor allows Authorized Reseller(s) to participate in the Contract, requests to add or delete Authorized Reseller(s) or to modify their information, this request must be submitted to OGS by the Contractor for prior approval. Contractors must utilize Attachment 12 – *Contractor Reseller Distributor Information Sheet* for each submission. OGS reserves the right to give first consideration to substantially complete submissions, as well as to deny revisions to a Contractor’s Authorized Reseller List whereas the Contractor is delinquent regarding administrative requirements, including, but not limited to, the submission of Attachment 8 - *Report of Contract Usage*, and/or Proof of Insurance requirements.
- E. Bidders should submit with their Bid a listing of Authorized Reseller(s) chosen to fulfill orders, and/or accept payments under this Solicitation and subsequent Award, using Attachment 12 – *Contractor Reseller Distributor Information Sheet*, and note whether the Authorized Reseller is a Minority or Women Owned Business Enterprise (MWBE), a Service-Disabled Veteran Owned Business (SDVOB), or a New York State Small Business (SB). Should the Bidder allow the Authorized Reseller to take orders, ship direct, or accept payments, they must note such within the Attachment. All Authorized Resellers chosen to fulfill orders to include, though not limited to, issuing invoices and receiving payments, must be authorized by OGS.
- F. Resellers must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State’s sole discretion, at any time. Contractor shall have the right to qualify Resellers and their participation under this Contract by Product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria (“qualifying criteria”), provided that:
 - 1. such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor’s established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
 - 2. all general Categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
 - 3. those qualifying criteria met by the Reseller must be identified in Reseller designations Attachment 12 – *Contractor Reseller Distributor Information Sheet* at the time that Reseller approval is requested; and,
 - 4. immediate notice is provided to OGS in the event that a change in Reseller’s status occurs during the Contract term.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order.

- G. When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 12 – *Contractor Reseller Distributor Information Sheet*. Contractor shall also specify whether orders must be placed directly with Contractor or may be placed directly with designated Resellers.
- H. Contractor shall be fully liable for a Reseller's performance and compliance with all Contract terms and conditions. Product purchased through a Reseller must be reported by Contractor in the required bi-annual sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor's sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User's Contract activity with the Reseller.
- I. Product ordered directly through Resellers shall be limited to Products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

2.2.3 Price Lists and Catalogs

Contractor shall be required to furnish, without charge, to Authorized Users that request them, Catalog(s) and Price Lists identical to those accepted with their Bid, including any changes (additions, deletions, etc.) pursuant to the Contract. Catalogs and Price Lists provided must reflect all Products excluded from the resultant Contract, either through the omission of those portions or by obvious indications, within the catalogs and Price Lists. All offerings within the Catalog must match the Product Numbers, and Product Descriptions of the offerings listed within the Contract, and clearly indicate whether the pricing is List Price, or Net Contract Pricing. List Pricing or Net Contract Pricing indicated within the Catalog must match that listed under the Contract. Catalogs and Price Lists may be furnished in either hard-copy or electronic format. If available in both formats, they shall be furnished in the format preferred by the requesting Authorized User. In the case of discrepancies regarding Products and/or pricing between the Catalog or Price List furnished by the Contractor to the Authorized User, in either electronic or hard copy formats, the Products and pricing approved by OGS, in effect and posted on the OGS website, per the Contract, shall always take precedence. Upon request, the Contractor shall assist Authorized Users in the use of Catalogs and Price Lists.

2.2.4 Discrepancies

The Contractor shall resolve all order and invoice discrepancies within five (5) Business Days from notification.

2.2.5 Product Returns, Problem Product

Products returned because of quality problems, duplicated shipments, outdated Product, etc., shall be picked up by the contractor within five (5) Business Days after notification with no restocking charge and shall be replaced with specified Products or the agency shall be credited/refunded for the full purchase price. Any additional shipping charges that may apply will be paid by the Contractor.

2.2.6 Product Returns, Agency Error

Standard stock Products ordered in error by an Authorized User must be returned for credit within 15 days of receipt. Product must be in resalable condition (original container, unused). There shall be no restocking fee if returned Product(s) are resalable.

2.2.7 Substitutions

Unauthorized substitutions are not acceptable. Substitution of one catalog Product for another catalog Product shall require the approval of the ordering Authorized User.

2.2.8 Emergency Service Number and Emergency Contact Information

The Contractor will provide a toll-free Product emergency service, available seven (7) days a week, twenty-four (24) hours a day. Given the nature of the Products, an emergency contact including name, office phone number, cell phone number, and email must be provided.

Failure to meet any of the above qualifications within Section 2 – *Bidder Qualifications and Performance Requirements*, in whole or in part, may result in a rejection of that Bidder's Bid as non-responsive. The Commissioner reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract.

OGS must determine that the Bidder meets all of the above requirements in order for the Bidder to be found responsive, as that term is defined in State Finance Law §163(1)(d). OGS reserves the right to verify all information provided by Bidder.

SECTION 3 STANDARDS AND GUIDELINES

3.1 Standards

Bidders submitting Products under Categories 1 and 7, for Personal Protective Equipment (PPE) and Detection Equipment, must ensure the Products meet strict standards. The following standards adopted by the US Department of Homeland Security's Science and Technology Directorate apply to Personal Protective Equipment (PPE) and Detection Equipment. NYS Department of Homeland Security and Emergency Services (NYS DHSES) grant guidance requires that any equipment purchased with Federal Homeland Security grant funds must meet any applicable standard listed on the DHS AEL. The Authorized Equipment List (AEL) is a list of approved equipment types allowed under FEMA's preparedness grant programs.

3.1.1 Standards for Personal Protective Equipment for First Responders

The following standards adopted by the US Department of Homeland Security's Science and Technology Directorate apply to Personal Protective Equipment (PPE) and Detection Equipment. Products purchased by end users that have been represented as meeting Federal ODP guidelines for CBRNE, NFPA, NIOSH, or ANSI standards, but that do not meet those standards, may be returned at Contractor's expense for replacement or refund. For radiation detection equipment that has been tested by the manufacturer but has not completed third party testing for ANSI N 42.33, 42.34, 42.35- Evaluation and performance of Radiation Detection Portal Monitors for Use in homeland security, and at a later date does not pass the third party tests, vendors/manufacturers must refund, retrofit or replace equipment that has failed to meet requirements of the Federal ODP standards at no additional cost to the end user.

