



Office of General Services Procurement Services

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

Solicitation

| | |
|-----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| BID OPENING DATE: January 5, 2022 TIME: 11:00 A.M. EST SOLICITATION NUMBER: 23246 | TITLE: Group 73003 – Administrative Services – Temporary Personnel (Statewide) Classification Codes: 78, 90 |
|-----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|

CONTRACT PERIOD: A Period of Five (5) 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.

E-mail Address: SST_admin_svcs@ogs.ny.gov

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Alyssa Nolte Contract Management Specialist 1 Telephone No.: (518) 473-1863 E-mail address: SST_admin_svcs@ogs.ny.gov | Cheri McCullough Contract Management Specialist 2 Telephone No.: (518) 402-5552 E-mail address: SST_admin_svcs@ogs.ny.gov |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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

Legal Business Name of Company Bidding:

D/B/A – Doing Business As (if applicable):

| | | | | |
|--------|------|-------|--------|----------|
| Street | City | State | County | Zip Code |
|--------|------|-------|--------|----------|

| | |
|-----------------|-------------------|
| E-mail Address: | Company Web Site: |
|-----------------|-------------------|

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

| | | | |
|---------------------------------------------------------|------------------------------------------------------------------|------------------------------------------------------|---------------------------------------------------|
| <input type="checkbox"/> NYS Small Business # Employees | <input type="checkbox"/> 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.

WE ARE NOT BIDDING AT THIS TIME BECAUSE:

FOR PROCUREMENT SERVICES USE ONLY

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

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 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 Invitation for Bids.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Invitation for Bids.
3. The Bidder has read and understands the provisions of the Invitation for Bids, 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 they are duly authorized to legally bind the Bidder referenced above and that they 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 issued by the New York State (NYS) Office of General Services (OGS), Procurement Services to establish Centralized Back-Drop Contracts for Administrative Services (Temporary Personnel), grouped into various Lots and Regions as further described herein, to be used by Authorized Users of NYS OGS Centralized Contracts.

This Solicitation is a **non-competitive establishment** of multiple-award Centralized Backdrop Contracts. Contract awards will be made to all responsive and responsible Bidders who meet qualifications as detailed in Section 2 – *Bidder Qualifications and Service Requirements* and whose pricing is determined to be reasonable by OGS. The prices proposed by Bidders in response to this Solicitation **are Maximum-Not-To-Exceed Bill Rates**.

Bidders are reminded that the rates provided in response to this Solicitation are Maximum-Not-To-Exceed Bill Rates and the actual bill rates proposed to be charged for providing temporary personnel will be determined by Contractors in response to a detailed Request for Quote (RFQ), identifying the specific needs of an Authorized User relative to qualifications of the temporary personnel being requested. The actual bill rates proposed may be lower than, but may not exceed, the Maximum-Not-To-Exceed Bill Rates. **Potential Bidders are strongly encouraged to fully review Section 6.6 – Bid Pricing Information prior to completing Attachment 1-Pricing and submitting a Bid in response to this Solicitation.**

The Backdrop Contracts resulting from this Solicitation will have an established set of standardized terms and conditions, guidelines, processes and templates. When an Authorized User needs temporary personnel, it will issue a **competitive** Request for Quote (RFQ) in accordance with the terms and conditions of the Centralized Backdrop Contract and include any additional requirements of the positions sought to be filled. **The RFQ will be distributed by the Authorized User to all Contractors for the applicable Lot and Region where the work is to be performed and it is in response to the RFQ where the Contractors shall submit the actual proposed prices to be charged.** The Authorized User will then either use their NYS Procurement Card (PCard) to obtain temporary personnel or issue a Purchase Order to the selected Contractor based on the RFQ responses. Procurement Instructions further describing the RFQ process and requirements for Authorized Users to purchase from the Centralized Backdrop Contracts are found in Section 6.3 – *Procurement Instructions*.

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

1.2 Scope

The State of New York seeks to establish Centralized Backdrop Contracts for the acquisition of specified Administrative Services **Temporary Personnel** for a variety of occupations (also referred to as “Job Titles”). These occupations are categorized in the “Lot” of service as follows:

- a) Lot 1 – “Office Worker Occupations”
- b) Lot 2 – “Hearing Reporter Services”
- c) Lot 3 – “Transcription Services”
- d) Lot 4 – “Financial Occupations”
- e) Lot 5 – “Miscellaneous Occupations”
- f) Lot 6 – “General Health Occupations”
- g) Lot 7 – “Physicians and Nurses”
- h) Lot 8 – “Dental Services”
- i) Lot 9 – “Psychiatric and Psychology Services”
- j) Lot 10 – “Light Industrial Occupations”

A description of these Lots and the Job Titles included in each can be found in Attachment 10 – *Job Descriptions and Qualifications*. Bidders are not required to bid on all Lots. Bidders are also not required to bid on all Job Titles within a Lot as described in Attachment 10 – *Job Descriptions and Qualifications*.

It is the intent of OGS to award Centralized Backdrop Contracts for Lots 1 through Lot 10, in the ten (10) Labor Market Regions of the State, as established by the NYS Department of Labor (see *Table #1 – Regions*, below). Contract awards will be made to all responsive and responsible Bidders who meet qualifications as detailed in Section 2 – *Bidder Qualifications and Service Requirements* and whose pricing is determined to be reasonable by OGS.

Table #1-Regions

| | | |
|-----------|------------------|----------------------------------------------------------------------------------------------|
| Region 1 | Capital Region | Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren, and Washington Counties |
| Region 2 | Central New York | Cayuga, Cortland, Madison, Onondaga, and Oswego Counties |
| Region 3 | Finger Lakes | Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, and Yates Counties |
| Region 4 | Hudson Valley | Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester Counties |
| Region 5 | Long Island | Nassau and Suffolk Counties |
| Region 6 | Mohawk Valley | Fulton, Herkimer, Montgomery, Oneida, Otsego, and Schoharie Counties |
| Region 7 | New York City | Bronx, Kings, New York, Queens, and Richmond Counties |
| Region 8 | North Country | Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis, and St. Lawrence Counties |
| Region 9 | Southern Tier | Broome, Chemung, Chenango, Delaware, Schuyler, Steuben, Tioga, and Tompkins Counties |
| Region 10 | Western New York | Allegany, Cattaraugus, Chautauqua, Erie, and Niagara Counties |

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 \$100,000,000.00, 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 – Clause 28 – *Estimated/Specific Quantity Contracts* and Clause 25 – *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 | 9/30/21 | N/A |
| Deadline for Submission of Intent to Bid | 10/15/21 | 5:00 PM ET |
| Closing Date for Bidder Questions | 10/22/21 | 5:00 PM ET |
| OGS Procurement Services' Response to Bidder Questions | 12/1/21 (tentative) | N/A |
| Bid Opening / Due Date for Bids | 1/5/22 | 11:00 AM ET |
| Contract Approval Date / Award Publish Date | 10/21/22 | N/A |

1.5 Intent to Bid

A Bidder is requested to indicate its intent to bid by sending an e-mail titled "INTENT TO BID - "[**BIDDER NAME**]" to SST_admin_svcs@ogs.ny.gov on or before the date and time indicated in the *Key Events/Dates* – Sub-section 1.4 (above). The e-mail should include the Bidder's company name and a contact name and contact information. The intent to bid is discretionary.

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 the "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 the 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 the Solicitation documents.

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

1.7 Bidder Questions

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

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. See 4.3 – *Bid Deviations* for additional information.

1.8 NYS Comptroller Approval

Pursuant to the Memorandum of Understanding (MOU) dated August 15, 2019 between the Offices of the New York State Governor Andrew M. Cuomo (Executive), New York State Comptroller Thomas P. DiNapoli (OSC), the State University of New York (SUNY), the State University of New York Construction Fund (SUCF), the City University of New York (CUNY), and the City University of New York Construction Fund (CUCF), procurement documents and contracts awarded under this Solicitation shall have no force and effect and the State bears no liability unless such procurement documents and contracts awarded under this Solicitation are approved by OSC or the pertinent pre-audit review period under the MOU has elapsed.

1.9 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 23246-MWBE or SDVOB INTEREST_COMPANY NAME*" to SST_admin_svcs@ogs.ny.gov on or before October 15, 2021. The e-mail content 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).
5. Include what locations in NYS where the company provides services.

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

1.10 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 (OSC) (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://ogs.ny.gov/acpl/>.

1.11 Definitions

Capitalized terms used in this Solicitation shall be defined in accordance with Appendix B – Clause 2 – *Definitions*, or as below.

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

"Best Value" shall mean the basis for awarding a contract for services to the Bidder which best optimizes quality, cost and efficiency among Responsive and Responsible Bidders. See State Finance Law § 163(1)(j). Best value may be equated to low price in response to an RFQ.

"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.

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

"Blanket Purchase Order" shall refer to a purchase order agreement between an authorized user and contractor to deliver services with a set price on a recurring basis over a specified time period.

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

“**Candidate**” shall refer to an individual proposed by a Contractor in response to a Request for Quote from an Authorized User. Upon completion of background check, determination of suitability by the Authorized User, and acceptance by Authorized User, a Candidate will become Temporary Personnel. Also see “Temporary Personnel” and “Contractor.”

“**Change Notice**” shall refer to any issuance of changes made to an originally issued purchase order or purchase made via the New York State Procurement Card (PCard).

“**Contract**”, “**Centralized Contract**” or “**Backdrop Centralized Contract**” as defined in Appendix B.

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

“**Lot**” shall mean that organization of job titles within a specified category of service.

“**Master File**” shall mean an electronic file maintained by Contractor for each Candidate. The Master File must include for each Candidate a resume (except for Lots 2, 3, and 10 unless requested by an Authorized User), qualifications, certifications, licenses, and background checks (except for Lots 2, 3, and 10 unless requested by an Authorized User).

“**Maximum Not-To-Exceed Bill Rate**” shall mean the most (in dollars) a Contractor may ever quote in response to an Authorized User RFQ for an hour worked by a Candidate on this contract for a particular job title, county, region, time period (e.g. overtime), etc. as specified in Attachment 1 - *Pricing* and Sub-section 1.1, *Overview*.

