



DIVISION OF FINANCIAL ADMINISTRATION

ADDENDUM #1

REQUEST FOR PROPOSAL # 2687 LIVE AUCTIONEER SERVICES

Date: September 14, 2023

Proposal Due Date: October 3, 2023 at 2:00 pm

To Prospective Proposers: This addendum is being issued to provide a list of vendors who submitted a timely intent to submit a proposal, official answers to submitted questions, and revisions.

Intents to Submit a Proposal:

Vendors who submitted a timely mandatory intent to submit a proposal:

Absolute Auctions and Realty, Inc
JJ Kane Auctions
Liquidity Services Operations, LLC DBA GovDeals
Rochester-Syracuse Auto Auction
Spandco Inc./ Perry Auctions

Questions and Answers:

- Q1.** Is it possible to solely bid on the five boroughs and Long Island?
- A1.** No. Per RFP 2639 Section 5.2 Method of Contract Award, OGS intends to award one contract. Any proposal that proposed covering only certain regions would be considered non-responsive.
- Q2.** At what locations are vehicles/equipment stored within NY?
- A2.** Vehicles/equipment will be stored at auction locations. Please refer to RFP 2687, Attachment 2 – Traditional NYS Auction Locations.
- Q3.** How often are auctions conducted?
- A3.** Approximately 45 – 50 auctions are conducted throughout the State from April through December.

- Q4.** Is the contractor or State responsible for facilitating transportation/towing of vehicles and heavy equipment to the auction locations?
- A4.** The State will be responsible for having all vehicles at the auction location.
- Q5.** Does the State anticipate conducting auctions from its own facilities, or does the State desire the contractor to host the auction events at the vendor's facilities?
- A5.** Auctions will be held at State Facilities. Please refer to RFP 2687, Attachment 2 – Traditional NYS Auction Locations.
- Q6.** Please detail the title transfer process for these auctions. Please specify responsibilities of the contractor and responsibilities of the State, and if applicable, responsibilities of the buyer.
- A6.** Transfer documents are the responsibility of the State – the auctioneer has no responsibilities in the transfer document process.
- Q7.** Would OGS consider an auction format of allowing in-person inspections of all equipment and bidding online-only where the awarded Vendor handles all aspects of the auction process (i.e., staging, photographing, collections, buyer pickups, etc.)?
- A7.** OGS respectfully declines this request.
- Q8.** We consolidate lots from all sellers into a regional-based auction the second Tuesday of every month with bidding opening 6 days prior. This auction format attracts a large amount of auction activity to a specific event, leading to increased bidding and high net returns. Would OGS consider using this format of auction?
- A8.** OGS respectfully declines this request.
- Q9.** What is the anticipated monthly / annual volume of vehicles and equipment to be auctioned by OGS?
- A9.** Approximately 5,000 Lots (includes vehicles and non-vehicles) per year.
- Q10.** Page 9, Section 2.1 – Would OGS consider having all items transported to Vendor's location(s) to be stored, cataloged, imaged, and auctioned on the Vendor's online auction platform? Transportation services can be coordinated by vendor.
- A10.** OGS respectfully declines this request.
- Q11.** Page 29 & 30, Section 5.5 – Only a Buyer's Premium is listed. Does this mean a Seller's Fee will not be permitted?
- A11.** Yes, a Seller's Fee will not be permitted. Please see RFP 2687 Section 5.6 Method of Payment. The Buyer's Premium will be used to compensate the contractor. Proposers shall consider all cost associated with performing services as required by RFP 2687 when proposing a Buyer's Premium.

- Q12.** Page 30, Section 5.6 – Would the following payment method be acceptable? The awarded Vendor collects all payments and then within 14 business days following the auction sale, remits to OGS the net proceeds from items sold at auction, less Auctioneer’s applicable commission and any expenses as outlined in the Pricing Proposal.
- A12.** OGS respectfully declines this request.
- Q13.** Please see our standard Seller’s Agreement Terms on the following page. Should OGS select XXX to be awarded contract, we would negotiate OGS terms to be more in line with our standard terms. Note, we would not ask for OGS for indemnify since you are a state entity.
- A13.** Please see RFP 2687 Section 5.2 Method of Contract Award and Appendix C – Sample Contract. Only nonmaterial changes to our terms would be negotiable.
- Q14.** 1.3 Key Events, Page 6, The OGS response to questions may raise additional questions. Will OGS have a second round of questions and answers well in advance to the September 26, 2023, proposal due date?
- A14.** OGS does not intend on having an additional question and answer period. Proposers may submit additional questions, but OGS is not committing to a response.
- Q15.** 1.4.1, Page 6, The requirement states "three live auctions". Are these Live Virtual Onsite and/or Live Virtual Remote? We request that NYS OGS be more specific as experience and resources are very different for each?
- A15.** This Minimum Qualification is in reference to live auctions and does not consider a virtual component. Please also see RFR 2687 Section 3.2.1.2 Proof of Minimum Qualifications.
- Q16.** 1.6 Glossary of Terms, "Auction Virtual Service", Page 7, " Please clarify, is this service "Live On Site" or "Live Remote"?
- A16.** Auction Virtual Service shall be performed live on the site of the auction.
- Q17.** 2.1 General Scope - Page 9, Paragraph #4, Please provide clarity as to contractor responsibilities, reference: "areas must be cleared out and cleaned up after the scheduled work.
- A17.** Contractor is responsible for removal of trash they generate while administering the auction.
- Q18.** 2.1 OGS General Scope, Page 9, Paragraph 2, Will NYS OGS provide a preliminary calendar to the Contractor and allow the Contractor to have input regarding dates and locations prior to the final calendar being published?
- A18.** OGS will consult with contractor to make the auction schedule convenient to both parties. However, OGS has final determination of when auctions will be held.