The following are provided for Bidder's information and use in preparing and submitting a Bid in response to this Solicitation:

- A. **ISEA:** <https://safetyequipment.org/wp-content/uploads/2016/02/FAQ-HVSA-2016June-1.pdf>
ANSI/ISEA 107-2015 details the performance requirements for materials used in the construction of HVSA, specifically fluorescent background material and retroreflective or combined-performance material. The standard specifies the amount of material required for various types and classes of HVSA and test procedures for determining performance of the material. The standard also includes requirements for garment configuration and construction, labeling and use instruction, along with suggested use scenarios and examples of garment design.
- B. **NIOSH:** [Chemical, Biological, Radiological and Nuclear \(CBRN\) Standard for Open-Circuit Self-Contained Breathing Apparatus](#)
This standard establishes performance and design requirements to certify Self-Contained Breathing Apparatus (SCBA) for use in chemical, biological, radiological, and nuclear (CBRN) exposures for use by emergency responders.
- C. **NIOSH:** [Standard for Chemical, Biological, Radiological, and Nuclear \(CBRN\) Full Facepiece Air Purifying Respirator \(APR\)](#)
The purpose of this standard is to specify minimum requirements to determine the effectiveness of full facepiece air purifying respirators (APR), commonly referred to as gas masks, used during entry into chemical, biological, radiological, and nuclear (CBRN) atmospheres not immediately dangerous to life or health (IDLH).
- D. **NIOSH:** [Standard for Chemical, Biological, Radiological, and Nuclear \(CBRN\) Air-Purifying Escape Respirator and CBRN Self-Contained Escape Respirator](#)
The purpose of this standard is to specify minimum requirements to determine the effectiveness of escape

respirators that address CBRN materials identified as inhalation hazards from possible terrorist events for use by the general working population.

- E. **NFPA 1951:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1951>
This standard presents requirements for the protection of emergency services personnel assigned to or involved in search, rescue, treatment, recovery, decontamination, site stabilization, extrication, and similar operations at technical rescue incidents.
- F. **NFPA 1981:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1981>
This standard establishes levels of respiratory protection and functional requirements for SCBA used by emergency services personnel.
- G. **NFPA 1991:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1991>
This standard provides requirements for protection for emergency responders against adverse vapor environments during hazardous materials incidents, and from specified chemical, biological, or radiological terrorism agents during chemical and biological terrorism incidents.
- H. **NFPA 1994:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1994>
This standard establishes requirements for protective ensembles and ensemble elements to safeguard emergency first responder personnel from chemicals, biological agents, and radiological particulates (CBRN) terrorism agents.
- I. **NFPA 1999:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1999>
This standard specifies requirements for EMS protective clothing to protect personnel performing patient care during emergency medical operations from contact with blood and body fluid-borne pathogens. It also includes additional requirements that provide limited protection from specified CBRN terrorism agents.
- J. **NFPA 2001:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=2001>
This standard contains requirements for total flooding and local application clean agent fire extinguishing systems. It is intended for use by those who purchase, design, install, test, inspect, approve, operate, and maintain engineered or pre-engineered gaseous agent fire suppression systems so they will function as intended when needed.
- K. **NFPA 2010:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=2010>
This standard contains minimum requirements for fixed aerosol fire extinguishing systems. It is intended for use by those who purchase, design, install, test, inspect, approve, list, operate, and maintain fixed aerosol fire-extinguishing systems so that such equipment will function as intended throughout its life.
- L. **National Institute of Justice - NIJ 0116.00:** <https://www.nij.gov/publications/pages/publication-detail.aspx?ncjnumber=221916>
This National Institute of Justice Standard is a voluntary performance standard for chemical, biological, radiological and nuclear (CBRN) protective ensembles for use by law enforcement. It defines both performance requirements and the methods used to test performance.
- M. **NFPA 2112:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=2112>
Essential for manufacturers and certifying agencies, this standard protects workers from flash fire exposure and injury by specifying performance requirements and test methods for flame-resistant fabric and garments.
- N. **NFPA 1975:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1975>
This standard safeguards emergency services personnel on the job by establishing requirements for flame-resistant station uniform clothing that won't cause or exacerbate burn injury.
- O. **NFPA 1982:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1982>
This standard establishes requirements intended to ensure reliable performance of personal alert safety systems (PASS) that enable emergency responders to signal for help if they get lost, disoriented, trapped, injured, or run out of breathing air during emergency operations.
- P. **NFPA 1952:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1952>

This standard presents requirements for the protection of emergency services personnel assigned to or involved in surface water search and rescue operations or other surface water incident operations.

- Q. NFPA 1992:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1992>

This standard provides requirements for protection for emergency responders against adverse liquid- splash environments during hazardous materials emergency incidents.

- R. NFPA 1971:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1971>

NFPA 1971 protects firefighting personnel by establishing minimum levels of protection from thermal, physical, environmental, and bloodborne pathogen hazards encountered during structural and proximity firefighting operations.

- S. NFPA 2112:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=2112>

Essential for manufacturers and certifying agencies, this standard protects workers from flash fire exposure and injury by specifying performance requirements and test methods for flame-resistant fabric and garments.

- T. NFPA 1983:** <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1983>

This standard specifies requirements for life safety rope and associated equipment used to support emergency services personnel and civilians during rescue, firefighting, or other emergency operations, or during training.

- U. ANSI/ISEA Z89.1-2014:** <https://safetyequipment.org/standard/ansiisea-z89-1-2014/>

This standard provides performance and testing requirements for industrial helmets, commonly known as hard hats. It establishes the types and classes of protective helmets, depending on the type of hazard encountered. It includes specifications for helmets designed to offer protection from lateral impact, or top-only impact, giving employers and users the flexibility to specify the helmet that best meets the needs of their specific workplace.

- V. ANSI/ISEA 105-2016:** <https://safetyequipment.org/standard/ansiisea-105-2016/>

ANSI/ISEA 105-2016 addresses the classification and testing of hand protection for specific performance properties related to mechanical protection (cut-resistance, puncture resistance and abrasion resistance), chemical protection (permeation resistance, degradation) and other performance characteristics such as ignition resistance and vibration reductions.