“**May**” denotes the permissive in a contract clause or specification. “May” does not mean “required.” Also see “Shall” and “Must.”

“**Must**” denotes the imperative in a contract clause or specification. “Must” is synonymous with “required.” Also see “Shall” and “May.”

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

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

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

“**NYS Holiday Rate**” shall mean the hourly rate paid for work performed on NYS Holidays by Temporary Personnel. Any Holiday Rate allowed shall be at the sole discretion of the Authorized User and requested in the RFQ;

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

“**Overtime Rate**” shall mean the hourly rate paid for time worked above 40 hours in a single week. Time and a half shall be paid above the pay rate for time worked above 40 hours in a single week for Authorized User regardless of time of day or day of the week, unless the Authorized User has requested a Holiday Rate within their RFQ and work was performed on a NYS Holiday. This requirement applies to Lots 1, 4, 5, 7, 8, 9, 10. There shall be no overtime for Lots 2 and 3 as these services are billed by the page. Overtime Rate for Lot 10 – *Light*

Industrial Occupations is determined by the relevant prevailing wage which the engagement is subjected. Any overtime allowed shall be at the sole discretion of the Authorized User.

“**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).

“**Prevailing Wage Rate**” shall mean that part of the requirements of Article 8 (Sections 220-223) and Article 9 (Sections 230-239) of the New York State Labor Law, which requires public work Contractors and Subcontractors to pay laborers, workers or mechanics employed in the performance of a public work contract not less than the prevailing rate of wage and to provide supplements (fringe benefits) in accordance with prevailing practices in the locality where the work is performed. Prevailing wage requirements for this Solicitation are contained herein. This term only applies to Lot 10 – *Light Industrial Occupations* job titles.

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

“**Region**” shall mean the grouping of counties by the State.

“**Request for Quote**” (RFQ) shall refer to the document issued by the Authorized User and used to solicit price quotations for specific services or candidates.

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

“**Shall**” denotes the imperative in a contract clause or specification. “Shall” is synonymous with “required.” Also see “Must” and “May.”

“**Solicitation**” shall refer to this document, and its appendices and attachments.

“**Subcontractor**” or “**Sub-contractor**” as defined in Appendix B.

“**Suitability**” refers to the Authorized User’s review of identifiable character traits and past conduct which are reasonably sufficient to indicate whether a given individual is or is not likely to be able to perform the requirements of a contract without undue risk to the interests of the Authorized User.

“**Suitability determination**” is a determination by the Authorized User that there are reasonable grounds to believe that a given individual will likely be able to perform the job title requirements without undue risk to the interests of the Authorized User.

“**Temporary Personnel (Temp)**” shall refer generically to any individual provided by a Contractor in response to an RFQ issued by an Authorized User and who is hired for the service requested. A Temp can be a direct Temp, a Subcontractor or an agent. Also see “Candidate.”

“**0 (Zero)**” is both a number and the numerical digit used to represent that number in numerals. It is the integer immediately preceding 1 (one).

1.12 Appendices and Attachments

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

Appendix A – *Standard Clauses for NYS Contracts* (October 2019)
 Appendix B – *General Specifications* (April 2016)
 Appendix C – *Contract Modification Procedure* (January 2017)
 Appendix D – *Federal Funding Agency Mandatory Terms and Conditions* (May 2021)

Attachment 1 – *Pricing*
 Attachment 2 – *NYS Required Certifications*
 Attachment 3 – *Encouraging Use of NYS Businesses*
 Attachment 4 – *Insurance Requirements*
 Attachment 5 – *Bidder Information Questionnaire*
 Attachment 6 – *Bidder Submission Checklist*
 Attachment 7 – *Bidder Questions Form*
 Attachment 8 – *Report of Contract Usage*
 Attachment 9 – *Intent to Bid*
 Attachment 10 – *Job Descriptions and Qualifications*
 Attachment 11 – *Background Check Requirements*
 Attachment 12 – *Lot 1: Office Worker Occupations*
 Attachment 13 – *Lot 2: Hearing Reporter Services*
 Attachment 14 – *Lot 3: Transcription Services*
 Attachment 15 – *Lot 4: Financial Occupations*
 Attachment 16 – *Lot 5: Miscellaneous Occupations*
 Attachment 17 – *Lot 6: General Health Occupations*
 Attachment 18 – *Lot 7: Physicians and Nurses*
 Attachment 19 – *Lot 8: Dental Services*
 Attachment 20 – *Lot 9: Psychiatric and Psychology Services*
 Attachment 21 – *Lot 10: Light Industrial Occupations*
 Attachment 22 – *Proof of Past Sales*

1.13 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* (October 2019);
- 2) Solicitation;
- 3) Appendix B – *General Specifications* (April 2016); and
- 4) All other appendices and attachments to the Solicitation.

SECTION 2 – BIDDER QUALIFICATIONS AND SERVICE REQUIREMENTS

2.1 Bidder Qualifications

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

By submitting a Bid, the Bidder shall meet the following qualifications and requirements outlined in this section.

- A. All Bidders must provide evidence of experience through proof of past sales as described below and in Attachment 22 – *Proof of Past Sales*:

Lots 1, 4, 5, 6, 7, 8, 9, and 10 all Bidders must provide:

- Proof of an average of at least \$200,000.00 in **sales to governmental or private sector accounts** over the past three (3) years immediately preceding the Bid Opening / Due Date for Bids as defined in Sub-section 1.4 – *Key Events/Dates*, and where such sales were made for comparable services and/or titles to the Lots for which they are being bid for this Solicitation.

- The sales data must be entered into Attachment 22 – *Proof of Past Sales* and be submitted with the Bid.

Lots 2 and 3 all Bidders must provide:

- Proof of an average of at least \$100,000.00 in sales to governmental or private sector accounts over the past three (3) years immediately preceding the Bid Opening/Due Date for Bids, and where such sales were made for comparable services and/or titles to the Lots for which they are being bid for this Solicitation.
- The sales data must be entered into Attachment 22 – *Proof of Past Sales* and be submitted with the Bid. Determination of proof of prior sales and experience is at the sole discretion of the State. Proof of prior minimum sales revenue should be provided with the Bid submission (see Sub-section 4.8 – *Format and Content of Bid Submittal*).

- B. All Bidders must agree to accept the NYS Procurement Card (PCard), or other electronic form(s) of payment, from Authorized Users for all titles included in any Contract awarded to the Bidder resulting from this Solicitation.
- C. All Bidders must provide a single generic electronic mailbox to receive RFQs from Authorized Users. The electronic mailbox must be monitored consistently throughout each Business Day in order to provide timely responses to Authorized Users' requests. Any changes to the generic electronic mailbox must be provided within one (1) Business Day to the Contract Manager listed on the Contract Award Notification page. If the Bidder does not currently maintain a generic electronic mailbox, by submitting a Bid in response to this Solicitation, the Bidder agrees to establish one prior to contract award.

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.

Bidders, if requested, shall provide a minimum of three (3) references within five (5) Business Days of request. References shall be governmental or private sector accounts and shall demonstrate the ability of the vendor to fulfill contract requirements similar in scope to the size, nature and complexity of the outlined Bid. References shall include:

- Government/Customer name, address, contact person, telephone number, e-mail, and number of years Bidder has provided the services to the referenced account.

Failure to meet any of the above qualifications, in whole or in part, may result in a rejection of the Bid of that Bidder as non-responsive.

2.2 Service Requirements (LOT 2 and LOT 3 SPECIFIC REQUIREMENTS)

LOT 2 - Hearing Reporter Services

Unless otherwise required by the Authorized User in the RFQ, the following requirements shall apply:

- Proceedings are to be stenographically or electronically recorded and transcribed as specified by the Authorized User.
- The Contractor shall furnish all labor and materials required to provide proceeding, session, or meeting reporting at Authorized User designated locations within the region of the Contract. Unless otherwise required by an Authorized User in the RFQ, a Hearing Reporter shall be at the scheduled proceeding, session, or meeting a minimum of ten (10) minutes prior to start time and expected to stay until told they are able to leave.
- More than three (3) late arrivals or early departures in a one-month period by the same Hearing Reporter, from the same Contractor, provided to the same Authorized User, may result in that Hearing Reporter being disqualified from serving that Authorized User.
- If more than fifteen (15) percent of transcripts are returned late in any calendar month for a specific Authorized User, the Authorized User may arrange to have transcription work completed by another Contractor and the Contractor having returned the transcripts late shall be liable for any additional costs incurred over Contract costs as noted in Appendix B – Clause 48 – *Remedies for Breach*.

Completion Requirements

Completion requirements will be agreed upon by the Authorized User and Contractor at the time of job scheduling and can only be changed with the consent of both parties.

A. Normal Completion:

The Contractor shall deliver transcripts to the Authorized User within seven (7) Business Days after the recorded proceeding, excluding Saturday, Sunday, and New York State designated holidays. Additional copies of public hearing proceeding transcripts shall be delivered to all ordering parties within seven (7) Business Days after purchase order from the ordering parties is received by the Contractor, excluding Saturday, Sunday, and New York State designated holidays.

B. Priority Completion:

The Contractor shall deliver to the Authorized User transcripts, electronically or in hard copy, as specified by the Authorized User, within three (3) Business Days after the recorded proceeding, excluding Saturday, Sunday, and New York State designated holidays. Additional copies of public hearing proceeding transcript shall be delivered to all ordering parties within three (3) Business Days after a purchase order for those additional copies is received by the Contractor, excluding Saturday, Sunday, and New York State designated holidays.

C. Overnight Completion:

The Contractor shall deliver transcripts to the Authorized User no later than 1:00 p.m. on the Business Day following the proceeding. Additional copies of proceeding transcripts shall be delivered to all ordering parties no later than 1:00 p.m. on the Business Day after receipt of a purchase order by the Contractor.

D. Immediate Completion:

The Contractor shall deliver transcripts no later than 9:00 p.m. on the date of the proceeding. Additional copies of public hearing proceeding transcripts shall be delivered to all ordering parties no later than 9:00 p.m. on date of the receipt of the purchase order by the Contractor.

E. Proceeding Cancellation:

The Authorized User shall provide the Contractor with a minimum of 24 (twenty-four) hours written notice of cancellation of any proceeding. In the event of proceeding cancellation without specific notification, the Contractor shall be entitled to minimum payment as noted below.