- Q19.** 2.12 Handling of Proceeds, Page 19, Will all required funds be available, secured and allocated to pay the contractor before the contractor begins work?
- A19.** Without knowing what lots will sell, or how much they will sell for, it would be impossible for OGS to have funds available, secured, and allocated. Please also see RFP 2687 Section 5.6 Method of Payment.
- Q20.** 2.12 Handling of Proceeds, Page 19, so as to not delay payments to the contractor? How will the New York State Office of General Services set aside estimated contractor commissions to ensure funds are available allocated for the full 5-year contract term period?
- A21.** Per RFP 2687 Section 5.7 – Invoicing, payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.
- Q22.** 2.1.1.2 Reporting Requirements; Page 18, "The following must be reported in electronic Excel format for each auction " Is there a specific Excel version and format that is required? Is the data included in the Excel file subject to specific and stringent requirements, such as; Tab Names (alpha or alpha numeric), Column Headers (capitalization, invalid characters or symbols, field length), Required order for Columns, Minimum or Maximum number of rows?
- A22.** Please find Sample Excel Report at <https://ogs.ny.gov/procurement/bid-opportunities> . Contractors will be responsible for providing information in headers highlighted in green on each tab.
- Q23.** Is the Excel formatted data used as input to a NYS Mainframe or Client Server System that has specific input requirements? If so what system is used and what are the specific input requirements?
- A23.** Please see A22. There will be input requirement (e.g. character limits) that will be shared with contractor upon award. Contractor's responsibility will be to provide required information within input requirements.
- Q24.** If the MS Excel formatted data is used in a mainframe system will OGS troubleshoot the errors and make any necessary changes?
- A24.** Any error in the Excel file will need to be corrected by the Contractor.
- Q25.** If the MS Excel formatted data fails to load to the NYS system will this delay payment to the contractor for services?
- A25.** Yes, this may delay payment.
- Q26.** Will the contractor be responsible for any and all requirements definition, data programming, validation and testing of the Excel files suitability as input data to the NYS System?

- A26.** OGS determines any and all requirements, definitions, data programming, validation and testing. The Contractor is responsible for submitting the Excel document in the required format. Please also see A22.
- Q27.** 2.1.1.2 Reporting Requirements; Page 19, "The following information must be reported in hard copy " Is there a requirement to tender a copy of each Credit Card Receipt attached to each invoice at the end of the auction? For hard copy reporting is it required to provide a copy of each credit card receipt (exclusive of the copy provided at the end of the auction) attached to each invoice?
- A27.** Yes, a hard copy of the receipts is required to be attached to all invoices.
- Q28.** 2.2 Auction Set Up, Requirement 3, Page 9 - "Pictures of the lots " – Is there a specific requirement by OGS as to the number of pictures of each lot? Is the number of pictures the same for vehicles vs. non vehicles". What is OGS' requirement regarding pictures of lots on the setup report that are not at the site when the contractor is there? Will those lots be pulled from the auction?
- A28.** There is no specific number of photos required for each item. The lots will be pulled if they are not on site at the time of the set up.
- Q29.** 2.2 Auction Set Up, Requirement 3, Page 9 How will NYS OGS use the digital photos and for what purpose? It has been observed that digital photos taken by the contractor have not been used on the NYS OGS website? Will this be the practice going forward? Under what circumstances with the digital photos be used or not used by NYS OGS?
- A29.** Photos will become the property of OGS to use at our discretion.
- Q30.** 2.2 Auction Setup, Page 9 -Is there a requirement to label each auction lot prior to the auction? Is the contractor required to provide a label for each lot? If a label is required what information should be on the label? is the contractor responsible for the programming development, acquisition, cost, and printing of the labels? Are the labeling requirements the same for vehicles and non-vehicles? If not how are the label requirements different?
- A30.** Description labels are not required, if the contractor decides to provide them it is at their own expense.
- Q31.** 2.2 Auction Setup, Page 9 - Will access to all respective auction sites be provided to the contractor during customary business hours of 8am and 5pm eastern time? Will an OGS representative work with the site contact to ensure access? Will an OGS representative be onsite and available for each setup?
- A31.** Auction site access times will be dependent on the site, typically 8am-4pm. An OGS representative will be available via phone or email but will not be on site.
- Q32.** 2.2 Auction Setup, Page 9 -How will keys for vehicles be provided to the contractor? Is the contractor responsible for custody and management of the keys from time of setup to the day of Auction? Who will retain custody of keys up to and during the day of Auction?
- A32.** The site contact will provide keys to the contracted auctioneer for set up, keys must be returned to the site contact after the setup is complete.