- W. ANSI/ISEA 107-2015:** <https://safetyequipment.org/ansiisea-107-2015/>

This new edition consolidates the requirements of ANSI/ISEA 107-2010 and ANSI/ISEA 207, American National Standard for High-Visibility Public Safety Vests in an effort to establish a single, comprehensive document that considers all occupational tasks. The standard continues to present three performance classes of garments based on the amount of visible materials and design attributes incorporated into the final configuration and identifies garment types based on expected use settings and work activities being performed. These are designated as off-road (type O), roadway and temporary traffic control (type R), or public safety activities (type P).

- X. NFPA Official Site:** <http://www.nfpa.org/>

To find a specific code or standard: <http://www.nfpa.org/codes-and-standards/document-information-pages>

- Y. ISEA Official Site:** <https://safetyequipment.org>

To find a specific standard please visit the home page

3.1.2 Standards for Radiation and Nuclear Detection Equipment

Copies of the complete standards are available from IEEE (search by Standard Number):

<http://www.ieee.org/index.html>

- A. ANSI N42.32-2016:** [Performance Criteria for Alarming Personal Radiation Detectors for Homeland Security](#)

This standard describes minimum performance requirements and test methods for evaluating the performance of alarming personal radiation detectors (PRDs) for homeland security applications. This standard describes minimum performance requirements and test methods for evaluating the performance of alarming personal radiation detectors (PRDs) for homeland security applications. PRDs are pocket-sized battery-powered alarming electronic instruments that are worn on the body and used to detect photon-emitting, and optionally neutron-emitting, radioactive materials. PRDs have user-readable displays related to the intensity of radiation, but they are distinct from, and typically more sensitive than, electronic personal dosimeters, which are designed to measure the dose equivalent to workers occupationally exposed to radiation. The performance criteria contained in this standard are meant to provide the means for verifying the capability of the PRDs to reliably detect changes above background levels of ionizing radiation fields and alert the user to these changes. This standard also

specifies the requirements and test methods for environmental, electromagnetic, and mechanical conditions that may affect the ability of the PRDs to function properly.

- B. ANSI N42.33-2006:** [Portable Radiation Detection Instrumentation for Homeland Security](#)
The purpose of this standard is to specify technical performance requirements and performance testing requirements for those purchasing and using portable radiation detectors for Homeland Security applications. These instruments are used for detection of photon-emitting radioactive materials and quantification of photon exposure rates. Instruments are used for the purposes of detection, interdiction, and prevention. This standard does not apply to instruments that are primarily intended to provide a measurement of dose equivalent, or dose equivalent rate.
- C. ANSI N42.34-2015:** [Performance Criteria for Handheld Instruments for the Detection and Identification of Radionuclides](#)
This standard addresses instruments that are used to detect and identify radionuclides, display gamma-ray exposure rates, and when provided, indicate the presence of neutron radiation. This standard specifies general, radiological, environmental, electromagnetic, and mechanical requirements, and associated test methods for handheld radionuclide identification devices (RIDs). Successful completion of the tests described in this standard should not be construed as an ability to identify all radionuclides in all environments.
- D. ANSI N42.35-2016:** [Evaluation and Performance of Radiation Detection Portal Monitors for Use in Homeland Security](#)
The purpose of this standard is to establish the baseline performance requirements and associated test methods for RPMs used to detect radioactive material. This standard establishes the performance requirements and provides the testing and evaluation criteria for installed radiation portal monitors (RPMs) that detect photon-and neutron-emitting radioactive substances by monitoring people, packages, containers, and vehicles.

SECTION 4 BID SUBMISSION

4.1 Notice to Potential Bidders

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

4.2 Performance and Bid Bonds

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

4.3 NYS Vendor File Registration

Prior to being awarded a Contract pursuant to this 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

4.4 Format and Content of Bid Submission

The complete Bid package, as described herein, must be received by OGS Procurement Services by the date and time of the Bid opening, as per Section 1.4 – *Key Events/Dates*. Late Bids shall be rejected, except as provided within Appendix B - *Late Bids*. Any Bid pricing or portions thereof that are incomplete or that cannot be opened/accessed from the submitted USB flash drive(s) may be rejected. With respect to Bid documents in Excel format, only those cells provided for entering Bid pricing and/or information are to be accessed by the Bidder.

Situations where disqualification may be considered by OGS Procurement Services include, though are not limited to:

- E-mail or facsimile Bid submissions.
- Missing Price Pages (Attachment 1 - *Pricing*), in whole or in part.
- Missing Attachment 1a – *Pricing Summary* hard copy with original signature.
- Missing, blank or corrupt electronic media, where Pricing Pages (Attachment 1 – *Pricing*) are not accessible.

It is recommended that after having saved Bid files to the electronic media, 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 the flash drives for submittal. Bidders are strongly encouraged to verify that all required documents have been saved properly to each USB flash drive prior to bid submission.

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. Bidder shall submit the Bid documents on flash drives (electronic format), and/or in folder format, in accordance with the instructions below. Bids are to be submitted on both USB flash drive and in hard copy/paper document, where requested. Bids not submitted on USB flash drive or not formatted properly may be rejected.

Items listed below are required in electronic and/or hard (paper) copy with original ink signature, where noted. USB flash drives and folders should be labeled with the name of the Bidder and the Solicitation number - #23173.

A complete Bid consists of both electronic media (USB flash drives) containing all required documents in electronic format, and a folder containing hard copies of required documents, with original signature.

