

***Note 1**

Per Appendix B [Section 26, Modification of Contract Terms], the awarded Contractor may offer any Authorized User more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User and Commissioner by the Contractor at the time of such offer. All additional terms and conditions offered to an Authorized User under any contract resulting from this solicitation must be in accordance with all statutory requirements contained in the provisions of NYS Election Law and NYS Election Codes, Rules and Regulations.

#	Solicitation Document Name	Document Section (Name or Number)	Comment / Question / Bid Deviation	Draft Response
1	Solicitation	Scope	Can you confirm that the vendor must have applied for certification before responding to Solicitation 23198 and the system must be approved before the Award deadline?	The proposed Voting System must be certified by SBOE before submitting a proposal. See Section 1.2 - Scope - OGS is requesting proposals from established and qualified manufacturers of Voting Systems certified by the New York State Board of Elections ("SBOE"). Section 2.2 - A Bidder that has not provided proof of certification from the SBOE for a Voting System shall be ineligible for Contract award in relation to that Voting System.
2	Solicitation	General	Is it required that all jurisdictions in New York State purchase voting systems off of this State contract?	While it is not required that all jurisdictions purchase off this State Contract, all contracts for voting systems must be approved by NYSBOE, and be made in accordance with all statutory requirements contained in the provisions of NYS Election Law and NYS Election Codes, Rules and Regulations.
3	Solicitation	General	Can jurisdictions issue their own procurement process to purchase a system outside of this contract, assuming the system is certified?	While it is not required that all jurisdictions purchase off this State Contract, all contracts for voting systems must be approved by NYSBOE, and be made in accordance with all statutory requirements contained in the provisions of NYS Election Law and NYS Election Codes, Rules and Regulations.
4	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	34. TITLE AND RISK OF LOSS FOR PRODUCTS OTHER THAN TECHNOLOGY PRODUCTS	[Vendor] understands this provision and requests that acceptance testing take place within seventy-two hours from delivery in accordance with 9 CRR-NY §6209.10 unless otherwise mutually agreed upon by the parties per the previous agreement with the SBOE. **Vendor's proposed edits to associated clause have been redacted by OGS**	OGS respectfully declines to make this change as part of this solicitation process. Bidders are reminded that Solicitation 23198 is controlling over Appendix B. Section 5.1 - NYS Election Codes, Rules, and Regulations of the Solicitation provides that "[E]ach Voting System must be provided in accordance with all statutory requirements contained in the provisions of NYS Election Law and NYS Election Code and Regulations (https://www.elections.ny.gov/ElectionLaw.html).
5	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	36. REJECTED PRODUCT	It is [Vendor]'s position that it be afforded the opportunity to repair any reject product prior to replacing a product delivered to an Authorized User. **Vendor's proposed edits to associated clause have been redacted by OGS**	OGS respectfully declines to make this change as part of this solicitation process. Please also see *Note 1 above.
6	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	48. REMEDIES FOR BREACH	It is [Vendor]'s position that the cure period for Remedies for Breach should conform with the cure period under Section 43 Termination. **Vendor's proposed edits to associated clause have been redacted by OGS**	OGS respectfully declines to make this change as part of this solicitation process. Bidders are reminded that Solicitation 23198 is controlling over Appendix B in the order of precedence.
6 (cont'd)	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	48. REMEDIES FOR BREACH (continued)	**Vendor's proposed edits to associated clause have been redacted by OGS**	Please see Section 8.43 – Remedies for Breach of the
7	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	54. WARRANTIES	[Vendor] understands this provision and requests additional changes to be added to clarify items not included under the warranty. **Vendor's proposed edits to associated clause have been redacted by OGS**	OGS respectfully declines to make this change as part of this solicitation process.
7 (cont'd)	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	54. WARRANTIES (continued)	**Vendor's proposed edits to associated clause have been redacted by OGS**	Please also see *Note 1 above.