- Q33.** 2.2 Auction Day, Page 9, Item 11 -Question-" collecting pre-bid information." How and when is this information to be collected and communicated to OGS? Is any of the information identified in Item 11, such as drivers license data considered personal and private and what are OGS' requirements for protection of this data?
- A33.** Please see Revision 1 below.
- Q34.** 2.3 Auction Items, Page 10, Item 3 -Please provide the process and data that OGS will use to add or remove items from the auction? Are items added and or removed prior to, up to, and during the auction? Will the contractor be required to make the respective changes made by OGS before the close of the auction? How does this impact any reports or audit data provided to the OGS Onsite Auditor?
- A34.** The OGS representative will inform the contractor of items to be removed or added, the contractor and OGS will need to remove or add the items in their respective systems and this will be communicated via the Excel report. Please also see RFP 2687 Section 2.11.2 Reporting Requirements.
- Q35.** 2.4 Auction Day, page 10, Item1- "Contractor is required to check the list of banned Auction Bidders ?" Will OGS create, maintain, and provide a list of banned auction bidders? When will the list be provided to the contractor? In what format will the Banned Bidder Data be provided to the contractor" What responsibility does the contractor have if a Banned Bidder happens to successfully register? How will NY State OGS Communicate previously banned bidders that are now past the one-year ban period?
- A35.** OGS will maintain and provide an Excel spreadsheet of the banned bidders. Should a banned bidder attempt to register, the contractor should consult with the onsite OGS representative for further action.
- Q36.** 2.4 Auction Day, Page 10, Item 5 - Please provide the requirements and examples contemplated by "Contractor will be responsible for addressing any issues about aftermarket equipment or decals before item is auctioned."
- A36.** Contractor will inform OGS representative on site of any items that would prevent any items from being sold including, NYS seals, logos, insignias, red and blue lights, two-way radios, ez-passes, wex cards, etc.
- Q37.** 2.4 Auction Day, Items 6 & 7, Page 10, The RFP states that All payment collection are the responsibility of the contractor and returned funds are also responsibility of the contractor, If payment is made payable to NY SOGS and it is returned what authority will NY SOGS give the contractor to collect these funds?
- A37.** Please see R2.
- Q38.** 2.4 Auction Day Item 7 B, Page10, Is NYS OGS contemplating assessing successful Bidders an additional percentage for credit card transactions? What is the percentage surcharge?
- A38.** OGS will not charge additional fees to bidders paying by credit card. Contractor is not responsible for credit card fees for transactions.
- Q39.** 2.4 Auction Day, 7 B, Page10, - If all payment and collections are the responsibility of the contractor, how are credit card charge backs handled? Are charge backs recovered from the contractor?

- A39.** NYS OGS is responsible for all charge backs. Contractor will not be penalized.
- Q40.** 2.4 Auction Day, Page 11, Are NYS Employees allowed to register for, bid and purchase items at the NYS OGS Auctions? Are NYS employees of the Agency Surplus-ing the respective items up for auction allowed to register, bid, and purchase items? Please provide the specific rules for each agency?
- A40.** Contractor is only responsible for ensuring that banned bidders do not participate.
- Q41.** 2.4 Auction Day, Item 10, Page 11, Please provide an example of this will be put into practice by the NYS OGS Representative during the auction? Will NYS OGS provide the Contractor with "Reserves" eg. Acceptable price prior to the auction? Will NYS OGS publish reserves to the public prior to the auction? What methods and metrics does NYS OGS use to establish the Acceptable Price?
- A41.** Acceptable prices will not be published, and establishment of an acceptable price will be at the discretion of OGS. Please also see Revision 2.
- Q42.** Auction Day, Item 10, Page 11, We would like further clarification on the requirement as stated in the RFP. The requirement as stated severely limits NYS OGS from realizing the Acceptable price.

Please consider the following which is customary in the Auction Industry; Example: OGS offers an item for Auction with a \$100,000 reserve. This item has several bids on the item from several different registered bidders during the auction process, but unfortunately the Bid only goes to \$90,000, and the auctioneer and the OSG Representative No Sales the item, The Auctioneer than informs the high bidder that the state will not accept the bid of \$90,000 but would accept \$100,000 and the High bidder declines the bid. After the high bidder declines the bid the backup bidder approached the auctioneer and said he would pay the \$100,000. In this scenario as stated in the RFP we have to no sale the item even though we have a bidder who will pay the reserve price. Is this a more viable way to handle arriving at the sale of the item to benefit NYS?

- A42.** Please see R3.
- Q43.** 2.4 Auction Day, Page 10 Item 7 - Reference Certified Checks "Any returned Certified Check will be the responsibility of the Contractor". We respectfully request that the Acceptance of Certified Checks be stricken as a form of payment. By requiring the Contractor to accept responsibility for returned checks, it exposes the contractor to an unacceptable unlimited level of financial risk.

If NYS OGS requires the acceptance of Certified Checks, then we request that the onsite OGS Auditor/s be required to approve all Certified Checks tendered. Further we request that NYS OGS be solely responsible for all Certified Funds Returned Checks.

- A43.** Please see R2.
- Q44.** 2.4 Day of Auction, Page 11, Item 8, "The bill of sale must include sales tax (where applicable) Question: Are all lots (vehicles and non-Vehicles) charged the same sales tax? If not, how does the contractor determine the correct sales tax? Must the contractor auction system segregate sales tax separately for vehicles and non-vehicles? Is sales tax for vehicles charged based on the registered address of the bidder? Is the contractor responsible for obtaining a completed and valid Tax Form? What is the contractor's responsibility, financial or otherwise if a bidder is not charged sales tax but

should have been? Can Taxable and Non-Taxable items be included on the same bill of sale? Is the contractor responsible for collecting tax on vehicle purchases by out of state bidders? Is the contractor responsible for maintaining a database of current tax rates by jurisdiction for use in its billing system? How is tax jurisdiction and dollars to be reported to OGS post Auction, is it a literal value or numeric value? Will the contractor be required to map these values to a table of values in the NYS OGS Finance mainframe application? Is the contractor responsible for any technical resources, development, and testing costs to validate? Will the onsite NYS OGS Auditor/s validate that the tax form used is the correct one, per NYS Taxation and Finance, prior to completing the payment for each bidder?