Bidders shall submit their Bid as follows:

1. Electronic Media: Two (2) Copies of Electronic Media (2 USB flash drives), each containing the following:

- a) Completed Pages 1 and 2 of the Solicitation (signed and scanned) (PDF);
- b) Completed Attachment 1 – *Pricing* (Excel);
- c) Completed Attachment 1a – *Pricing Summary* (MS Word);
- d) Completed Attachment 2 – *NYS Required Certifications* (signed and scanned) (PDF);
- e) Completed Attachment 3 – *Encouraging Use of NYS Businesses* (PDF);
- f) Completed Attachment 4 – *Insurance Requirements* (All necessary proof of insurance as outlined) (PDF);
- g) Completed Attachment 5 – *Bidder Information Questionnaire* (Excel);
- h) Completed Attachment 6 – *Bidder Submission Checklist* (Excel);
- i) Completed Attachment 10 – *Contractor Information* (Excel);
- j) Completed Attachment 12 – *Contractor Reseller Distributor Information Sheet*, if applicable (MS Word);
- k) Completed Attachment 14 – *Category Matrix* (Excel);
- l) Completed Attachment 15 – *Manufacturer's Certificate(s)*, if applicable (PDF);
- m) Completed Attachment 16 – *Proof of Past Sales* (Excel);
- n) Copy of Manufacturer's Price List and/or Internal Price List for all Products bid (PDF);

- o) Completed ST-220-CA - *Contractor Certification* - (signed/notarized and scanned) (PDF);
- p) Proof of Current Government Contract (PDF);
- q) Completed MWBE 100, MWBE Utilization Plan (if applicable) (PDF);
- r) Completed SDVOB 100, SDVOB Utilization Plan (if applicable) (PDF);
- s) Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF); and
- t) Standard Vendor Responsibility Questionnaire Certification (PDF) (or if hard copy - signed and scanned).

2. Hard Copy Documents: One (1) folder containing one hard copy version, with original ink signature, as noted, of each of the following:

- a) Completed Pages 1 and 2 of the Solicitation with original ink signature;
- b) Completed Attachment 1a - *Pricing Summary* with original ink signature;
- c) Completed Attachment 2 – *NYS Required Certifications* with original ink signature;
- d) Completed Attachment 10 – *Contractor Information*, no signature required;
- e) Completed ST-220CA, Contractor Certification, notarized with original ink signatures; and
- f) Standard Vendor Responsibility Questionnaire (VRQ) with original ink signatures (only if VRQ NOT certified online).

4.5 Notes to Bidder

1. Do not include hard copies of documents within the folder other than what is requested herein.
2. Do not provide Attachment 1 – *Pricing* in hard copy.
3. Do not return copies of Appendices A, B, and C with your Bid.
4. Electronic Media may be in the form of USB flash drives only. CD's and DVD's will NOT be accepted and may result in rejection of a Bidder's Bid.
5. A completed **electronic copy** of Attachment 1 – *Pricing* is required. Bidders must provide a discount; full List Price will not be accepted. Failure by a Bidder to submit Attachment 1 - *Pricing* may result in rejection of that Bidder's Bid and no further consideration for award. Failure to submit pricing includes missing or incomplete pricing; electronic media that does not allow for review/retrieval of information contained within; failure to complete all tabs and/or columns within Attachment 1 - *Pricing*, as per the Instructions and/or failure to provide Pricing in Excel Format.
6. In the case of discrepancies between paper copies and electronic (USB flash drive) submissions of the documents required in both formats, the electronic copy shall take precedence over the paper copy.
7. 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. Bidders remain responsible for reviewing the Attachments to ensure compliance with the Solicitation requirements.

4.6 Bid Envelopes and Packages

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

1. BID ENCLOSED (preferably bold, large print, all capital letters);
2. Solicitation number (Solicitation #23173);
3. Bid Opening Date and Time (as per Section 1.4 – Key Events/Dates, Tuesday, September 10, 2019 at 11:00 A.M. ET); and
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2).

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

4.7 Bid Delivery

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

**State of New York Executive Department
Office of General Services
Procurement Services
Corning Tower - 38th Floor Reception Desk**

**Empire State Plaza
Albany, NY 12242**

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

4.8 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.

4.9 NYS Required Certifications

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

4.10 Manufacturer's Certificate

Bids will be accepted only from Manufacturers or Authorized Resellers. Through completion and submission of the Attachment 15 - *Manufacturer's Certificate*, the supplier or manufacturer guarantees that the Bidder is an Authorized Reseller and has agreed to supply the Bidder with all quantities of Products required by the Bidder in fulfillment of its obligations under any resultant Contract with the State. Bidders shall use the certificate Attached to this Solicitation to document this level of support.

The Supplier/Manufacturer's Certificate is to be forwarded by the Bidder to its proposed supplier or Manufacturer for completion and returned to the Bidder for inclusion with its Bid. The Commissioner reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract. See Appendix B - *Participation in Centralized Contracts and Employees, Subcontractors and Agents*.

4.11 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Section 1.7 - *Bidder Questions*, if a 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.

4.12 Vendor Responsibility for Accuracy

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, as requests for Bid withdrawals of any type may not be granted. Bidders, in the preparation of their Bids, should maintain complete and accurate calculation worksheets, which clearly support their submissions.

If an incorrect reference, parameter, model, code number, component, Product, etc. is stated by OGS or by the Bidders, the correct reference shall prevail, and the proper alternative or corrected reference may be considered. Bidders are advised to raise any issues or questions regarding any incorrect Product references during the Bidder Questions Period so that it may be addressed by OGS prior to the deadline for submission of Bids. See Section 1.4 *Key Events/Dates* for the Bidder Questions Period and Bid Submission Deadline.

4.13 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 and may or may not include pricing. Such information is anticipated to be available online within two Business Days after the completion of the Bid Opening. The Bid Opening Results Page is available at: <https://ogs.ny.gov/procurement/bid-opening-results-0>. NOTE: Due to the large number of anticipated responses to this Solicitation, there may be limited space available for in-person attendance to the Bid Opening. Bidders interested in attending the Bid Opening in person are strongly encouraged to contact the Designated Contact to inquire about seating availability. OGS reserves the right to deny in-person attendance for this Solicitation.

4.14 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.

4.15 Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least 180 calendar days from the Bid Submission due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 180 calendar day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

4.16 Responsiveness

To be considered responsive, a Bidder must submit a Bid that satisfies and addresses all requirements stated in the Solicitation. A Bid that fails to conform to all requirements may be considered non-responsive and may be rejected.