Minimum Fees

Contractor shall be entitled to a minimum payment equal to the value of 20 (twenty) pages at the normal delivery rate (i.e., applies per hearing scheduled or per facility visit). Contractor will not receive payment for wait time. If the Temp appears for the hearing and it has been cancelled, the Contractor will be entitled to the minimum fees as stated above (i.e., applies per hearing scheduled or per facility visit).

Late Completion Payment Reductions

The following payment reductions shall be assessed by an Authorized User for late completion of transcription work:

- One (1) day late: Ten (10) percent reduction of the per page rate.
- Two (2) to five (5) days late: Fifteen (15) percent reduction of the per page rate.
- More than five (5) days late: Thirty (30) percent reduction of the per page rate.

Recording Requirements

All instructions by the Hearing Officer to the Hearing Reporter with respect to the Hearing Reporter's conduct and participation in proceedings shall be followed without discussion. Except where inconsistent with general or specific instructions issued by the Authorized User, every word spoken during a proceeding, session or meeting shall be transcribed by the Hearing Reporter, unless designated specifically as "off the record" by the Hearing Officer. With specific permission of the Hearing Officer, certain "off the record" statements may be recorded.

Instructions from anyone other than the Hearing Officer, concerning what shall or shall not be included in the record, shall be ignored.

The Contractor shall furnish transcript proofread with all words correctly spelled, properly hyphenated and properly punctuated. Any corrections to spelling, hyphenation or punctuation requested by the Hearing Officer shall be made without additional cost.

All original notes or other records taken in connection with any proceeding shall be held in security by the contractor for a period of time as designated by the Authorized User, not to exceed one year. Proceedings are to be stenographically or electronically recorded and transcribed. Backup electronic verbal recording equipment shall be operating at all times while proceedings are being reported, unless prohibited by the Hearing Officer.

Stenographic recording shall be mechanical or electronic keyboard-operated typing devices and shall meet the requirements of the State Administrative Procedure Act.

Transcribed Page Requirements

- **Paper:** Shall be white 20 LB cotton bond, 8-1/2 inches wide by 11 inches long or Authorized User may designate recycled content paper with the same specifications as noted above. Either paper shall be furnished at no additional cost.
- **Type:** Shall be black, ten (10) letters to the inch size and reproducible by standard office copy equipment.
- **Type Spacing:** Shall be 25 lines minimum double spaced between lines with ruled margin of 3/8 inch on right and 1-3/4 inches on left or not to exceed 2-1/8 inches in total.
- **Punches:** Paper shall be un-punched unless designated by the Authorized User as punched, with punch specifications. There will be no additional charge for punched paper.
- **Format:** All transcripts shall be formatted as noted below: If Authorized User format requirements deviate from below, the Authorized User shall furnish Contractor with a sample format.

Formatting

All pages shall be paginated in consecutive order for each proceeding report and sequential from the first to the last volume. Page numbers shall be located in the upper right-hand corner of each page. Pagination will not be considered a transcribed line unless located on a line with other transcribed material.

At the opening of each proceeding and as directed by the Hearing Officer, the Hearing Reporter shall record and insert, in a location as directed by the Authorized User, the names and addresses of persons representing parties and participants in the proceeding.

When directed by the Hearing Officer, after an extended recess, the Hearing Reporter shall place in the appropriate place in the transcript on the days preceding the cumulative list of appearances up to and including that day.

Each transcript for a proceeding shall include a table of contents or index indicating page numbers of opening statements and closing arguments by counsel, lists of witnesses testifying at the hearing and all persons making statements. The table of contents or index shall also include a tabulation consisting of the number and description of each exhibit marked for identification with the page number on which the exhibit is marked for identification, and in due course, the page on which it is either received in evidence, withdrawn or rejected. The index shall also include separate tabulations consisting of a description of each document offered in reference, public documents and matters to be officially noted, and the page on which each item or document was marked for identification or received in evidence. The table of contents or index shall note the page where offers of proof were made and such other matters as the presiding officer directs.

Upon Authorized User's request, the Contractor shall have rubber stamps manufactured, per Authorized User facsimile sample, to be used by the Hearing Reporter to stamp and date exhibits and copies as directed by the hearing officer for repetitive hearing requirements. Stamps will be provided at the expense of the Contractor.

The Contractor shall retain, safeguard or distribute, per instructions from the Hearing Officer, all exhibits. Additionally, the Contractor shall cause the Hearing Reporter to collect appearance cards from all persons appearing on behalf of themselves or others. Hearing cards shall contain information as designated by the Hearing Officer, and the Contractor shall file all cards with the Authorized User at the close of the hearing day.

Electronic Mailing of Transcription

An electronic version of each transcript shall be electronically mailed to the Authorized User as an encrypted message, with encrypted document attached in addition to a hard copy if requested by the Authorized User.

The file shall be computer readable identical copy of original printed transcript including pagination, one hundred (100) percent equivalent upper/lower case text and matching page and line numbers in the same sequential order

Confidentiality Requirements

The Authorized User will communicate to the Hearing Reporter if a hearing has been designated closed. All recorded and hard copy testimony and material will remain the property of the Authorized User. The Contractor shall maintain the confidentiality of all material, identity of any parties and content of any material related to the hearing.

Any requests for information on closed hearings from third parties shall be reported to the Authorized User in writing within twenty-four (24) hours of the request.

All original notes or other records taken in connection with any proceeding shall be held in security by the Contractor for a period of time, as designated by the Authorized User, not to exceed one year.

Public Hearing (as designated by the Authorized User)

The Authorized User, or any other purchaser of transcript or document of any hearing, investigation, session, meeting, etc., may duplicate or otherwise reproduce any document for their own use, except for sale to other prospective purchasers, without compensation to the Contractor. Any transcript or documents received by the Authorized User are public documents accessible for public inspection and copying under the terms and provisions of NYS Public Officers Law §87.

Recording Medium

All transcripts shall be typewritten or mechanical reproduced if approved in writing by the Authorized User.

Transcript in Electronic Format

The Contractor shall furnish portable electronic media in addition to paper document original. Price additional shall include cost of such electronic media.

The electronic media shall be computer readable identical copy of original printed transcript including pagination, one hundred (100) percent equivalent upper/lower case text and matching page and line numbers in the same sequential order.

Each copy of electronic media shall be clearly labeled per Authorized User instructions supplied with the purchase order and computer file identification shall be per Authorized User requirements.

Format shall be ASCII, or generic word processing ASCII.

LOT 3 - Transcription Services

Unless otherwise required by the Authorized User in the RFQ, the following requirements shall apply:

- The Contractor shall furnish all labor and materials required to transcribe judicial, administrative, and criminal proceedings, including meetings, from audio cassettes, tapes, digital files, CD-ROM or other media to transcribed copy on media specified by Authorized User.
- Transcript shall be in verbatim form, proofread with all words spelled correctly, properly punctuated and hyphenated and grammatically correct. Any corrections to spelling, hyphenation, or punctuation requested by Authorized User shall be made without additional cost.

Work Pick Up and Delivery

After notification by the Authorized User, the material to be transcribed will be sent via postal mail, overnight, hand delivery, or other agreed-upon method by the Authorized User to the Contractor. Alternately, the Contractor shall take delivery of audio cassettes, tapes, digital files, CD-ROM or other media at the Authorized User's designated location and times or as specified by the Authorized User.

Completed transcripts shall be sent via electronic mail, within designated times.

An electronic version of each transcript shall be electronically mailed to the Authorized User as an encrypted message, with encrypted document attached.

The file shall be computer readable identical copy of original printed transcript including pagination, one hundred percent equivalent upper/lower case text and matching page and line numbers in the same sequential order.

Transcription Completion Requirements

A. Normal Completion:

Work completion and delivery shall be required in seven (7) Business Days excluding Saturday, Sunday and New York State designated holidays.

B. Priority Completion:

Work completion and delivery shall be required in three (3) Business Days excluding Saturday, Sunday, and New York State designated holidays. The first Business Day shall commence on the first Business Day after work pick-up; and work completion shall be after delivery to the Authorized User by close of business on the third Business Day.

C. Overnight Completion:

The Contractor shall deliver transcripts to the Authorized User no later than 1:00 p.m. on the Business Day following the proceeding. Additional copies of proceeding transcripts shall be delivered via electronic mail to all ordering parties no later than 1:00 p.m. on the Business Day after receipt of purchase order by the Contractor for those additional copies.

D. Immediate Completion:

The Contractor shall deliver transcripts no later than 9:00 p.m. on the date of the proceeding. Additional copies of public hearing proceeding transcripts shall be delivered to all ordering parties no later than 9:00 p.m. on date of the receipt of the purchase order by the Contractor for those additional copies.

Late Completion Payment Reductions

The following payment reductions shall be assessed by an Authorized User for late completion of transcription work:

- One (1) day Late: Ten (10) percent reduction of the per page rate.
- Two (2) to five (5) days late: Fifteen (15) percent reduction of the per page rate.
- More than five (5) days late: Thirty (30) percent reduction of the per page rate.

If more than fifteen (15) percent of transcripts are returned late in any calendar month for a specific Authorized User, the Authorized User may arrange to have transcription work completed by another Contractor and the Contractor having returned the transcripts late shall be liable for any additional costs incurred over Contract costs as noted in Appendix B – Clause 48 – *Remedies for Breach*.

Transcription Requirements

A Contractor is obligated to provide Transcription Services in a professional manner. The Contractor shall transcribe verbatim all audible portions of the recorded proceeding. If any inaudible portions are encountered, the Contractor shall re-play the inaudible portions and if portions are still inaudible, the Contractor shall identify in the transcription the section as inaudible and identify the length in minutes and seconds.

Recording Medium

Contractor shall have equipment to transcribe from audio cassettes, tapes, digital files, CD-ROM or other media.

Transcription in Electronic Media Format

The Contractor shall furnish electronic media, such as USB flash drive, CD, or other electronic media in addition to paper document original.

The electronic media shall be computer readable identical copy of original printed transcript including pagination, one hundred percent (100) equivalent upper/lower case text and matching page and line numbers in the same sequential order.