7 (cont'd)	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	54. WARRANTIES (continued)	**Vendor's proposed edits to associated clause have been redacted by OGS**	In addition, please be advised [Vendor] is prohibited from providing software or updates to software for any Voting System component until it has been tested and certified by the SBOE. All software to be installed and used for voting, including underlying operating systems must be approved by SBOE before it can be added to the Contract Price List and sold to an Authorized User. All Voting System software shall be provided to the Authorized User by SBOE, and not the vendor.
7 (cont'd)	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	54. WARRANTIES (continued)	**Vendor's proposed edits to associated clause have been redacted by OGS**	
7 (cont'd)	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	54. WARRANTIES (continued)	**Vendor's proposed edits to associated clause have been redacted by OGS**	
8	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	58. LIMITATION OF LIABILITY	[Vendor] understands this provision and requests that neither the Contractor nor the Authorized users shall be liable for indirect damages, special damages or consequential damages under any circumstance. **Vendor's proposed edits to associated clause have been redacted by OGS**	OGS respectfully declines to make this change as part of the solicitation process. Please also see *Note 1 above.
9	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	60. SOFTWARE LICENSE GRANT	[Vendor] understands this provision and requests a slight modification to the restricted use subsection set forth herein. **Vendor's proposed edits to associated clause have been redacted by OGS**	OGS respectfully declines to make this change as part of this solicitation process. Please also see *Note 1 above.
9 (cont'd)	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	60. SOFTWARE LICENSE GRANT (continued)	**Vendor's proposed edits to associated clause have been redacted by OGS**	
9 (cont'd)	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	60. SOFTWARE LICENSE GRANT (continued)	**Vendor's proposed edits to associated clause have been redacted by OGS**	
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9 (cont'd)	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	60. SOFTWARE LICENSE GRANT (continued)	**Vendor's proposed edits to associated clause have been redacted by OGS**	
9 (cont'd)	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	60. SOFTWARE LICENSE GRANT (continued)	**Vendor's proposed edits to associated clause have been redacted by OGS**	
10	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	61. PRODUCT ACCEPTANCE	[Vendor] understands this provision and requests that acceptance testing take place within seventy- two hours from delivery in accordance with 9 CRR-NY §6209.10 unless otherwise mutually agreed upon by the parties per the previous agreement with the SBOE. **Vendor's proposed edits to associated clause have been redacted by OGS**	OGS respectfully declines to make this change as part of this solicitation process. Bidders are reminded that Solicitation 23198 is controlling over Appendix B. Section 5.1 - NYS Election Codes, Rules, and Regulations of the Solicitation provides that "[E]ach Voting System must be provided in accordance with all statutory requirements contained in the provisions of NYS Election Law and NYS Election Code and Regulations (https://www.elections.ny.gov/ElectionLaw.html).
10 (cont'd)	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	61. PRODUCT ACCEPTANCE (continued)	**Vendor's proposed edits to associated clause have been redacted by OGS**	
10 (cont'd)	Appendix B_GENERAL SPECIFICATIONS_bid23198-appendixb.pdf	61. PRODUCT ACCEPTANCE (continued)	**Vendor's proposed edits to associated clause have been redacted by OGS**	
11	bid23198-solicitation.pdf	5.4 SERVICE PROVISIONS	[Vendor] understands this provision and agrees to provide the Authorized Users with the necessary documentation in order to meet the above service provisions. [Vendor] agrees to a five (5) year warranty for the [Vendor] Equipment and a one (1) year warranty for the [Vendor] firmware and software (collectively the "Warranty Periods"). With respect to Warranty Periods set forth in this provision, please be advised that [Vendor]'s warranty provides that it will repair or replace any component of the [Vendor] equipment or [Vendor] firmware and software which, while under normal use and service: (i) fails to perform in accordance with its documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty Periods will commence upon delivery of the [Vendor] equipment and [Vendor] firmware and software. The Warranty shall not include the repair or replacement of any [Vendor] equipment components that are consumed in the normal course of operating the [Vendor] equipment, including printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. All replaced components of the [Vendor] equipment or [Vendor] firmware and software will become the property of [Vendor]. This warranty is effective provided that (I) the [Vendor] equipment or [Vendor] firmware and software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by [Vendor], (II) the [Vendor] equipment or [Vendor] firmware and software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by [Vendor] or causes beyond the reasonable control of [Vendor] or Authorized User, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (III) Authorized User has installed and is using the most recent update provided to it by [Vendor]. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.	The language provided was not part of the Solicitation. OGS respectfully declines to make the requested changes to Section 5.4 Service Provisions as part of the solicitation process. Please also see *Note 1 above. In addition, please be advised [Vendor] is prohibited from providing software or updates to software for any Voting System component until it has been tested and certified by the SBOE. All software to be installed and used for voting, including underlying operating systems must be approved by SBOE before it can be added to the Contract Price List and sold to an Authorized User. All Voting System software shall be provided to the Authorized User by SBOE, and not the vendor.