- A44.** All lots are not charged the same sales tax. The Contractor must segregate tax on invoices between vehicles and non-vehicles, vehicles must be charged the sales tax rate from where the winning bidder lives, and non-vehicles are charged sales tax in the county the auction is held in. The Contractor shall be responsible for obtaining completed and valid tax forms. Any sales tax that should have been collected from buyer, but wasn't, will be deducted from the Buyer's Premium paid to contractor. The Contractor shall obtain a DTF820 for any out of State vehicle purchases. NYS OGS will provide the tax rates per jurisdiction and the contractor would be responsible for putting this information in their system. Tax jurisdiction and dollars shall be reported to OGS by numeric value. The Contractor won't be required to map these values to a table of values in the NYS OGS Finance mainframe application. The contractor will be responsible for validating all data provided to OGS. It will be the Contractor's responsibility to validate that the correct tax forms are being used by bidders.
- Q45.** 2.4 Auction Day, Page 11, The following has not been addressed in the RFP, please consider the following: On www.nysstore.com, Under terms and conditions of the NYS highway and personal property Auctions #7 states. "Sale will be made to the highest bidder, subject to the following terms of sale; however, if there is a disputed or tied bid among two or more bidders, the OGS Representative, at their discretion may determine the highest bidder or the bidding may be re-opened to determine the highest bidder. In any case, the OGS Representative's decision will be absolute." Is OGS willing to allow the auctioneer this discretion as well? If so will OGS change the terms and conditions to reflect the auctioneers discretion?
- A45.** OGS will not grant the Contractor this discretion.
- Q46.** 2.4 Auction Day, Number 3, Page 11, Reference is made in this section and several other section in the RFP to a NY State Representative which will accompany the Auctioneer, provide a list of banned bidders, etc.. Will the State Representatives/Auditors be present at each auction, (a) to accompany the auctioneer, (b) administrate titles, (c) onsite decisions before during and after the auction, (d) respond to bidder questions regarding claims they want to decline paying for a Lot/Lots, (e) calling bidders that leave the auction site without paying (e) problems with titles from previous auctions, (f) immediate decisions day of auction regarding missing lots or additional lots not in the provided "Setup". Please provide the following for each of the OGS Auditors that are or will be assigned to direct management of the contract and On-Site Support on the Auction Day; Please provide number or OGS Auction Support Staff, years of direct Auction management experience, number or OGS Auction Staff that will be present at each auction.
- A46.** Two OGS representatives will be on site during the auction. OGS will be responsible for all functions listed above other than calling bidders that leave the auction site without paying. OGS respectfully declines to provide any details regarding qualifications of OGS staff.

- Q47.** 2.5 Auction Virtual Service, Commentary; Auction Virtual Services require specific technical resources, systems, registration processes, experienced personnel, custom developed payment systems and reporting. We request that NYS OGS modify the RFP and require respondents to the RFP to provide specific examples of Virtual Services which have been successfully delivered, in both "Combined" On Site Live Bidding Combined with Online Virtual Bidding, and stand-alone Virtual Auctions without a Live onsite bidding component? Specific auction revenue should be requested for each example.
- A47.** OGS respectfully declines this request.
- Q48.** 2.5 Virtual Service - Page 11, "OGS may request up to ten Auction Virtual Services per year" What criteria will OGS apply to determine which auctions require "Virtual Service"? How much notice will the contractor receive if a site has been identified for a virtual auction?
- A48.** Determination of when to include Auction Virtual Service is made based on auction location and any unique/special/high dollar items. OGS will provide notice that Auction Virtual Service is required at least 2 weeks in advance.
- Q49.** 2.5 Virtual Service, Page 11, Second Paragraph; "Contractor will be responsible for providing equipment necessary for platform to function" Please provide definition of platform necessary"? Virtual connectivity (wireless) will highly depend upon the availability of adequate wireless bandwidth from a recognized network provider, will OGS evaluate available bandwidth to support Virtual Services? Does Virtual Services contemplate Audio only or Audio and Live Video?
- A49.** A necessary platform shall include any hardware, software, personnel, bandwidth, or other resource necessary to provide Auction Virtual Service. Please also see A48. Only audio is required for Auction Virtual Service, but the Contractor may choose to also provide video.
- Q50.** 2.5 Virtual Service, Item 5 continued Page 12 - "OGS payment portal link" Can OGS provide the technical requirements of interfacing with the system? What are the technical requirements of the OGS payment portal that the contractor will need to interface with? Will the contractor be responsible for any technical requirements definition, development cost, testing cost, and implementation to validate the interface?
- A50.** Contractor will not be responsible for any integration with OGS payment portal.
- Q51.** 2.6 Auction Staff, Item 2, Page 12, Will OGS provide the contractor adequate space to "Operate and Demonstrate" such as raising and lowering bulldozer blades, dump truck bodies, and loader buckets, etc.to highest revenue for NSYOGS?
- A51.** Yes, OGS will provide space it deems adequate to operate and demonstrate equipment.
- Q52.** 2. 7 Auction Resources, Item 3, Page 16, "elevated staging area", Please provide a definition of "elevated staging area"
- A52.** The elevated staging area shall be a mobile platform that includes a PA system, video and audio recording devices, and adequate counter space for an OGS auditor.
- Q53.** 2.9 Marketing and Promotions, page 17," The Contractor is encouraged to assist in the advertising and promoting of each auction." Does NYSOGS have a Facebook page? How

many followers does OGS have? How many posts per auction does OGS initiate? How many paid posts does NYOGS initiate per Auction?