Each item of electronic shall be clearly labeled per Authorized User instructions supplied with the purchase order and computer file identification shall be per Authorized User requirements.

Format shall be **American Standard Code for Information Interchange** (ASCII), or generic equivalent.

Important Notes

- a) For all on-site services, Temps must adhere to any security clearance requirements, which may include providing photo identification.
- b) The Authorized User may request that the Contractor provide equipment for any or all of the above services. Such request shall be made by the Authorized User within the RFQ.

SECTION 3 – SPECIFICATIONS/GENERAL REQUIREMENTS

3.1 Quality of Services

The Authorized User shall have the right to interview a Candidate to determine his/her qualifications. The Candidate's qualifications must reflect the position of the specific job title requested. The Authorized User reserves the right to reject the Candidate if the Authorized User determines that the Candidate is not qualified based on the referenced job title and any additional requirements identified in the RFQ. An Authorized User has the right to request a replacement Candidate if the original selected Candidate is deficient in the performance of an assignment.

To ensure all services conform to Contract and RFQ specifications, the Contractor shall implement the quality control procedures and the quality assurance plan set forth in Bidder's response in Attachment 5 – *Bidder Information Questionnaire* on the Solicitation Specific Questions tab. By submitting a Bid, the Bidder agrees that the services provided under a resulting Contract will be provided in a professional manner in accordance with industry standards, and that all candidates proposed in response to an RFQ will have any required licenses, certifications or permits necessary or required by applicable law to perform the requested services.

3.2 Disqualified Resources

Any Temp that an Authorized User deems unfit to perform a position at the time of RFQ response or any time in the future shall be recorded by notifying the Contractor in writing, via email, and may result in that Temp being disqualified from performing future services for the Authorized User under this Contract.

3.3 Late Arrival

An Authorized User will expect that any Temp will arrive at his/her workplace/workstation/job site to allow sufficient time to be prepared to work at the commencement of his/her appointed shift. An Authorized User shall not pay for any scheduled time for the period the Temp was late. More than three (3) late arrivals in a one-month period by the same Temp may result in that Temp being disqualified from performing future services for the Authorized User under this Contract.

3.4 Maintenance of a Master File

The Contractor shall maintain a Master File for each Candidate and keep it in electronic format (i.e., electronic, or scanned documents). The Contractor shall provide a copy of the Candidate's Master File to the Authorized User when suggesting a Candidate for a role.

3.5 Background Checks

Except for Lots 2, 3 and 10, the Contractor shall provide appropriate background checks for each Candidate prior to the start of their employment. Authorized Users, at their discretion, may request in the RFQ that background checks be performed for Lots 2, 3 and 10. Minimum background check requirements are detailed in Attachment 11 – *Background Check Requirements*. Additional background check requirements requested by an Authorized User shall be specifically detailed in the RFQ. Contractors may bid an additional fee for background check requests beyond the minimum requirements. The Contractor shall pre-screen and qualify Candidates as defined in the respective job titles for all positions requested. Regarding onsite work, Authorized Users may require that the Candidate(s) reside and be legally authorized to work in the United States.

3.6 RFQ Response Validity

All Contractor responses to RFQs must remain open and valid for at least sixty (60) days from the RFQ response opening/due date, unless the time for selecting the candidate is extended by mutual consent of the Authorized User and the Contractor. A Contractor's RFQ response shall continue to remain an effective offer, firm and irrevocable, subsequent to such sixty (60) day period until either candidate selection by the Authorized User is made or withdrawal of the Contractor's RFQ response in writing by the Contractor. Candidate selection shall consist of written notice to that effect by an Authorized User to a successful Contractor.

3.7 Replacement Candidates

For job titles in Lots 1, 4, 5, 6, 7, 8, and 9 the Contractor must recommend a replacement Candidate within two (2) workdays of request from an Authorized User. For job titles in Lots 2 and 10, the Contractor must recommend a replacement Candidate within one (1) workday of request from an Authorized User. The Authorized User may review Contractor's selection process and/or Candidate resumes. If a Contractor cannot provide a replacement Candidate within that time, then the Authorized User will consider the request unfulfilled. Thereafter, the Authorized User may make a request for a Candidate from the next best value quote received in response to their RFQ (if RFQ responses are still open and valid), or in the alternative, the Authorized User may issue a new RFQ for a replacement Candidate. **Where an authorized user prefers that candidate not return for any assignment due to poor performance or other documented service-related issues, the vendor should provide a replacement candidate, as per the above.**

A background check, if requested by the Authorized User, must be provided as per Attachment 11 – *Background Check Requirements*, on the replacement Candidate before they begin working. However, at the discretion of the Authorized User, the replacement Candidate may begin work before the background check is completed, with the issuance of a written waiver by the Authorized User to the Contractor.

If the Candidate's Master File contains educational background verification and social security number verification, then these items may be omitted from the copy of the initial background check provided to the Authorized User, if the Authorized User advises it does not need this information. If the Master File contains employment verification from previous engagements with the State, then employment verification is only required to be updated going back to the previous verification included in the Master File.

3.8 Reduce Work

The Authorized User has the right to reduce the length of the work assignment and the Contractor shall be provided a minimum of twenty-four (24) hours' notice, except when reduction is due to a force majeure event, as defined in Appendix B – *Savings/Force Majeure*, or if the Temp presents a risk to the safety and well-being of his/herself or others. Contractors shall not assess any fees or penalties for reductions in work assignments.

3.9 Travel

All Temporary Personnel's travel expenses must be pre-approved by the Authorized User. "Personal Vehicle Mileage Reimbursement" and "Ground Transportation via Common Carrier (Train and Bus Travel)", for work-related travel only, shall be provided in accordance with codes, rules, and regulations promulgated by the OSC for Management/Confidential Employees. Any travel under thirty-five (35) miles or any travel that is a standard commute between home and office is excluded from reimbursement, as per the policy. Any other travel expenses including Lodging, Meal Allowances, Rental Vehicles and Air Travel are specifically excluded from the scope of the Contract.

3.10 Rates

For Lots 1 through 10 the Contractor shall offer to provide Temp personnel in response to an RFQ issued to a Contractor by the Authorized User. The Contractor shall refer to the definitions of job titles in Attachment 10 – *Job Descriptions and Qualifications* for a brief description of skills and must pay special attention to all additional job skills or requirements included by the Authorized User in each RFQ.

The hourly rates for job titles in Lots 1, 4, 5, 6, 7, 8 and 9, will be considered straight time costs for work performed during 40 hours in a single week for an Authorized User regardless of time of day, day of the week or NYS Holiday unless the Authorized User has requested a Holiday Rate within their RFQ and work was performed on a NYS Holiday. Any work performed over 40 hours in a single week for an Authorized User, as described herein is considered to be overtime and would be allowed only when approved in advance by the Authorized User.

Overtime and Holiday Rates shall be requested in the RFQ when the Authorized User anticipates the need for such rates.

Note 1: The overtime work assumes the Temp has worked a 40-hour week for the Authorized User. Should the regular work shift of the Temp be other than normal hours, then the Overtime Rate is not paid until 40 hours is exceeded by an individual Temp for an Authorized User. If a Temp is performing work for more than one Authorized User, the Contractor shall inform each of the Authorized Users of the Temp's schedule and actual hours worked so that all parties are aware of when the Temp will reach 40 hours worked and at what point Overtime Rates would begin. An Authorized User is responsible for Overtime Rates when a Temp has performed 40 hours of work for said Authorized User and the Authorized User requests the Temp work additional hours. An Authorized User shall not pay Overtime Rates if a Temp has performed less than 40 hours of work for the Authorized User, but more than 40 hours among several Authorized Users.

For Lot 10 of this Solicitation the Contractor shall provide to the Authorized User, in response to an RFQ, personnel at the quoted hourly bill rate, which shall not be less than the cost of the applicable prevailing wage rate including all supplemental benefits. The Authorized User shall obtain and provide in the RFQ a PRC# for the applicable prevailing wage, which is based upon the date, job title and county within which the work is to be performed as identified at: <https://applications.labor.ny.gov/wpp/publicViewPWChanges.do?method=showIt>. If the hourly bill rate proposed by a Contractor is less than the applicable prevailing wage plus all supplemental benefits required to be paid, the Authorized User cannot use that Contractor for the requested services.

Note 2: An Authorized User subject to a local law, such as the "living wage" requirement as found in Section 6-109 of the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies with such local law at the time of issuance of a Purchase Order or PCard transaction to the selected Contractor based on the RFQ response. If the hourly bill rate(s) proposed by a Contractor for a job title(s) as set forth in Attachment 1 – *Pricing* or in response to an RFQ, are less than the local law "living wage" then the Authorized User subject to such local law cannot use that Contractor for the requested services. Compliance with such local laws; however, will not be determined during the establishment of the Centralized Contract or monitored by OGS. Therefore, Authorized Users are responsible for ensuring compliance with any applicable local laws upon issuing a Purchase Order or PCard transaction to the selected Contractor based on the RFQ response.

Note 3: In the event a Temp does not work, regardless of whether the reason is due to sickness, vacation, or that NYS offices are closed for any reason, including, but not limited to NYS Holidays, and/or weather-related events, or other unforeseen events, the Contractor will not bill the Authorized User for those hours. An Authorized User is billed only for the hours when work is performed as described in the RFQ.

Note 4: NYS Holiday Rates may only be paid if Authorized User requests a separate Holiday Rate in the RFQ and the Temp works on a NYS Holiday.

3.11 Prevailing Wage Rates - Public Works and Building Services Contracts

Lot 10 is subject to the prevailing wage rate provisions of the New York State Labor Law. See Clause 7 – *Prevailing Wage Rates – Public Works and Building Services Contracts*, in Appendix B – *OGS General Specifications*. Any Federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility, rejection of Bid, rejection of a quote, suspension or termination of Contract.