4.17 NYS Reserved Rights

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

1. Reject any or all Bids received in response to the Solicitation;
2. Withdraw the Solicitation at any time at the sole discretion of the State;
3. Make an award under the Solicitation in whole or in part;
4. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
5. Seek clarifications and revisions of the Bid;
6. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
7. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
8. Change any of the schedule dates with notification through the NYS Contract Reporter;
9. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
10. Waive any requirements that are not material;
11. Utilize any and all ideas submitted in the Bids received;
12. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
13. 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;
14. 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;
15. 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;
16. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such

- as errors, technicalities, irregularities, or omissions;
17. Use any information which OGS obtains or receives from any source and determines relevant, at OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
 18. Consider a proper alternative where an evidently incorrect reference/parameter/component/Product/model/code number is stated by the State or the Bidder;
 19. Reject an obviously unbalanced Bid as determined by the State. An unbalanced bid is one based on Bid prices that are significantly understated for some Products and/or significantly overstated for other Products or is such that there is a reasonable doubt that the Bid will result in the lowest overall cost to the State;
 20. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
 21. Make no award for any Product, region, or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, or lots;
 22. 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;
 23. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation. Preference will be given to bids that are deemed substantially complete by OGS;
 24. Unilaterally make revisions, changes and/or updates to any templates, Appendices (excluding Appendices A and B) and/or Attachments to this Contract without processing a formal amendment and/or modification;
 25. Request current Bidder financial statements documenting past sales history that demonstrates ability to service a contract with dollar sales volume similar to the scope of this Solicitation; documents must be provided upon request;
 26. Request additional documentation from the Bidder or request reports on financial stability from independent financial rating services;
 27. Reject any Bidder who does not demonstrate financial stability sufficient for the scope of this Solicitation;
 28. Reject any Bid submission or portion(s) thereof determined to have been altered or modified from the original format by the Bidder. Such alterations or modifications include, but are not limited to: any change to document headers, footers and/or cells, unprotecting worksheets or workbooks, hiding or un-hiding cells, columns, rows, or worksheets, and locking or unlocking cells;
 29. Reject an unbalanced bid, or a bid containing incomplete, unreasonable or unrealistic pricing, as determined by the State;
 30. Upon discovery of non-material completeness or conformance issues with a Bidder's Proposal, contact the Bidder to attempt to cure the issue prior to completion of the evaluation of the Bidder's Proposal.

4.18 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 5 METHOD OF AWARD

5.1 Method of Award

- A. Awards shall be made to all responsive and responsible Bidders that are able to meet the terms and conditions of this Solicitation, and the requirements detailed in Section 2 - *Bidder Qualifications and Performance Requirements*, and whose Product offerings meet the Scope of this Solicitation, as detailed in Section 1.2 - *Scope* and whose discounts/prices indicate that those Products will be provided at a reasonable discount/price as determined by the NYS OGS. Reasonable discounts/prices may be determined by, but not limited to, reviewing discounts and/or prices on any current or previously awarded Government Entity contract and/or discounts and/or pricing offered by other Bidders for this solicitation. Because of the varied nature of Products OGS anticipates that awards will be made to more than one vendor. Additionally, awards shall be made by DHS AEL Category. Once awarded a Contract, a Contractor may not request to add additional Categories during the term of the Contract and may only add Products under previously awarded Categories as per Section 6.4 - *Price Updates*.

- B. Pricing shall be a discount from Manufacturer's List Price, and discounts shall be equal to or better than any other offered by the Bidder to another Government Entity for the same type of Products. Discounts will be confirmed by comparison with other Government Entity contracts held by the Bidder. The Bidder must supply copies of its current contract obligations indicating the contract discount, including, but not limited to contract price lists, contract terms and conditions, etc.

In the event a Bidder holds a current Government contract where the terms and conditions specifically prohibit the Bidder from offering discounts/pricing which are equal to or better than those within that contract for the same type of Products Bid, Bidder must provide proof of such contract obligations for OGS' consideration. OGS reserves the right to deny or allow a minimal difference in discount/pricing with regard to Section 5.1 (B) herein due to a Bidder's contractual obligations with another Government entity. Allowable discount differences based upon such instances are at the sole discretion of OGS and may be determined as described in Section 5.1 (A). Other terms and conditions which vary from those within this Solicitation and those included in a Bidder's other Government Entity contract, including but not limited to purchase volumes (estimated or actual), price list update allowances, delivery terms, etc., will not be considered regarding acceptance of discount/price.

- C. After the Bid opening, each Bid will be screened for completeness and conformance with the stated Bidder Qualifications for Bid submission, as set forth in Section 2 of this Solicitation. Any Bid not meeting these requirements may be deemed non-responsive and denied further consideration for award.
- D. Bids will be reviewed to ensure that the Bidder has provided all required Attachments, completed in full, and in original hard copy, where requested. Failure by a Bidder to provide properly completed required documents and/or Attachments may result in their Bid being deemed non-responsive and denied further consideration for award. OGS reserves the right to give first consideration to Bids which are substantially complete over those that are not, and to make awards on a rolling or staggered start basis, as per Section 4.17- *New York State Reserved Rights*, as deemed necessary and determined solely by OGS Procurement Services.
- E. Bidder must be financially stable and able to demonstrate the financial stability of the company. In addition to sales history, current financial statements or other financial information, as requested and deemed appropriate by OGS, must be provided within five (5) Business Days of request. New York State reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this contract.
- F. The Commissioner reserves the right to evaluate and/or reject any and all Bids, in whole or in part and to waive technicalities, irregularities and omissions if in his or her considered judgment, the best interests of the State will be served. In the event satisfactory Bids, fully in accord with the Bid documents, are not received, the Commissioner reserves the right to consider late or non-conforming Bids as stipulated in "Late Bid" clause of Appendix B – *General Specifications*.
- G. Bidders who Bid Products in nine (9) or more of the DHS AEL Categories in scope of this Solicitation and listed herein will be considered **Level One Bidders, and those Bids will be given review and/or award priority over those that do not qualify for Level One.**
- H. Bidders that do not qualify to be classified as Level One Bidders will be considered as **Level Two Bidders** and their Bids may be reviewed and/or awarded after the review and award of Level One Bid submissions.
- I. Awards will be made to established Manufacturers and/or Authorized Resellers of an established Manufacturer taking into consideration delivery offered, past performance, and all Product information available.
- J. The State reserves the right to reject a Bid or accept adjustments when discounts/prices are deemed to be excessive or unbalanced, or when it does not guarantee delivery of Product in accordance with the "Product Delivery" clause in Appendix B. The State reserves the right to negotiate better pricing with all qualified Bidders being considered for award.
- K. This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> to receive notifications regarding any periodic recruitments under this Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be

required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration relating to any DHS AEL Categories previously awarded to that Contractor. Contractors may however bid on DHS AEL Categories not previously awarded to that Contractor. Notice of such Periodic Recruitment will be posted in the NYS Contract Reporter for a minimum of 15 Business Days prior to the submission due date. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next Solicitation or recruitment period.