12	bid23198-solicitation.pdf	8.12 INVOICING AND PAYMENT	[Vendor] would appreciate the opportunity to discuss these payment terms. **Vendor's proposed edits to associated clause have been redacted by OGS**	OGS respectfully declines to make this change as part of the solicitation process. Please also see *Note 1 above.
13	bid23198-solicitation.pdf	8.26 GUARANTEE	[Vendor] understands this provision and [Vendor] agrees to a five (5) year warranty for the [Vendor] Equipment and one(1) year warranty for the [Vendor] firmware and software (collectively the "Warranty Periods"). With respect to the Warranty Periods, [Vendor] will repair or replace any component of the [Vendor] equipment or [Vendor] software and firmware which, while under normal use and service: (i) fails to perform in accordance with its documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty Periods will commence upon acceptance of the [Vendor] equipment and [Vendor]software and firmware. The Warranty shall not include the repair or replacement of any [Vendor] equipment components that are consumed in the normal course of operating the [Vendor] equipment, including printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. All replaced components of the [Vendor] equipment or [Vendor] software and firmware will become the property of [Vendor]. This warranty is effective provided that (I) the [Vendor] equipment or [Vendor] software and firmware to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by [Vendor], (II) the [Vendor] equipment or [Vendor] software and firmware to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by [Vendor] or causes beyond the reasonable control of [Vendor] or Authorized User, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (III) Authorized User has installed and is using the most recent update provided to it by [Vendor]. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.	The language provided was not part of the Solicitation. OGS respectfully declines to make this change to Section 8.26 Guarantee as part of the solicitation process. Please also see *Note 1 above. In addition, please be advised [Vendor] is prohibited from providing software or updates to software for any Voting System component until it has been tested and certified by the SBOE. All software to be installed and used for voting, including underlying operating systems must be approved by SBOE before it can be added to the Contract Price List and sold to an Authorized User. All Voting System software shall be provided to the Authorized User by SBOE, and not the vendor.
13 (cont'd)	bid23198-solicitation.pdf	8.26 GUARANTEE (continued)	In addition, [Vendor] warrants that the [Vendor] equipment and [Vendor] software and firmware will operate in conjunction with third party items during the Warranty Periods, provided that (i) Authorized User has installed and is using the most recent update provided to it by [Vendor], and (ii) the third party items are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship. In the event of a breach of this warranty, [Vendor] will repair or replace the item of [Vendor] equipment or [Vendor] software and firmware that is causing such breach to occur. The Authorized Users acknowledges that [Vendor] has merely purchased the third party items for resale or rental to the Authorized Users, and that the proprietary and intellectual property rights to the third party items are owned by parties other than [Vendor] ("Third Parties"). [Vendor] shall provide Authorized Users with copies of all documentation and warranties for the Third Party Items which are provided to [Vendor].	