For bidding purposes, the applicable Prevailing Wage Rate Schedule for this Solicitation is **PRC# 2021500388**. **Contractors are reminded that the rates provided in response to this Solicitation are Maximum-Not-To-Exceed Bill Rates, and the actual bill rates for each Authorized User engagement will be established in response to a particular Authorized Users' RFQ and based upon the PRC # obtained by each requesting Authorized User.**

Authorized Users MUST obtain a separate PRC# for each purchase from this contract where prevailing wage rates apply. The PRC# provided in this Bid is for information and evaluation purposes of the Centralized Backdrop Contract only. When an Authorized User submits the request for the applicable

prevailing wages, the Department of Labor will send the Authorized User an e-mail with a link to the PRC information for the particular service agreement requested.

For access to the Department of Labor (DOL) PRC # request page, use the following link:

<https://applications.labor.ny.gov/wpp/showPublicNewProject.do?method=showIt>

For access to the Department of Labor (DOL) Prevailing Wage Schedule, use the following link:

<http://wpp.labor.state.ny.us/wpp/showFindProject.do?method=showIt>

For Prevailing Wage Updates, use the following DOL link:

<http://wpp.labor.state.ny.us/wpp/publicViewPWChanges.do?method=showIt>

Links to schedule updates appear in the table at the bottom of the web page.

3.12 Worker Notification

Labor Law § 220(3-a)(a)(ii) requires Contractors and Subcontractors to provide written notice to all laborers, workers, or mechanics of the prevailing wage rate for their particular job classification on each pay stub*. It also requires Contractors and Subcontractors to post a notice at the beginning of the performance of every public work Contract on each job site that includes the telephone number and address for the Department of Labor and a statement informing laborers, workers or mechanics of their right to contact the Department of Labor if they are not receiving the proper prevailing rate of wages and/or supplements for his/her particular job classification. The required notification will be provided with each wage schedule and may be downloaded from: <https://dol.ny.gov/>, or made available upon request by contacting the Bureau of Public Work at (518) 457-5589.

*In the event that the required information will not fit on the pay stub, an accompanying sheet or attachment of the information will suffice.

3.13 OSHA Training

For Lot 10, all Temporary Personnel shall have completed the OSHA Ten (10) Hour Construction course and shall have completed additional training, including but not limited to, asbestos & lead awareness, lockout/tagout, hazard communication and confined space awareness. Upon first reporting to an Authorized User location assignment, the Temp MUST present the Authorized User with proof of the completion of the above listed courses, including all updates and renewals. Failure of the Temp to provide such documentation to the Authorized User when reporting for initial assignment shall result in the Authorized User rejecting the Temp.

3.14 On-site Work

Services performed on-site by Contractor's Temps shall be rendered in accordance with these additional requirements as determined by the Authorized User:

- a. Temp Sign-In: Contractor's Temp shall sign in and out in accordance with the Authorized User's security procedures and guidelines. Failure to sign in or out, whether intentional or not, may be understood to mean that service was not performed;
- b. A review of all facility use rules for the subject location;
- c. An introduction for each respective Agency organization, chain of command, etc., and
- d. Any other additional security or other requirements set forth by the Authorized User in the RFQ.

SECTION 4 – BID SUBMISSION

4.1 Notice to Potential Bidders

Receipt of Bid does not indicate that OGS has pre-determined a company's qualifications to receive a Contract award. Such determination shall be based on the evaluation of a Bid compared to the specific requirements and qualifications contained in this 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 shall be required at any time during the Term of the resulting Contract.

4.3 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Section 1.7 – *Bidder Questions*, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed

deviations should be submitted during the Questions period described in Section 1.4 - *Key Events/Dates* 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 NYS 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.

4.4 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.

4.5 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 the 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.

4.6 Bid Liability

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

4.7 Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least 180 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 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.

4.8 Format and Content of Bid Submittal

The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening described in Section 1.4 - *Key Events/Dates*. Late Bids shall be handled in accordance with Appendix B – Clause 5 – *Late Bids*. Any Bid pricing or portions thereof submitted on USB flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder.

Situations susceptible to disqualification may include:

- E-mail or facsimile Bid submissions are not acceptable, and
- Absent Price Pages (Attachment 1 – *Pricing*) are not acceptable

It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up. Only completed files (in the specified format) should be saved to a USB flash drive for submittal. **Do not return copies of Appendix A and/or Appendix B with your Bid.** Please note that submitting a Bid by fax or e-mail is not acceptable.

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.

A complete Bid consists of the following:
Two (2) USB flash drives containing:

| REQUIRED BID DOCUMENTS | REQUIRED ELECTRONIC FILE FORMAT | ELECTRONIC COPY (USB) REQUIRED | ORIGINAL (Hard Copy with Ink Signature) REQUIRED |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|--------------------------------|--------------------------------------------------|
| Pages 1 and 2 of the Solicitation (signed and scanned) | PDF | X | X |
| Completed Attachment 1 – <i>Pricing</i> (must be submitted as an Excel file) see requirements below: <i>Attachment 1 Requirements</i> | EXCEL | X | |
| Completed Attachment 2 – <i>NYS Required Certifications with original ink signatures</i> | PDF | X | X |
| Completed Attachment 3 – Encouraging use of NYS Businesses | PDF | X | |
| Proof of compliance with Attachment 4 – <i>Insurance Requirements</i> | PDF | X | |
| Completed Attachment 5 – <i>Bidder Information Questionnaire</i> | EXCEL | X | |
| Completed Attachment 6 – <i>Bidder Submission Checklist</i> | EXCEL | X | |
| Completed ST-220CA <i>Contractor Certification</i> , notarized with <i>original ink signatures</i> | PDF | X | X |
| Completed MWBE 100 – <i>MWBE Utilization Plan</i> (if applicable) | PDF | X | |
| Completed Form EEO100 – <i>Equal Employment Opportunity Staffing Plan</i> | PDF | X | |
| Completed SDVOB 100 – <i>SDVOB Utilization Plan with original ink signatures</i> | PDF | X | |
| Standard Vendor Responsibility Questionnaire – (completed and scanned to PDF) or Certification that Questionnaire has been completed online | PDF | X | Not required if submitted online |
| Completed Attachment 22 – <i>Proof of Past Sales</i> | EXCEL | X | |

1. **Attachment 1 Requirements – Pricing, in Electronic Format (Microsoft Excel, NOT LOCKED):**
 - a) Do not change the spreadsheet structure. Any changes may result in rejection of Bids.
 - b) Tab “Background Check Fees” requires **Maximum Not-To-Exceed Bill Rates** for Background Check services. Bidders must provide **Maximum Not-To-Exceed Bill Rates** for each title Bid.
 - c) All cells are currently defaulted to “NO BID.” Bidders must replace the “NO BID” with a **Maximum Not-To-Exceed Bill Rate** in each Lot and Region for each title they intend to Bid.
 - d) **Only MS EXCEL format for the required electronic copy, Attachment 1, will be accepted.**

2. **Original, hard copy paper versions of each of the following are required to be submitted with the Bid:**
 - a) Pages 1 and 2 of the Solicitation with *original ink signatures*,
 - b) Completed Attachment 2 – *NYS Required Certifications to Covered Agency*, with *original ink signatures*, and
 - c) Completed ST-220CA, NYS Department of Taxation and Finance Contractor Certification, notarized with *original ink signatures*.

Bidder should note that an electronic copy of Attachment 1 – Pricing, is required. A Bid submission that does not contain a completed Attachment 1 – Pricing, in electronic format, may be rejected in its entirety.

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

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

4.9 Bid Envelopes and Packages

All Bids must have a label on the outside of the box or package itemizing the following information:

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Group number (73003)
3. Bid number (Solicitation # 23246)
4. Bid Opening Date and Time (December 15, 2021; 11:00 AM ET)
5. The number of boxes or packages (i.e., 1 of 2; 2 of 2)

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

4.10 Bid Delivery

Bids shall be delivered to the following address **no later than** 11:00 a.m. ET, on or before the Bid Opening Date as stated in Section 1.4 – *Key Events/Dates*:

**Office of General Services
Procurement Services
Corning Tower – 38th Floor Reception Desk
Empire State Plaza
Albany, New York 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.

4.11 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.

4.12 Bid Opening Results

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

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

4.13 New York State Reserved Rights

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

- A. Reject any or all Bids received in response to the Solicitation;

- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders or all of the prospective Bidders in a particular Lot and Region;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State;
- T. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, 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;
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing;
- W. 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, and
- X. 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.

4.14 Authorized User Reserved Rights

The Authorized User shall have all of the same reserved rights as the State, set forth in Section 4.13 – *New York State Reserved Rights*. In addition to the above reserved rights, the Authorized User shall have the following additional reserved rights:

- A. For all Lots: The Authorized User reserves the right to request and select the level of personnel for the task to be performed, previous experience, skill levels, or qualifications necessary as well as to stipulate the length of time that such personnel will be retained. These requirements will be set forth in the RFQ;
- B. The Authorized User reserves the right to add requirements to the RFQ and resulting Authorized User Agreement that are more advantageous than the terms and conditions established within the Contract;
- C. The Authorized User reserves the right to require the Contractor to identify any sub-contractors, and to approve such sub-contractors;
- D. The Authorized User reserves the right to request the Contractor's insurance policy language for purposes of substantiating compliance with Attachment 4 – *Insurance Requirements*, or such other Insurance Requirements, as required by the Authorized User as part of an RFQ;
- E. Conduct Contract negotiations with the next responsible Contractor responding to an RFQ, should the Authorized User be unsuccessful in negotiating with the selected Contractor, and

- F. After issuing a Purchase Order or PCard transaction to a Contractor in response to an RFQ, should that Contractor be unable to fulfill the terms of the engagement, an Authorized User may issue a Purchase Order or PCard transaction to another Contractor who responded to the original RFQ, if the Contractor is willing to provide the requested Temps at the price this Contractor previously quoted.

Additional terms and conditions may be allowed as part of the Contractor's response to an Authorized User's RFQ and incorporated into the Authorized User Agreement provided all of the following conditions are met:

- a) The Contractor identifies such terms and conditions in Contractor's response to the Authorized User's RFQ; and
- b) Such terms and conditions do not contradict or violate any of the terms and conditions of the Contract, and/or are more advantageous to the Authorized User and the State than those set forth in the Contract; and
- c) Such terms place no additional liability or responsibility on the Authorized User or the State; and
- d) The Authorized User acknowledges in writing that it accepts such additional terms and conditions.