- A53.** OGS does have a Facebook page with approximately 5,100 followers. The number of posts per auction, paid or otherwise, is determined by OGS's Public Information Officer.
- Q54.** 2.9 Marketing and Promotions, page 17, Is the Contractor Name and Logo allowed in any marketing promotions, including those authored on NYS OGS public facing items? What contact information will be included, NYS OGS and Contractor? Which entity will receive questions regarding the auctions and the respective lots? On what website and or social media platforms will NYS OGS use?
- A54.** Any marketing promotions paid for by OGS will not include the Contractor's information. All questions regarding auctions should be directed to OGS. OGS uses Facebook, X, and print advertising to promote auctions. OGS's website is also used to promote auctions and will direct customers to the Contractor's website.
- Q55.** 2.9 Marketing and Promotions, page 17, What is OGS's advertising budget for the following years 2024, 2025, 2026, 2027, 2028? What percentage of NYSOGS's yearly budget is allocated for print advertising? What percentage of NYSOGS's yearly budget is allocated to electronic advertising? What percentage of NYSOGS's yearly budget is spent on social media advertising? What percentage of OGS's yearly budget is spent on direct mail? What percentage of OGS's Yearly Budget is Spent On Email Blasts? Is advertising and promotion subject to the approval of the NYS OGS Public Information Officer? Will NYS OGS staff facilitate the approval process? Are there existing advertising and promotion guidelines required by the Public Information Officer? If yes will they be included as a requirement of this RFP?
- A55.** The requested budget information isn't available. OGS approval of Contractor's advertising is not required, but OGS reserves the right to have contractor remove any advertising that is considered to reflect negatively on OGS.
- Q56.** 3.2.1.2 Proof of Minimum Requirements, Item 1.A, Page 22, When providing proof of "Live" auctions exceeding \$100,000 dollars can this be any type of auction, e.g. real estate? We recommend that the qualification be focused on "Live" Auctions Include items that are specific to the majority of items managed for sale by OGS such as; heavy equipment, vehicles, atvs, light and heavy duty trucks as stated in this RFP on pages 6 and 7 section 1.4.1.C.
- A56.** The three referenced auctions used to meet the first minimum qualification must meet all of the requirements set forth in subsections a., b., and c. of RFP Section 1.4, item 1.
- Q57.** 5.14, Requirement 2, Please verify if our understanding as follows is accurate: If a contractor was awarded a previous RFP for OGS Professional Auctioneers and was subsequently removed from this contract do to "nonperformance" they would be disqualified?
- A57.** All proposers will undergo a vendor responsibility review and determination in accordance with RFP 2687 Section 6.11 NYS Standard Vendor Responsibility Questionnaire.
- Q58.** 5.14, Requirement 2, Page 33, Please confirm our understanding of this requirement as follows; Any respondent/business entity who has an officer, owner, or employee as a Contractor, who was removed for nonperformance on a previous contract with NYS OGS will be removed from consideration and award of RFP No. 2687 Live Auctioneer Services.

- A58.** Please see A57.
- Q59.** 5.14, Item 11, Page 33, Please provide detail as to what NYS OGS is contemplating, regarding multiple contract awards. Is this term of the contract, areas serviced, Live versus Virtual?
- A59.** Please see RFP 2687 Section 5.2 Method of Contract Award which states "OGS intends to award one contract under this solicitation."
- Q60.** 5.5 Price, Page 29, Paragraph One, Do to the extent, complexity, internal and external requirements of RFP 2687, the buyer's premium required to offset those costs would be above the "Auction Industry Standard". To mitigate the impact to the Bidders/Purchasers and maximize the return to NYS, would NYS OGS adjust the Cost Proposal Form to include a "Buyers Premium" and a separate percentage fee paid by NYS OGS on the Hamer Price to the Contractor?
- A61.** OGS respectfully declines this request.
- Q62.** We have taken the liberty of reviewing the Auction Terms and Conditions available at; <https://ogs.ny.gov/vehicles-highway-equipment-auctions-terms-sale> and submit the following questions:
- a. Terms and Conditions, 14, "Loading services are not provided by OGS or the Auctioneer." The winning bidder is responsible for the loading and removal of purchased items and assumes all risk incidental to such loading and removal. The winning bidder is responsible for any damage and/or personal injury caused by removal of items. This includes the obligation to repair and restore any damage to the property to the satisfaction of the facility representative.
- Does the facility provide loading services for the customer? If not how does the customer load non-operational units or items that require a forklift?
- b. Terms and Conditions, 19, "NOTICE: It is expected that all buyers shall responsibly use this personal property including its disposition in conformance with applicable laws, rule and environmentally preferred practices."
- Could you please explain this term and condition?
- c. Terms and Conditions, 12: "Catalog numbers are assigned for identification only. The items will not necessarily be sold in numerical order. The lotting of items is also at the discretion of the OGS Representative and/or the auctioneer."
- Will the items be arranged in numerical order for your virtual events, allowing online bidders to be able to follow the sale order?
- d. Terms and Conditions, 10: "Full payment must be made within 30 minutes of the completion of the auction in cash, credit card or certified funds ONLY. A bill of sale will be furnished once payment has been made. Municipalities, local subdivisions and school districts may also use the forms of payment outlined above or a purchase order; however, a letter of delegated authority must be presented to the OGS Representative prior to bidding and if successful, a signed purchase order, payable to the State of New York, must then be presented."

If the contractor is responsible for collection and depositing all fund, how does the contractor collect on a purchase order? What authority will the state of New York give The contractor for collection of these funds?

e. Terms and Conditions, 1: "The State of New York reserves the right to add or withdraw any item(s) before the sale."

If the item are added after the contractors setup has been completed at the auction site, who's responsibility is it to get the units checked in and pictures taken and posted on the auction website?

A62. Auction Terms and Conditions apply to Bidders and not the Contractor. The Contractor's only responsibility is to announce the Auction Terms and Conditions. Items will not be added after setup if Auction Virtual Service will be included in service. For auctions that do not include Auction Virtual Service items may be added. If items are added, the Contractor will be responsible for adding the item to the list of available lots for invoicing purposes at the direction of OGS.