- L. Tentative Contract award(s) shall consist of written notice, via email, to that effect by OGS to a selected Bidder, who shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible. Non-awardees will also be notified, via email, that their Bids were not selected for award. Non-awardees may be notified after all contract awards have been made.

SECTION 6 TERMS AND CONDITIONS

Contract Term and Extensions

6.1 Contract Period

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

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for up to three (3) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B - *Contract Term – Extension*.

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

6.2 Short Term Extension

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

6.3 Bid Pricing Information

A Bidder shall submit its proposed Products and pricing within Attachment 1 – *Pricing* in Excel format only, on USB Flash Drives, as per Section 4.4 – *Format and Content of Bid Submission*.

Price shall include all customs, duties and charges and be net, F.O.B. destination any point Statewide (NY). Upon mutual agreement between New York State and the Contractor, delivery locations may be expanded per Section 6.36 - *Non-State Agencies Participation in Centralized Contracts*, and Section 6.37 - *Extension of Use*.

Bidder must offer discount(s) from its nationally published and regularly distributed **Manufacturer's** catalog(s)/Price List(s) in effect and identified at the time of the bid opening. Full List Price will not be accepted.

Requirements for Attachment 1 - Pricing:

- a. Attachment 1 – *Pricing* must be submitted in Electronic Format ONLY (Excel only, NOT LOCKED, or PASSWORD PROTECTED). Do not change the spreadsheet structure. Any changes may result in rejection of the Bid.
- b. Each Product must have its own identifying number (contractor/manufacturer item number etc.) and Product description.
- c. Products offered must correspond to the DHS AEL Categories listed on the Bidder's submission of Attachment 14 – *Category Matrix* and must be within the Scope of the Solicitation. **Each Product offered may correspond to only ONE (1) DHS AEL Category.** Bidders are to refer to Attachment 13 for Category descriptions and numbers.
- d. Bidders shall select the appropriate DHS AEL Category from the dropdown box in Attachment 1 - *Pricing*, Column A, for each Product offered.
- e. Bidders shall enter all required information as per Attachment 1 – *Pricing* instructions. Incomplete information, including columns and/or rows, may result in a Bidder's Bid being rejected.

A copy of the Bidder's Manufacturer's Price List and/or Internal Price List for all Products bid must also be included with the Bid in electronic format and be named and dated. Hard copies will not be accepted. See Section 4.4 – *Format and Content of Bid Submission*.

This Solicitation allows for the inclusion of maintenance, calibration, and training for Products being bid only. All such offerings must be included within Attachment 1 – *Pricing*. Detailed information about maintenance, calibration and/or training offered should be provided with the bid submission, in electronic format only.

6.4 Price Updates

- A. Updates to a Contractor's OGS Price List (price list updates) will be allowed at any time, twice per year, after the first anniversary date of the Bid Opening. Price list update requests at any other time may not be granted, unless OGS determines that it is within the best interest of the State and/or its Authorized Users. Approval for additional price list updates will be given on a case by case basis. Requests for price list updates must be submitted, via email, to the OGS contract administrator listed on the OGS Website. The price list update request must be dated, complete and accurate, and in the format required by OGS. Contractors shall adhere to the instructions in Attachment 11 – *Price List Update Template* and use the provided template along with Appendix C - *Contract Modification Procedure* for all price update requests.
- B. Contractors may update their OGS price list to include price increases and decreases, Product additions and deletions, and/or Product item number or description changes. New Products will be considered for inclusion provided they are within the Contract scope, are within the same DHS AEL Category(s) originally awarded to the Contractor and offered to the State under the same terms and conditions as per the Contract, and at discounts/pricing deemed to be reasonable and in the best interest of the State. The discount offered on new Products requested to be added to the Contractor's price list shall be no lower than the minimum established discount under the main DHS AEL Category in which the new Product corresponds.
- C. Contract prices may be subject to increase or decrease during the contract period in accordance with changes made by the Manufacturer or Authorized Reseller in their established, nationally distributed Price List or published catalog; however, the percentage discount accepted at time of contract award, or a price list update under the Contract, may not be decreased during the Contract term. Once approved by OGS, discounts offered from Manufacturer Price Lists may not be decreased unless satisfactory proof of undue hardship is submitted by the Contractor and approved by OGS. Proof may include, but not be limited to, signed statements by the Manufacturer detailing and attesting to the need for the discount reduction. Determination of undue hardship is at the sole discretion of OGS. OGS may, at their discretion, require the deletion of Products and/or product lines from the Contractors OGS price list should a Contractor be unable to support their approved discount structure. Price decreases or discount increases are permitted and encouraged at any time and may be provided to the Authorized User without a price list update having been processed. The State reserves the right to request copies of existing contracts, Manufacturer's Price Lists, or internal price lists to ensure that the prices offered to the State are reasonable. In connection with any price list update, OGS reserves the right to request additional information,

reject Contract updates, remove Products from Contracts, remove Products from price list update submissions, and request additional discounts for new or existing Products.

- D. New Manufacturer Product lines may be offered within a Price Update by a Contractor provided they are within Contract scope and within the DHS AEL Category(s) originally awarded to the Contractor. Products and/or product lines that fall within a DHS AEL Category not originally awarded to a Contractor will not be accepted. DHS AEL Category(s) not originally awarded to a Contractor shall not be added post award.
- E. Price Updates will not be granted to any Contractor who has outstanding Sales Reports, Administrative Fees, Proof of Insurance or other documentation that is required under the resulting Contract. OGS reserves the right to deny price updates within the last six months of the contract term, without prior notice.
- F. It is OGS's intention that all Contractor price lists be maintained and updated regularly to keep Product offerings, pricing, Product numbers and Product descriptions current. Contractors are required to honor their posted contract pricing at all times and may not charge greater than Contract price at any time during the Contract term. Contractors are encouraged to review their posted price lists regularly and submit a request to update their price list at least once per year. Contractor's should contact the OGS contract administrator for the most current price list update procedures and forms. Contractors shall submit their price list update request to the OGS Procurement Services contract administrator pursuant to the requirements of this Section for review and written approval prior to use. Revised pricing is effective upon the date in which OGS approves the request. Revised price lists shall be posted by OGS on the contract website within five (5) Business Days after approval, or as soon as possible thereafter.