4.15 NYS Required Certifications

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

SECTION 5 – METHOD OF AWARD

5.1 Method of Award

Awards shall be made only to responsive and responsible Bidders who meet all Bidder Qualifications and Service Requirements and whose prices for services indicates that those services will be provided at a reasonable price (i.e., the Maximum-Not-To Exceed Bill Rate is reasonable as determined by the NYS OGS). OGS reserves the right not to make an award within a Lot or Region where there are less than three responsive and responsible Bidders or where the Maximum-Not-To-Exceed Bill Rates are too low to be sustained for the term of the Contract plus any extensions or too high as to be within the realm of possible price reasonableness as determined solely by OGS.

After the Bid opening each Bid will be screened for completeness and conformance with the stated *Bidder Qualifications and Service Requirements*, as set forth in Section 2 and the *Bid Submission* requirements as set forth in Section 4 of this Solicitation. Any Bid not meeting these requirements may be deemed nonresponsive and denied further consideration for award.

Bids will be reviewed to ensure that the Bidder has provided in electronic format 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.

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 their 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 5 of Appendix B.

The New York State Office of General Services Procurement Services reserves the right to hold Periodic Recruitment during the Contract period if it is deemed to be within the best interest of the State. Vendors shall be required to submit this original Bid document, which may include an addendum containing additional applicable statutory requirements currently in effect at the time of the new Bid solicitation. Bids shall be evaluated under similar terms and conditions. Once awarded a Contract, a vendor may not resubmit a Bid for future consideration under a Periodic Recruitment relating to any titles in a Lot or Region previously awarded to that Contractor. Contractors may however Bid on titles, Lots and Regions 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.

Rejection for Failing to Submit Bid on Electronic Media: Bids are to be submitted on both electronic media and "hard" copy/paper document as described in Section 4.8 – *Format and Content of Bid Submittal*. Bids not submitted on electronic media or not formatted properly may be rejected.

5.2 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 submittal, as requests for Bid withdrawals of any type may not be granted. All exceptions and deviations must be noted in Bids, otherwise the Bid will be considered in full compliance with requirements and no adjustments may be made after award is issued. Bidders, in the preparation of their Bids, should maintain complete and accurate calculation worksheets, which clearly support their submissions.

5.3 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.

5.4 Notification of Award

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

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

SECTION 6 – TERMS AND CONDITIONS

6.1 Contract Period and Renewal

The Contract(s) awarded shall be in effect for a term of five (5) years. The Contract(s) shall commence upon OSC approval and consistent with the MOU.

If mutually agreed between OGS and the Contractor(s), and consistent with the MOU, the Contract may be renewed under the same terms and conditions for up to an additional thirty-six (36) months.

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 – Clause 23 – *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 Procurement Instructions

The resultant Contracts will be issued under a multiple award structure. Authorized Users shall procure Products that best meet their form, function, and utility requirements.

Authorized Users shall first check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law §162, which requires that agencies afford first priority to the services of Preferred Source suppliers such as the New York State Preferred Source Program for People who are Blind and NYS Industries for the Disabled, when such services meet the form, function and utility of the Authorized User and the price offered is within 15% of prevailing market prices. If a preferred source does not meet an Authorized User's form,

function and utility or the preferred source price is more than 15% above prevailing market prices, then the Authorize User may use this Contract.

Authorized Users must use the Request for Quote (RFQ) Process, as the rates included in the Contracts are Maximum-Not-To-Exceed Bill Rates. The Authorized User's RFQ is a competitive procurement, based on the development of a specific need in accordance with the contractual terms. When an Authorized User issues a Request for Quote, the Restricted Period for that procurement will begin. The Restricted Period will end when the Authorized User selects the winning bidder for that procurement and the RFQ process is complete.

An RFQ can be issued for a single title or a combination of titles. An RFQ for a combination of titles can only be issued if all titles sought in the RFQ are provided by all Contractors eligible to bid on the RFQ if the title was bid individually. A configurator will be added to the OGS website to assist Authorized Users with determining which titles may be grouped within a Lot and Region. Only titles within a single Lot and Region may be potentially grouped together.

Example: Lot A: Asbestos Removal Workers, Boiler Makers, Carpenters, Laborers, Masons, Painters, Plumbers, Roofers, and Sheet-Metal Workers. Contractors A, B, and C can provide all nine titles; Vendor D has 8 of the titles, but not Sheet-Metal Workers.

Asbestos Removal Workers, Boiler Makers, Carpenters, Laborers, Masons, Painters, Plumbers, and Roofers could be listed on a single RFQ because all four contractors offer all these titles. Sheet-Metal Workers could not be added to this RFQ because Contractor D cannot provide Sheet-Metal Workers.

An Authorized User shall review the list of Lots and Regions to determine the applicable Lot and Region for the required service. In addition, the Authorized user will identify in the RFQ any special requirements such as evening or night shifts, work inside a secure facility, specialized training, or experience, etc. For Lots 2, 3, and 10, where background checks are not automatically required, the Authorized User shall inform the Contractor at this time if a background check will be necessary. Authorized Users must request quotes, and may request resumes, from each Contractor listed within the applicable Lot/Region for the Title(s) they are seeking. The Authorized User must send the RFQ, using the generic e-mail address listed within the Award, to each of the Contractors within the applicable Lot/Region. If the Contractor was not awarded the specific Title within a Lot, the Contractor is not eligible to respond to the RFQ and no response is needed. A Contractor whose Maximum Not-To-Exceed Bill Rate is no longer viable, in that it has been exceeded by the minimum wage or the sum of Prevailing Wages and Benefits for that Title in that Region, will not be eligible to respond to the RFQ. A standard RFQ Form for each specific Lot, must be used and will be available on the OGS Contract Award page.

For all titles, with the exception of Hearing Reporter Services, and Transcription Services, where on-demand services may be requested, a minimum of two (2) Business Days should be given for Contractors to respond to the RFQ or resume requests. The Authorized User will determine the amount of time needed for responses, beyond the two (2) day minimum, by taking into consideration the title(s) and complexity of needs. A minimum of three (3) quotes must be received by the due date and time in order for the Authorized User to proceed. In some Lot/Regions, where the total number of available Contractors may be less than three, this requirement will be waived. Authorized Users are not required to reach out to Contractors that did not respond to the RFQ to find out why they did not respond, unless the minimum number of quotes have not been received. In the event three (3) quotes have not been received by the due date and time provided, where required, Authorized Users must then contact the Contractor(s) that did not respond to find out why they did not submit a response to the RFQ and must note such reason for the procurement record. If after contacting the Contractors the Authorized User is still unable to obtain the required three quotes, where the reason for such is due to lack of sufficient information within the RFQ, they must reissue their RFQ. The Authorized User should consider modifying their RFQ to be more detailed or to address the reason(s) which may have prevented Contractors from responding to the initial RFQ. If the Authorized User has not received the requisite number of quotes after the reissued RFQ, the Authorized User may, if they elect, award based on the quotes received in response to the reissued request. In all cases, Authorized Users must document the basis for their selection under the RFQ for the procurement record.

RFQ's should be as detailed as possible, and, at a minimum, contain the following:

- a) Region
- b) Lot

- c) Job title(s)
- d) Location
- e) Duration (not to exceed 24 months)
- f) Hours (start and stop times, and whether overtime is anticipated)
- g) Days of the week requested
- h) Shift
- i) Estimated Start date
- j) Additional specifications, qualifications, experience or skill levels
- k) Authorized User information
- l) Order priority (normal– 7 days, priority – 3 days, overnight – next day, immediate – same day)
- m) Response date and time
- n) Other information and requirements necessary for the particular engagement
- o) NYS Holiday Rate, if requested
- p) Overtime Rate, if requested

Authorized Users must maintain a record of the Contractors they send an RFQ to. It is highly recommended the Authorized User save both an electronic copy, and print-out of their e-mail for the RFQ sent to all Contractors in the applicable Lot and Region for inclusion in their procurement record and submission to the OGS Business Services Center (BSC), should a listing be requested.

Contractor's quotes should be responsive to each of the Authorized User's requirements and contain a competitive bill rate, a competitive Overtime Rate, and a NYS Holiday Rate if the Authorized User indicates in the RFQ that overtime or work on a NYS Holiday is needed or anticipated.

Selection of the winning Contractor will be based on a best-value determination considering the Authorized User's needs and Contractors' lowest price. Best value can be equated to low price by the Authorized User. The RFQ will result in an Authorized User either issuing a Purchase Order or providing their PCard information to the selected Contractor for Administrative Services. Each Authorized User Purchase Order or PCard transaction for services will be governed first by the terms and conditions specified in the OGS Centralized Contract and second by any terms and conditions added to the Authorized User's RFQ. See Appendix B – Clause 26 – *Modification of Contract Terms*.

Authorized Users should include as much information as possible to allow Contractors to provide complete and appropriate quotes and/or resumes by the due date and time provided. For example, if requesting the temporary services of a Nurse, the Authorized User should include the shift (day, night, weekend, etc.), the level of experience, the type of facility where services are needed (correctional facility, elementary school, etc.) and any other pertinent information, such as the potential for overtime. The Authorized User may include additional requirements, such as: security requirements, advanced degrees, federal funding requirements, familiarity with NYS-specific terms, confidentiality requirements (such as no work being performed outside of the United States), shorter time frames for responding to urgent RFQs, electronic timekeeping, specific certifications, the need for travel, etc.

If an Authorized User is requesting more than one candidate at a time for the same title, the Authorized User may utilize more than one Contractor per quote. For example, if the Authorized User is requesting five (5) nurses, and a single Contractor is only able to provide three, the Authorized User may select the remaining two from another Contractor's quote to fulfill their requirements. There is no limit to the number of Contractors that may be selected in order to satisfy an Authorized User's requirements; however, the cost for each must be considered and if all other requirements are equal, low cost shall be the determining factor.