Q63. We are aware that certain vehicles are subject to "Diesel Emissions Reduction Act" or "DERA. as follows:

Form of Notice/ Language for use on heavy duty diesel trucks sales with surplus property Notice to Bidders/Purchasers of Heavy-Duty Diesel Vehicles (8,500 pounds or greater).The bidder or purchaser under the OGS Surplus Property sale is advised that all heavy duty diesel vehicles, as defined in New York State Environmental Law (ECL) section 19-0323, (known as the "Diesel Emissions Reduction Act" or "DERA") shall comply with the specifications and provisions of ECL section 19-0323 and any regulations promulgated pursuant thereto, which requires the use of BART ("Best Available Retrofit Technology") and ULSD ("Ultra Low Sulfur Diesel"). The NYSDEC has determined that heavy duty diesel vehicles sold at this auction which have received useful life waivers from the NYSDEC may not be used for on-road or off-road purposes and may only be used for parts after sale.

Question regarding DERA, Will NYS and its agencies continue to "Drill" the engine blocks of subject vehicles to render them non-operational? Please provide detail on provide more detail on, "Diesel Emissions Reduction Act" or "DERA"? Please confirm our assumption that the vehicles value at auction will be substantially reduced?

A63. NYS Agency will continue to comply with DERA and NYSDEC regulations. OGS cannot confirm any assumptions on value.

Revisions

R1. RFP 2687 Section 2.4 - Auction Day, 11th bullet is hereby deleted in its entirety and replaces with the following:

11. Contractor will be responsible for collecting the following pre-bid information: Auction Bidder ID number assigned at auction, first name, last name, middle initial, birthdate, address, city, state, zip, company name, NY County of residence (if applicable), tax exempt status. Contractor will be responsible for verifying information provided is true and accurate. Contractor will be responsible for providing pre-bid information to OGS prior to the start of the auction.

R2. RFP 2687 Section 2.4 - Auction Day, 7th bullet is hereby revised as follows:

7. All certified checks accepted are to be made payable to NYS Office of General Services. ~~Any returned certified checks will be the responsibility of the Contractor.~~ Determination of the validity of the documents presented by the buyers for payment shall be the sole responsibility of the Contractor.

R3. RFP 2687 Section 2.4 - Auction Day, 10th bullet is hereby revised as follows:

10. Pursuant to Article 11, Section 167 of the New York State Finance Law, NYS has the right to reject any final offer made at the auction sale, if the NYS representative deems the offer to be too low. ~~The high Auction Bidder, and only the high Auction Bidder,~~ All Bidders will be given an opportunity to meet the acceptable price placed on the item by the NYS representative in charge of the auction sale. The NYS representative will be present at the auction sale to carry out the terms of this paragraph.

R4. RFP 2687 Section 1.3 – Key Events is hereby revised as follows:

Action	Date
OGS Request for Proposal (RFP) #2687	August 8, 2023
Mandatory Intent to Submit a Proposal	August 31, 2023
Deadline for Submission of Proposer Questions and any exceptions.	August 31, 2023
OGS Issues Responses to Written Questions (estimated)	September 8, 2023
Proposal Due Date	September 26 <u>October 3</u> , 2023 at 2:00 pm
Contract Start Date	January 1, 2024

All other terms and conditions remain unchanged.

If submitting a proposal, this Addendum #1 for RFP# 2687 must contain an original signature, be dated, attached to, and made a part of your proposal.

Company Name _____

Address (include City, State, Zip) _____

Bidders Name (please print) _____

Title _____

Signature _____

Date _____



Office of General Services

Request for Proposals No. 2687

Solicited by

New York State Office of General Services

For

Live Auctioneer Services

Issue Date: August 8, 2023

Bid Due Date: September 26, 2023 at 2:00 pm

Designated Contact:

Seth Stark

Phone: 518-486-2823

E-mail: seth.stark@ogs.ny.gov

Alternate Contact:

Mary Slusarz

Phone: 518-486-2771

E-mail: mary.slusarz@ogs.ny.gov

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RFP Attachment 1	Cost Proposal Form
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RFP Attachment 2
RFP Attachment 3

Traditional NYS Auction Locations
Proposal Submission Checklist

1. Introduction

1.1 Overview

The New York State (NYS) Office of General Services (OGS) operates a centralized service for the disposition of a wide variety of surplus property. OGS is seeking to enter a five-year contract for Live Auctioneer Service throughout New York State. While most auctions conducted by the professional auctioneer contractor involve passenger vehicles, trucks and heavy equipment, occasionally auctions of other equipment or items may be required.

1.2 Designated Contact

In compliance with the Procurement Lobbying Law, Seth Stark, Contract Management Specialist II, NYS Office of General Services, Division of Financial Administration has been designated as the PRIMARY contact for this procurement solicitation and may be reached by email and phone for all inquiries regarding this solicitation.