6.5 Price Increase

OGS reserves the right to request justification for any price increase within a contractor's price list update request and reserves the right to reject any increase deemed unreasonable by OGS.

6.6 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

6.7 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B - *Savings/Force Majeure*.

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

6.8 Volume Discounts

Bidders may, and are encouraged to, offer Volume Discounts which shall apply to orders delivered to the same Authorized User and/or location at the same requested time. Volume Discounts, if offered, shall be based on Products and pricing as submitted within Attachment 1 - *Pricing*.

Volume Discounts shall be entered within Attachment 10 – *Contractor Information*. If no Volume Discount is entered, it will be presumed that the Bidder is not offering a Volume Discount. Volume discounts, if not offered at time of Bid

submission, may be added at a later date. All approved discounts shall remain in effect for the entire contract period. Discounts, including volume discounts, may be increased during the Contract term, as per Section 6.4 – *Price Updates*.

Volume Discounts may be applied per Purchase Order, cumulatively per ordering entity, or cumulatively statewide. The Bidder shall indicate the basis for applying the Volume Discount(s) within Attachment 10 – *Contractor Information*. Volume Discounts shall be defined and applied as follows: Purchase Order Volume Discounts shall be additional discounts applied to individual Purchase Orders over a specified dollar amount. Cumulative agency Volume Discounts shall be additional discounts applied to all future orders made by an individual ordering entity once an established volume has been met by that entity. Cumulative statewide Volume Discounts shall be additional discounts applied to all future orders for all state and non-state orders once an established volume has been met under this Contract.

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

6.10 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 or PCard, 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. A Bidder shall indicate in Attachment 5 – *Bidder Information Questionnaire* if it will accept the State's Purchasing Card for orders not to exceed \$15,000.

6.11 Minimum Order

Contractors may require a minimum order and may elect to honor orders for less than the minimum order. For such orders, at the contractor's option, shipping costs from the contractor's address (as stated in bid) may be added to the invoice with a copy of the freight bill. Shipping costs are to be prepaid by Contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the Product unless special instructions are stated on the order by the agency.

6.12 Invoicing and Payment

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

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line Product 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; additional information may be required:

- Contractor Name
- Contractor Billing Address
- Contractor Vendor ID Number
- Contractor Contact Information
- Unique Invoice Number
- Bill To Name (Ordering Entity Name)
- Purchase Order Number
- Payment Term
- Quantity
- Description
- Unit of Measure (each, case, etc.)

- Rate (unit price)
- Total (payment amount requested)

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

6.13 Product Delivery

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

6.14 Product Returns and Exchanges

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

Products shall be replaced within ten (10) Business Days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error where the Product is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product. Any restocking fees must be included within Attachment 10 – *Contractor Information* as a percentage (%) of the net price.

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

6.15 Unanticipated Excessive Purchase

The State reserves the right to negotiate lower pricing, or to advertise for Bids, for any unanticipated excessive purchase.

6.16 Contract Administration

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

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

6.17 NYS Financial System (SFS)

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

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized

Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://ogs.ny.gov/procurement/emarketplace>.

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

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

6.18 Accessibility of Information Communication Technology

Bidders are not required to create and/or maintain a website for this Solicitation or subsequent Contract Award. Should a Bidder/Contractor opt to do so, the Bidder/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 network-based information and applications development, or programming delivered to or by the State pursuant to this Contract or procurement, will comply with Section 508 of the Rehabilitation Act of 1973, as amended, and be consistent with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Information Communication Technology, as such policy may be amended, modified or superseded (the “Accessibility Policy”). The Accessibility Policy requires that State Entity Information Communication Technology shall be accessible to persons with disabilities as determined by accessibility compliance testing. Such accessibility compliance testing will be conducted by the State and any report on the results of such testing must be satisfactory to the State.

6.19 Americans with Disabilities Act (ADA)

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

6.20 N.Y. State Finance Law § 139-I

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

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

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be

deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

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

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

6.21 Insurance Requirements

The Contractor shall procure, at its sole cost and expense, and shall maintain in full force at all times during the term of the Contract(s) resulting from this Solicitation, all policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements*.

6.22 Report of Contract Usage

The Contractor shall furnish semi-annual reports, using Attachment 8 – *Report of Contract Usage*, containing total sales made under the Contract no later than fifteen (15) calendar days after the close of the reporting period. Reportable sales include those made to all Authorized Users (NYS) and those made to non-State entities utilizing the Contract under the Extension of Use Clause (see Section 6.37). 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 report.

The reporting periods are as follows:

- Sales for January 1st through June 30th will be due July 15th.
- Sales for July 1st through December 31st will be due January 15th.

Attachment 8 - *Report of Contract Usage* must be used, and the report must be completed in its entirety, referencing the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name. Incomplete, altered, locked, pdf. or hard copy submissions of Attachment 8 - *Report of Contract Usage* will not be accepted. The report must be submitted electronically, via e-mail, in MS Excel format only, to the attention of the OGS Contract Administrator as shown on the front page of the Contract Award Notification document posted on the OGS website. OGS reserves the right to make changes to the template and/or to request additional information. Contractors should contact the OGS Contract Administrator for the most current form. Additional related sales and/or detailed Authorized User and/or non-State purchase information may be required by OGS and must be supplied within thirty (30) calendar days, upon request. Failure to submit timely reports may result in the denial of Price Updates and/or Contract suspension.

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

I. New York State Law

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

II. General Provisions

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

- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
 - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
 - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 - Staffing Plan.

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified Categories listed, including ethnic background, gender, and federal occupational Categories.
- C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)
 - 1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified Categories listed including ethnic background, gender, and Federal occupational Categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
 - 2. Separate forms shall be completed by Contractor and any subcontractor.
 - 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When

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

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

IV. Contract Goals

- A. **OGS hereby establishes an overall goal of 10% for MWBE participation, 5% for Minority-Owned Business Enterprises (“MBE”) participation and 5% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs) in the following DHS AEL Categories: Personal Protective Equipment (PPE), Interoperable Communications Equipment (Limited to Satellite Phones/Communication & Accessories), Decontamination Equipment, Medical Equipment (Equipment Only; Pharmaceuticals Excluded), and Power Equipment. 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.newycontracts.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.

- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within thirty (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:

- A. 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.
- B. 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.
- C. 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.
- D. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
- E. 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.
- F. 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>

6.24 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 ("SDVOB"), 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 are 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.

I. Contract Goals

- A. **OGS hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs in the following DHS AEL Categories; Medical Equipment (Equipment Only; Pharmaceuticals Excluded), Power Equipment, and Physical Security Enhancement Equipment (Limited to Blast Resistant Receptacles/Systems, Jersey Walls/Barriers Only).** For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/Veterans/>. Questions regarding compliance with SDVOB participation goals

should be directed to the Designated Contacts listed on page 1 of this document. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows 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 SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.
- C. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven 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/Contractor and direct the Bidder/Contractor to submit, within five Business Days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. OGS may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB 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.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the 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-responsibility.

III. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses II (C), (D) & (E) will apply. If the

documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB 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 SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that the Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regard 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 Business Days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OGS.sm.PSGHIRE_Renewals@ogs.ny.gov.

IV. Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- A. Copies of solicitations to SDVOBs and any responses thereto.
- B. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- C. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified SDVOBs whom OGS determined were capable of fulfilling the SDVOB goals set in the Contract.
- D. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- E. Other information deemed relevant to the waiver request.

V. Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available at <https://ogs.ny.gov/veterans/> and should be completed by the Contractor and submitted to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS.sm.PSGHIRE_Renewals@ogs.ny.gov.

VI. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

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

6.25 Use of Recycled or Remanufactured Materials

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other

requirements of this Solicitation. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B - *Remanufactured, Recycled, Recyclable or Recovered Materials*.

6.26 Bulk Delivery and Alternate Packaging

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

6.27 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.

6.28 Environmental Attributes and NYS Executive Order Number 4

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

6.29 Consumer Products Containing Mercury

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

6.30 Diesel Emission Reduction Act

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

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

6.31 Overlapping Contract Products

Products available under the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost-effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

6.32 Preferred Source Products

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

6.33 NYS Vendor Responsibility

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

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

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID see Section 4.3 - *NYS Vendor File Registration*. OSC provides direct support or 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:

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

6.34 NYS Tax Law Section 5-a

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

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

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

6.35 "OGS or Less" Guidelines

Purchases of the Products included in the Solicitation and resulting Contract are subject to the "OGS or Less" provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two (2) Business Days prior to purchase. In addition, purchases made under “OGS or Less” flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

6.36 Non-State Agencies Participation in Centralized Contracts

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

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

6.37 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. Requests for extension of use must be sent via e-mail to: OGS.sm.PSGHIRE_Renewals@ogs.ny.gov. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions. Authorized Users (NYS) must be given priority with regard to Product availability and delivery. Additional States permitted by OGS to use the contracts resulting from this Solicitation may add their own terms and conditions although they may not conflict with OGS'. Additional States may not charge any fees to the Contractor(s) awarded from this Solicitation. OGS' terms and conditions, including this Section, may not be modified in any way by another State's terms and conditions.

6.38 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 and/or complete a credit application.

6.39 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. “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*. This Solicitation and resultant Contracts allows for Contractors to request Updates only. 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*.

6.40 Drug and Alcohol Use Prohibited

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

6.41 Traffic Infractions

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

6.42 Instruction Manuals

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

6.43 Exclusions

NYS OGS reserves the right to delete, before or after award, any of the Products included in the Bidder's offerings under this Solicitation and any resulting contract. Bidder's Price List may list Products covered by other State contracts as well as those available from preferred sources. It is the obligation of the Authorized User to order from the appropriate source.

6.44 Company and Contact Information

Changes regarding the Contractor's company and/or contact information, during the Contract term, should be submitted, via e-mail, to the OGS Contract Administrator no later than five (5) Business Days of the change. Due to the nature of this contract, it is imperative that all contact information be accurate.

6.45 Administrative Fee

Contractors will be required to submit to OGS on a bi-annual basis an Administrative Fee of .05% (one-half percent) for all sales made under the Contract, including sales made to other state entities (see Section 6.37 – *Extension of Use*). Bidders are strongly encouraged to take this required fee amount into consideration when submitting their Bid pricing and may include the additional amount in their pricing schedule in order to satisfy the requirement.

Contractors are required to submit a completed copy of Attachment 8 – *Report of Contract Usage*, on a bi-annual basis as per Section 6.22 to the OGS contract administrator, showing the properly calculated administrative fee amount due to OGS. Attachment 8 should NOT be submitted with the fee payment.

The OGS contract administrator will notify a Contractor should the received fee payment be less than or greater than what is required. Required adjustments to fee payments may be made by Contractors at the time of the next fee payment due date unless otherwise requested by OGS. Failure to submit administrative fee payments timely may result in Contract suspension.

The Administrative Fee must be submitted as follows:

- A. Fees must be submitted and paid to NYS OGS within thirty (30) calendar days after the report of contract usage is due to OGS Procurement Services.

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- B. Checks for 0.5% of all contract sales for each preceding six (6) months shall be sent directly to NYS OGS Financial Administration.
 - C. The Administrative Fee check stub must contain the Award #23173, Contractor Contract Number (PCxxxxx), and the Contract Dates the payment is issued for.
 - D. All Administrative Fee payments shall be sent to:

OGS Financial Administration
Empire State Plaza
PO Box 2166
Albany, NY 12220

Check should be made out to:
Office of General Services

6.46 Assignment of Contract

In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void.

6.47 New York State Food Products

Bidders and Contractors may be required to designate New York State Food Products in their Price Guide(s)/Price Lists. State Agencies are expected, and New York state public authorities are strongly encouraged, to purchase New York State Food Products, unless the Product does not meet their institutional or programmatic needs.

6.48 Minor Deviations/Minor Technicality

The State reserves the right to have the flexibility to consider Bids with minor deviations or technicalities and to waive minor deviations or technicalities that may be consistent with the intent and scope of the Solicitation. This flexibility may permit a reasonable outcome in cases where the results of a fair, competitive process are clear but the award of a Contract is threatened due to a minor technicality or a minor deviation.