An Authorized User shall issue a Purchase Order, initiate a PCard transaction or other written order for work to the winning Contractor, which is effective and binding on the Contractor at the time of order in accordance with Appendix B – *Purchase Orders*. The Purchase Order shall contain the total exact or estimated cost, if an exact cost cannot be determined at that time. A Contractor shall not initiate services until the Purchase Order or PCard transaction is issued, and an Authorized User shall not request performance of services until the Purchase Order or PCard transaction has been issued. Purchase Orders and PCard transactions may be issued for up to a two-year period (24 months) so long as the Purchase Order or PCard transaction is issued within the term of the Backdrop Centralized Contract. A Purchase Order that goes beyond the end of a fiscal year for a State agency will require a change notice to be implemented in the Statewide Financial System to authorize payments after

the end of the prior fiscal year. Change notices are also allowed for up to two (2) years, upon both parties agreement. Blanket Purchase Orders may be used for either an exact, or an estimated number of hours at a set rate for a certain time period, specific to a Lot, Region and Title. Blanket Purchase Order's may be used for either an exact, or estimated number of hours at a set rate for a certain time period, specific to a Lot, Region and Title.

In the event an Authorized User has an unanticipated or expedited need for services and the RFQ process provided for in the Contract will not allow the Authorized User to meet such unanticipated or expedited need for services, the Authorized User may acquire such services without issuing an RFQ as required herein but by obtaining quotes and making an award in accordance with the individual Authorized User's procurement procedures. The Authorized User shall document the nature of the unanticipated or expedited need for services and the process for obtaining quotes and making the award. The term of any award made without issuing an RFQ as required herein shall be limited to the minimum period of time necessary to meet the unanticipated or expedited need for services, until such time as the RFQ process can be completed.

All NYS Procurement Guidelines must be followed, and the Authorized User's procurement record should clearly show why one Contractor was chosen over another. Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.

Contractor questions, clarifications, and/or disputes arising from an Authorized User's RFQ and/or Contractor selection are to be reviewed and resolved by the Authorized User and the Contractor.

Suitability Determination Guidelines

In making a suitability determination, the Authorized User shall consider the information obtained through the background check for the following factors and evaluate them against the work to be performed, the performance location, and the degree of risk to its organization in accordance with NYS Correction Law §752:

- a) Any loyalty or terrorism issue;
- b) Patterns of conduct (e.g., alcoholism/drug addiction, financial irresponsibility/major liabilities, dishonesty, non-employability for negligence or misconduct, criminal conduct);
- c) Dishonorable military discharge;
- d) Felony and misdemeanor offenses;
- e) Drug manufacturing/trafficking/sale;
- f) Major honesty issue (e.g., extortion, armed robbery, embezzlement, perjury);
- g) Criminal sexual misconduct;
- h) Serious violent behavior (e.g., rape, aggravated assault, arson, child abuse, manslaughter);
- i) Illegal use of firearms/explosives;
- j) Employment related misconduct involving dishonesty, criminal or violent behavior; and
- k) Misrepresentation of information including educational and professional background, legal status or valid licensure.

The Authorized User shall evaluate any adverse information about a Candidate by considering the following factors before making a suitability determination:

- a) The nature, extent and seriousness of the conduct;
- b) The circumstances surrounding the conduct;
- c) The frequency and recent timeframe of the conduct;
- d) The individual's age and maturity at the time of the conduct;
- e) The presence or absence of rehabilitation and other pertinent behavior changes;
- f) The potential for pressure, coercion, exploitation, or duress;
- g) The likelihood of continuation of the conduct;
- h) How, and if, the conduct bears upon potential job responsibilities; and
- i) The Temp's employment history before and after the conduct.

A negative suitability determination must be supported by a finding that the adverse information has a direct bearing on the potential job duties or that it is deemed sufficiently serious to bar the Candidate from a governmental site. The Authorized User should consult with its legal counsel regarding any questions on the suitability determination.

6.4 Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B – Clause 45 – *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-item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Service or Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

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

6.5 Pricing Format

Bidders shall provide in response to this Solicitation Maximum-Not-To-Exceed Bill Rates for each title offered and provide Bid information and pricing in Attachment 1 – *Pricing*, as noted below in Section 6.6 – *Bid Pricing Information*.

Failure by a Bidder to submit electronic pricing in MS Excel format within Attachment 1 – *Pricing*, may result in automatic rejection of that Bidder's Bid and no further consideration for award. Failure to submit pricing, which 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, as per the instructions within the Pricing Excel Worksheet/Workbook and/or failure to provide Pricing in unlocked Excel Format. Electronic pricing saved in other than MS Excel format will not be accepted.

6.6 Bid Pricing Information

All pricing offered for each Lot shall be Maximum-Not-To-Exceed Bill Rates including Overtime Rates and NYS Holiday Rates, if requested, for each title the Bidder intends to Bid, within Attachment 1 – *Pricing*, in which to satisfy all Service Requirements as outlined in Section 2.2 – *Service Requirements* and all potential additional requirements requested by Authorized Users, except the requirement for Background checks. Prices for Background checks shall **also be Maximum-Not-To-Exceed Bill Rates**, and shall be provided by Bidders on Tab "Background Check Rates" of Attachment 1 – *Pricing*.

Bidders are strongly advised to take into consideration that the titles included in this Solicitation contain minimum requirements for each title and that Authorized Users, at the time of the issuance of an RFQ, will advise of the skill level, prior training and experience level, shifts, type of facility, and other requirements needed for each title, which could significantly increase the rate. **Bidders must include the possibility of extensive additional**

requirements by an Authorized User into their proposed Maximum-Not-To-Exceed Bill Rate and are strongly encouraged to bid rates that are much higher than what the current market anticipates at time of Bid.

This is a full-service Contract. For purposes of this Contract “full service” shall mean the Contractor's Bid rates include all costs of providing Temporary Personnel, including, but not necessarily limited to, all administrative requirements; all other additional costs such as necessary financial reports; all reporting or other requirements, all overhead costs and profit. It shall also include all parking fees, and any other ancillary fees and costs including permits, licenses, insurance, etc., and services not explicitly stated in this Solicitation, but necessarily attendant thereto or as requested by Authorized Users in their RFQs.

Bidder's pricing submitted in response to this Solicitation shall also take into consideration factors including, but not limited to the following:

1. Potential increases to the applicable Minimum Wage or Living Wage, etc.
2. Potential increases to the Prevailing Wage Rate and Supplemental Benefit Rate and the costs of required notification. See Section 3.12 – *Worker Notification*.
3. Profit and overhead which may include the following costs:
 - a. Travel (including, but not limited to, mileage), Meals, Lodging. See Section 3.9 – *Travel*
 - b. Site Access (access to and from the site)
 - c. Workers Compensation
 - d. Disability Benefits
 - e. State Unemployment (SUTA)
 - f. Federal Insurance (FICA)
 - g. All other insurance, including, but not limited to:
 - i. Commercial General Liability
 - ii. Business Automobile Liability
 - iii. Crime Liability, etc.
 - h. Any federal, state, local law, regulation, ordinance, etc.) regarding:
 - i. Paid family leave
 - ii. Paid sick leave
 - iii. Vacation
 - iv. Paid Holidays
 - i. All other overhead including, but not limited to:
 - i. Training
 - ii. Uniforms, Personal Protective Equipment, Safety Apparel, etc.
 - iii. Use of MWBEs and SDVOBs
 - iv. Federal, state or local fees
 - v. Background checks except as provided for in Section 3.5 Background Checks and Attachment 11- Background Check Requirements
 - j. Any back-office project management costs for Contractors and for their Subcontractors, including, but not limited to:
 - i. Management of Certified Payroll
 - ii. Management of Personnel Record/ Files
 - iii. Maintenance of a Master File, see Section 1.11 Definitions
 - iv. Management of workforce for scheduling and call-in coverage
 - v. Ensuring prevailing wage, minimum wage, and other (e.g. applicable Sick Leave Law) compliance through mentoring, monitoring, etc. Scheduling work and ensuring adequate staff.
 - vi. Creation and/or maintenance of a billing system that shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users.
 - vii. Record keeping and reporting described in Section 6.24 of this Solicitation - *Employee Information Required to be Reported by Certain Consultant Contractors and Service Contractors*.
 - k. Ensuring Subcontractors proposed to be used by the contractor on an Authorized User's site comply with Authorized User's various requirements (e.g. fingerprinting, etc.)

Bidders must also provide Maximum-Not-To-Exceed Rates, including **Overtime Rate and NYS Holiday Rate** for each title Bid. **Only at the time a Contractor responds to an RFQ issued by an Authorized User will the**

actual competitive bill rate, and a competitive Overtime Rate and/or NYS Holiday Rate, if requested, be submitted by Contractor. NYS Holiday Rates may only be paid if Authorized User requests a NYS Holiday Rate in the RFQ and the Temp works on a NYS Holiday. Rates quoted in response to an RFQ shall at all times be equal to or less than the Contractors awarded Maximum-Not-To-Exceed Bill Rates. Contractors are encouraged and expected to provide lower than their Maximum-Not-To-Exceed Bill Rates in response to the RFQs issued by the Authorized Users during the Contract term. Any and all additional costs, which may be incurred post award, are the sole responsibility of the Contractor though the maximum term of any resulting Contract.

The prices proposed by Bidders in response to this Solicitation are Maximum Not-To-Exceed Bill Rates. The prices proposed for Lot 2 – Hearing Reporter Services and Lot 3 – Transcription Services should be submitted as Maximum Not-To-Exceed per page rates. The prices proposed for the remaining Lots 1 - Office Worker Occupations; Lot 4 - Financial Occupations; Lot 5 - Miscellaneous Occupations; Lot 6 - General Health Occupations; Lot 7 - Physicians and Nurses; Lot 8 - Dental Services; Lot 9 - Psychiatric and Psychology Services; and Lot 10 - Light Industrial Occupations should be submitted as Maximum Not-To-Exceed Bill Rates.

All Contractor's pricelists will be posted on the OGS Procurement Services website, without exception. In Attachment 1 – *Pricing*, cells automatically round to the nearest cent regardless of how many numbers are entered after a decimal point.

6.7 Exclusions

NYS Procurement reserves the right to delete, before or after award, any of the services and/or titles included in the Bidder's offerings under this Solicitation and any resulting Contract. Notice of such deletion shall be provided to the Bidder/Contractor by OGS.