Seth Stark, Contract Management Specialist II
New York State Office of General Services
NYS Office of General Services
Financial Administration – Agency Procurement Office
32nd Floor, Corning Tower Bldg., Empire State Plaza
Albany, New York 12242
Phone: 1 518-486-2823
Email: seth.stark@ogs.ny.gov

In the event the designated contact is not available; the alternate designated contact is:

Mary Slusarz, Contract Management Specialist III
NYS Office of General Services
Financial Administration – Agency Procurement Office
32nd Floor, Corning Tower Bldg., Empire State Plaza
Albany, New York 12242
Phone: 1-518-474-8209
Email: mary.slusarz@ogs.ny.gov

For inquires related specifically to Minority Women-Owned Business Enterprises (MWBE) provisions of this solicitation, the designated contact is:

Joshua Quiles, Compliance Specialist II
NYS Office of General Services, Minority and Women-Owned Business Enterprises
29th Floor, Corning Tower Bldg., ESP
Albany, NY 12242
Voice: 1-518-486-9284
Email: OGS.sm.MWBE@ogs.ny.gov

For inquires related specifically to Service-Disabled Veteran Owned Businesses (SDVOB) provisions of this solicitation, contact:

NYS Division of Service-Disabled Veterans' Business Development
Corning Tower, 32nd Floor, ESP
Albany, NY 12242
Phone: 1-518-474-2015
Email: veteransdevelopment@ogs.ny.gov

For inquires related specifically to the insurance requirements of this solicitation, the designated contact is:

New York State Office of General Service Bureau of Risk and Insurance Management
32nd Floor, Corning Tower Bldg., Empire State Plaza
Albany, New York 12242
Office: 1-518-486-1887
Email: ogs.sm.insrev@ogs.ny.gov

1.3 Key Events

The Table below outlines the tentative schedule for important action dates. If the State finds it necessary to change any of these dates, notification will be accomplished through an addendum to this RFP.

Action	Date
OGS Request for Proposal (RFP) #2687	August 8, 2023
Mandatory Intent to Submit a Proposal	August 31, 2023
Deadline for Submission of Proposer Questions and any exceptions.	August 31, 2023
OGS Issues Responses to Written Questions (estimated)	September 8, 2023
Proposal Due Date	September 26, 2023 at 2:00 pm
Contract Start Date	January 1, 2024

1.4 Minimum Proposer Qualification

Proposers are advised that the State's intent is to ensure that only qualified and reliable contractors enter into a contract to perform the work as defined in this document.

The State considers the following qualifications to be a pre-requisite in order to be considered a qualified Proposer for purposes of this solicitation. Proposers not meeting the qualifications below will be disqualified. Proposers may not use a subcontractor's or any other entity's qualifications to meet requirements.

The following minimum requirements **must** be met by each Proposer:

1. Proposer must have conducted at least three live auctions meeting the following requirements:
 - a. Each auction must have yielded a net value of over \$100,000.00 in awarded bids.
 - b. The auctions must have been held within the last two years immediately preceding the release of this RFP.

- c. At least one of the auctions must have included the sale of vehicles (e.g., passenger vehicles, ATVs, light duty trucks) and/or heavy equipment (e.g., dump truck, skid steer, bulldozer).
2. Proposer must have a bonding capacity of \$300,000.00.

1.5 Mandatory Intent to Submit a Proposal

Proposers who wish to submit a proposal must register their Intent to Submit a Proposal with OGS by the date stated in Section 1.3 Key Events by sending written notice to the designated contact, Seth Stark, via email seth.stark@ogs.ny.gov. Proposers shall include their company name, address, phone, contact name, title, and email address.

Only Proposers who have submitted an Intent to Submit a Proposal will be allowed to submit proposals and receive updates and responses to questions regarding this RFP. By issuing an Intent to Submit a Proposal, the Proposer is not obligated to submit a proposal.

Late submissions will not be accepted. Proposers assume sole responsibility for ensuring that their intent is received timely.

1.6 Glossary of Terms

“Auction Bidder” shall mean an individual bidding on auction lots.

“Auction Virtual Service” shall mean a service that is held in live format that allows bidders to place bids virtually.

“Buyer’s Premium” shall mean the percentage additional charge on the Hammer Price of the lot that must be paid by the winning Auction Bidder.

“Commissioner” shall mean the Commissioner of General Services or duly authorized representative.

“Contractor” shall mean a successful company awarded a contract pursuant to this RFP.

“Hammer Price” shall mean the Selling price of item BEFORE Buyer’s Premium and tax (if applicable).

“Issuing Office” shall mean the Office of General Services Division of Financial Administration.

“OGS” shall mean the New York State Office of General Services.

“OSC” shall mean the New York State Office of the State Comptroller.

“Proposer” or **“Bidder”** shall mean any person, partnership, firm, corporation or other authorized entity submitting a bid to the State pursuant to this RFP.

“Request for Proposals” or **“RFP”** shall mean this document.

“Set Up Report” shall mean the report provided to the Contractor by OGS that will include the equipment to be sold as well as known defects of the property.

The "**State**" shall mean The People of the State of New York, which shall also mean the New York State office of General Services.

"**Terms of Sale**" shall mean terms that bidders must agree to in order to participate in an auction.

2. Scope of Work

2.1 General Scope

The professional auctioneer Contractor will handle, auction off, and dispose of such surplus personal property as designated for such purpose by OGS. All auctions will be live, but some will require a virtual component (please see RFP 2687 Section 2.5 –Auction Virtual Service) It is anticipated that auctions will occur at locations listed in RFP Attachment 2 – Traditional NYS Auction Locations, however this list may not be all inclusive, and the need may arise for alternate locations within the state. All auctioneer services under any contract resulting from this RFP must conform in all respects to Federal, State and Municipal laws, ordinances, rules and regulations. The Contractor shall continuously maintain all required licenses, permits, and shall provide for the inspection and review of such licenses and permits by the Office of General Services and any other persons authorized by law.

OGS will assign and schedule auctions to be conducted at various times Monday through Friday, and occasionally on Saturdays or during evening hours. Occasionally two auctions may be held on the same day. No auctions will be scheduled on Sundays or on State or Federal legal holidays. OGS will provide a minimum of two week's prior notice for regular auctions. The contractor must provide necessary staffing, including an additional auctioneer as may be required. All auction sales will be open to the public.