#	Solicitation Document Name	Document Section (Name or Number)	Comment / Question / Bid Deviation	Draft Response
14	bid23198-solicitation.pdf	8.40 EMBEDDED SOFTWARE/FIRMWARE; UPDATES	[Vendor] understands this provision and [Vendor] provides that during the initial software warranty period and so long as the authorized user maintains an ongoing software and firmware maintenance and support services agreement, [Vendor] may provide new releases, upgrades or maintenance patches to the [Vendor] software, together with appropriate documentation ("Updates"), on a schedule defined by [Vendor]. The Authorized User is responsible for obtaining any upgrades or purchases of third party items required to operate the Updates as well as the cost of any replacements, retrofits or modifications to the [Vendor] equipment which may be necessary in order to operate the Updates. All Updates shall be deemed to be [Vendor] software for purposes of this Agreement upon delivery. The Authorized User may install the Updates in accordance with [Vendor]'s recommended instructions or may request that [Vendor] install the Updates. [Vendor] may charge the Authorized User at its then-current rates to (i) install the Updates; (ii) train the Authorized User on Updates, if such training is requested by the Authorized User or (iii) provide maintenance and support on the [Vendor] software that is required as a result of Authorized User's failure to timely or properly install an Update. The Authorized User shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Authorized User's failure to install and use the most recent Update provided to it by [Vendor]. If the Authorized User proposes changes in the [Vendor] software to [Vendor], such proposals will become [Vendor]'s property. [Vendor] may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Authorized User or any third party. [Vendor] represents to Authorized User that the Updates will comply with all applicable state law requirements at the time of delivery. Authorized User shall be responsible to ensure that it has installed and is using only certified versions of [Vendor] software in accordance with applicable law. In the event that any Updates are required due to changes in state law, [Vendor] reserves the right to charge the Authorized User for the following: (i) the total cost of any third-party items that are required in order to operate the Updates;	The language provided was not part of the Solicitation. OGS respectfully declines to make this change to Section 8.40 Embedded Software/ Firmware; Updates as part of the solicitation process. Please also see *Note 1 above. In addition, please be advised [Vendor] is prohibited from providing software or updates to software for any Voting System component until it has been tested and certified by the SBOE. All software to be installed and used for voting, including underlying operating systems must be approved by SBOE before it can be added to the Contract Price List and sold to an Authorized User. All Voting System software shall be provided to the Authorized User by SBOE, and not the vendor.
14 (cont'd)	bid23198-solicitation.pdf	8.40 EMBEDDED SOFTWARE/FIRMWARE; UPDATES (continued)	(ii) the total cost of any replacements, retrofits or modifications to the [Vendor] equipment contracted for herein that may be developed and offered by [Vendor] in order for such [Vendor] equipment to remain compliant with applicable laws and regulations; and (iii) the Authorized User's pro-rata share of the costs of designing, developing and/or certification by applicable federal and state authorities of such state mandated Updates. The Authorized User's pro-rata share of the costs included under subsection (iii) above shall be determined at the time by dividing the number of registered voters in Authorized User's jurisdiction by the total number of registered voters in all counties in Authorized User's state to which [Vendor] has sold and/or licensed the equipment and/or [Vendor] software purchased and licensed by Authorized User under a resulting Agreement. Authorized User shall pay [Vendor] the entire costs incurred for design, development and certification of any Update which is required due to a change in local law or is otherwise requested or required by the Authorized User.	
15	Solicitation	Section 6.1.1	[Vendor] is certified as a central count voting system [(Product)]. Can you tell me why [Vendor] was not listed in sections 6.1.1 Certified Voting Systems and again in section 9.11? I think perhaps this was just an oversight. Please see attached documents. [Vendor] was initially certified in 2015 and again in 2019.	Please see revised Section 6.1.1 of the Solicitation.
16	Solicitation	General	If [Vendor] is awarded a contract for the current certified product [(Product)], can [Vendor] add to the contract additional certified products as they become available and certified?	Any Vendor that receives a Contract award for Solicitation 23198 may submit a request to update the Price List with additional products that have been certified by SBOE, subject to the procedures outlined in Appendix C - Contract Modification Procedures and in any contract resulting from this Solicitation.
END OF QUESTION AND ANSWER ENTRIES				