6.8 Price Adjustments

Pricing submitted with the Bid shall be Maximum-Not-To-Exceed (NTE) Bill Rates, including Overtime Rates and NYS Holiday Rates, and Contractors' NTE rates, for all titles, will be automatically adjusted by the OGS contract administrator twenty-four (24) months after contract award, again at forty-eight (48) months after award, and a final time in the event of a contract extension. Such an adjustment will be based on percent changes in the U.S. Bureau of Labor Statistics Employment Cost Index (Index) for total compensation, by occupational group and industry - Service Providing Industries. (see table on page 4 of the following link: <https://www.bls.gov/news.release/pdf/eci.pdf>).

NTE rate adjustments will be completed as outlined above, for example: Contracts awarded in October 2022 will be eligible for their first NTE rate adjustment in October 2024 based on the change in the Index over the preceding two years and will be eligible for the second NTE rate adjustment in October 2026 based on the change in the Index over the next two-year period. In the event of a contract extension NTE rates will be adjusted every 24 months in the same manner throughout the term of the Contracts. As an example, at the time of this Solicitation's release, for the period of June 2019 through June 2021, the percent increase under Service Providing Industries in the Index was 6.2%. The Index is published quarterly. OGS reserves the right to revise and publish rates within 60 days of the eligibility date based on the most recent Index publication.

If the cumulative two (2) year rate should decrease instead of increase during any of the adjustment periods, no action will be taken by OGS. The effective date for any NTE rate increase will be the date OGS posts the revised NTE rates to the OGS website. **A Contract Update Notification will be posted to the OGS website. Contractors are encouraged to sign up for procurement notifications via the OGS Purchaser Notification Service at: <https://online.ogs.ny.gov/pns/>.** All rates submitted in response to an RFQ before the effective date will be based upon the current posted rates on the OGS website.

6.9 Centralized Contract Modifications

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.

Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete products or services, 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.

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.

All modifications proposed by Contractor, shall be processed in accordance with Appendix C – *Contract Modification Procedure*. The Contractor shall submit all requests, except for Product and pricing updates as set forth in Section 6.8 – *Price Adjustments* (above), in the form and format contained in Appendix C – *Contract Modification Procedure*.

The form contained within Appendix C – *Contract Modification Procedure* is subject to change at the sole discretion of OGS.

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 – Clause 26 – *Modification of Contract Terms*.

6.10 New York State 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 <https://web.osc.state.ny.us/agencies/guide/MyWebHelp/?redirect=legacy>.

6.11 Contract Administrator

The Bidder 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. Bidder shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Bidder 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 it’s 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 Designated Contact, as shown on the front page of this Solicitation.

6.12 Insurance Requirements

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

6.13 Report of Contract Usage

The Contractor shall furnish quarterly reports, using the format specified in Attachment 8 – *Report of Contract Usage*, containing total sales for both State Agency and Authorized non-State Agency Contract purchases no later than forty-five (45) days after the close of each calendar quarter. For example, sales for January 1st through March 31st would be due by May 15th. Reports of Contract Usage are to be submitted to OGS Procurement Services, to the attention of the Designated Contact, as shown on the front page of this Solicitation, posted on the OGS website. Attachment 8 – *Report of Contract Usage* template must be used. The report must be completed in its entirety and submitted in MS Excel format *only* (incomplete, altered, locked, pdf, or hard copy submissions will not be accepted). OGS Procurement reserves the right to request additional information if needed. Additional related sales and/or detailed Authorized User purchase information may be required by OGS and must be supplied within 30 calendar days, upon request.

6.14 Company and Contact Information

Changes regarding the awarded Bidder's company and/or contact information should be submitted no later than five (5) Business Days of the change to the OGS Contract Administrator.

6.15 Contractor Requirements and Procedures for Participation by New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**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.

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

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 of Appendix A – Clause 12 – *Equal Employment Opportunities for Minorities and Women*, 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* as 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. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)
1. The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January. 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. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>.
 2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors.
 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit 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 complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as Subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional

methods of maximizing participation by MWBEs on the Contract. Please Note: Authorized Users may establish MWBE goals in their RFQ.

Good Faith Efforts

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

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

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/Forms>

6.16 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. The Bidder must complete the OSC Substitute W-9 Form which can be found at: 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, as shown on the front page of this 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: <https://osc.state.ny.us/vendors/>.

6.17 New York State 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 OSC website at: http://www.osc.state.ny.us./vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at: <https://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system>.

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 6.16 – *NYS Vendor File Registration*. The OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at: <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at: <https://www.osc.state.ny.us/state-vendors/vendrep/vendor-responsibility-forms>.

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

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

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

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

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

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

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

6.18 New York State Tax Law §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 their 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.

6.19 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, the Contractor's personnel shall not be impaired by alcohol or drugs of any kind in the performance of this Contract.

6.20 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.

6.21 Overlapping Contract Items

Products/services 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.

6.22 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 non-profit libraries, and certain other non-public/non-profit organizations. See Appendix B – Clause 25 – *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 at: <http://www.ogs.state.ny.us/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: customer.services@ogs.ny.gov or (518) 474-6717.

6.23 Extension of Use

Any Contract resulting from this Bid Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. An extension of use to another state or governmental jurisdiction will not be valid until New York State provides explicit, written approval of the extension. 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. Please contact NYS Procurement Services Customer Services for more information via e-mail at: customer.services@ogs.ny.gov or (518) 474-6717.

6.24 Employee Information Required to be Reported by Certain Consultant Contractors and Service Contractors

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

- A. **Form A – Contractor’s Planned Employment Form**, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information.
- B. **Form B – Contractor’s Annual Employment Report**. Throughout the term of the Contract by May 15th of each year the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such Contract was in effect during such prior State fiscal year Contractor reports the:
 1. Total number of Employees employed to provide the consultant services, by employment category.
 2. Total number of hours worked by such Employees.
 3. Total compensation paid to all Employees that performed consultant services under such Contract. *

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

Contractor agrees to simultaneously report such information to The Department of Civil Service (CS) and OSC as designated below:

Department of Civil Service
Alfred E. Smith State Office Building
Albany, New York 12239

Office of the State Comptroller
Bureau of Contracts
110 State St., 11th Floor
Albany, New York 12236
Attn: Consultant Reporting
(518) 473-8808

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

INSTRUCTIONS FOR COMPLETING FORM A AND B

Form A and Form B should be completed for Contracts for consulting services in accordance with Section XI.18.C of the OSC’s Guide to Financial Operations at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>, “Consultant Disclosure Legislation,” and the following:

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

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

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

Employment Category: enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describes the Employees providing services under the Contract.

(Note: Access the O*NET database, which is available through the US Department of Labor’s Employment and Training Administration, on-line at: online.onetcenter.org to find a list of occupations.)

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

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

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

6.25 Federal Funding

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

6.26 Contract Advertising

In addition to the requirements set forth in Appendix B – Clause 21 – *Contract Publicity*, any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to an awarded Contract must be reviewed and approved by OGS prior to issuance. Contractor also cannot use, for any purpose, the New York State of Opportunity registered trademark or the State coat of arms without prior approval from the State.

6.27 Americans with Disabilities Act (ADA)

The Federal ADA Act signed into law July 26, 1990, 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 visually, hearing, or any other physical disabilities.

Although it is not mandatory for Bidders 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.

6.28 Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses

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

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders 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.

1. Contract Goals

- a. OGS hereby establishes an overall goal of **4%** with the exception of Lot 2, Hearing Reporter Services, for SDVOB participation, based on the current availability of qualified SDVOBs. 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 OGS Designated Contact as shown on the front page of this Solicitation. Additionally, following Contract execution, the 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).

2. 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 (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/Contractor and direct the Bidder/Contractor to submit, within five (5) Business Days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on form 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:
 - If a Bidder fails to submit an SDVOB Utilization Plan;
 - If a Bidder fails to submit a written remedy to a notice of deficiency;
 - If a Bidder fails to submit a request for waiver; or
 - 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.

3. Request for Waiver

- a. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contact, as shown on the front page of this Solicitation, 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 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 (7) 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 Alyssa Nolte at: SST_admin_svcs@ogs.ny.gov.

4. 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.

5. 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 Anita Domanica at: OGSSDVOBreports@ogs.ny.gov.

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

6.29 Subcontracting Requirements

All Contracts between the Contractor and its Subcontractors must be by bona fide written Contracts that mandate compliance with the terms and conditions of this Contract. Contractor shall be fully liable for its Subcontractors' performance and compliance with all Contract terms and conditions.

Contractor is required to identify all Subcontractors involved with the placement of a Selected Candidate with an Authorized User. This includes Subcontractors that are directly paying the Hourly Wage Rate to the hired Selected Candidate. Contractor must also identify if any Subcontractor is a New York State SBE or New York State certified M/WBE or SDVOB.

A Contractor is prohibited from serving as a Subcontractor to another Contractor under this Procurement. Contractor must include in all Subcontracts related to the Contract, in such a manner that they will be binding upon each Subcontractor with respect to work performed relating to the Contract, provisions specifying that:

- Work performed by the Subcontractor must be in accordance with the terms and conditions of this Contract including, but not limited to, Appendix A - Standard Clauses for New York State Contracts (January 2014);
- Subcontractor must pass through all terms and conditions of the Contract, including but not limited to Appendix A - Standard Clauses for New York State Contracts (January 2014) and Hourly Wage Rate requirements, to any lower tier subcontracts;
- Nothing contained in such Subcontract shall impair the rights of the Authorized User or the State;
- Nothing contained in such Subcontract shall create any contractual relationship between any Subcontractor and Authorized User or the State;
- Subcontractor must maintain and protect against any unauthorized disclosure of records with respect to work performed under the Subcontract in the same manner as required of the Contractor;
- The State and/or Authorized User must have the same authority to audit the records of all Subcontractors as it does those of the Contractor; and
- Subcontractor must cooperate with any investigation, audit, or other inquiry related to the Contract or any litigation relating thereto.

Contractor must be fully responsible to Authorized User for the acts and omissions of, and the performance of Services by all Subcontractors and/or persons either directly or indirectly employed or engaged by such Subcontractors, including independent contractors of those Subcontractors. Contractor must not, in any way, be relieved of any programmatic or financial responsibility under this Contract by the terms of its agreement with any Subcontractor.

END OF SOLICITATION DOCUMENT