This contract does not give the Contractor the exclusive right to sell any or all surplus equipment for NYS. OGS reserves the right to conduct auctions in-house or by any other means determined to be in the best interest of the State.

Auction areas will be maintained in an orderly fashion; areas must be cleared out and cleaned up after the scheduled work. Service shall be provided to all patrons without discrimination based upon protected class.

2.2 Auction Setup

Minimum requirements for Auction Setup are as follows:

1. Known defects of surplus property offered for sale will be furnished to the Contractor by NYS via a Set Up Report which includes details of each lot, including item description, VIN number if applicable, listed defects, as well as other pertinent information and which will be provided two weeks prior to auction.
2. The Contractor will be required, within four business days of receipt of the Set-Up Report, to verify the information provided during their setup and immediately notify OGS of any needed modifications to the Set Up Report (please also see RFP 2687 Section 2.11 Administrative and Reporting Requirements).
3. Pictures of the lots must be made available to the bidders no later than three business days prior to the start of the auction. Contractor shall take digital photos of each lot and provide these photos in a format approved by OGS. These photos may also be posted on the Contractor's website. Adjustments to this timeline may be negotiated between OGS and the Contractor.

2.3 Auction Items

The following shall apply to all Auction Items:

1. All surplus property shall be sold "as is" and "where is." Potential buyers may observe and inspect property on the day of sale. Known defects are listed, but the absence of any indicated deficiencies does not mean the item may not have deficiencies.

2. The Contractor shall become familiar with the equipment to be sold and is encouraged to market the equipment in order to obtain the highest possible revenue for NYS.
3. OGS reserves the right to add or withdraw items from specified auction or lot prior to their sale and may do so without any recourse by the Contractor.

2.4 Auction Day

Minimum requirements for Auction Day are as follows:

1. Contractor is required to check the list of banned Auction Bidders during registration and notify OGS representative at auction that banned Auction Bidder is trying to register.
2. Contractor is required to collect information required in section 2.11.2 – Reporting Requirements.
3. A NYS Representative shall accompany the auctioneer during the auction process.
4. Contractor shall provide all services, personnel, equipment, etc. necessary to auction all items made available for sale by the OGS Bureau of Surplus Personal Property, e.g., passenger cars, vans, buses, ambulances, trucks, highway maintenance equipment, office furniture, and warehouse liquidation.
5. All vehicles and equipment for sale must have all aftermarket parts (such as but not limited to lights, radios, law enforcement items) or State markings (such as but not limited to decals, seals, logos, insignias) removed. See RFP 2687 Section 2.2 – Auction Setup for additional details for preparation of auction item. The NYS representative assigned to the auction will have final say prior to auction as to whether or not everything has adequately been stripped and eliminated. Contractor will be responsible for addressing any issues about aftermarket equipment or decals before item is auctioned. This work should be completed with minimal damage to the vehicle.
6. The Contractor shall require each successful buyer to make full payment in cash, credit card, or certified funds only. Personal checks are not accepted. Contractor shall obtain full payment from the live Auction Bidder within 30 minutes of the end of the auction.
7. All certified checks accepted are to be made payable to NYS Office of General Services. Any returned certified checks will be the responsibility of the Contractor. Determination of the validity of the documents presented by the buyers for payment shall be the sole responsibility of the Contractor.
 - a. Municipalities, local subdivisions and school districts may use the forms of payment outlined above or a purchase order; however, a letter of delegated authority must be presented to the OGS Representative prior to bidding and if successful, a signed purchase order, payable to the State of New York, must then be presented.
 - b. The Contractor must use OGS provided credit card processing machines/technology.
 - c. The Contractor will be responsible for all funds until they are turned over to the State. It will also be the responsibility of the Contractor for security at the auctions to secure these funds.
 - d. All sales are final. No refunds. No returns. No exchanges. No turndowns.

8. A bill of sale will be provided by the Contractor to each buyer, and a copy of that bill must also be provided to OGS prior to the invoicing of services. The bill of sale must include sales tax (where applicable) and Buyer's Premium paid for each item purchased. For all automotive equipment, the bill of sale must include the catalog item number, year, make, VIN/serial number, mileage and identification number of the vehicle or equipment sold.
9. The Contractor, the Contractor's employees, and family members of the Contractor and the Contractor's employees are prohibited from purchasing any items during the auction bidding process, and no sale shall result in a benefit to the Contractor or to any of the Contractor's employees or family members of the Contractor and the Contractor's employees outside of the terms and conditions of this contract. Violation is immediate cause for termination of the contract.
10. Pursuant to Article 11, Section 167 of the New York State Finance Law, NYS has the right to reject any final offer made at the auction sale, if the NYS representative deems the offer to be too low. The high Auction Bidder, and only the high Auction Bidder, will be given an opportunity to meet the acceptable price placed on the item by the NYS representative in charge of the auction sale. The NYS representative will be present at the auction sale to carry out the terms of this paragraph.
11. Contractor will be responsible for collecting pre-bid information including driver license, method of payment and maximum bid per lot.
12. Prior to the start of the bidding, the auctioneer will be required to:
 - a. Read the applicable State's Terms of Sale aloud.
 - b. Disclose that each sale is subject to a Buyer's Premium and state the percentage that will be applied to the final sale price.
13. The Contractor shall work with OGS personnel to publish Terms of Sale. This publication shall be made available to all auction attendees and posted at auction site.

2.5 Auction Virtual Service

Upon OGS request, Contractor shall provide virtual services at live auctions. An OGS Representative shall audit the virtual live auction as it occurs to verify the Hammer Price and winning Auction Bidder. OGS will make final determination if there is any question on what the Hammer Price is or who the winning Auction Bidder is. OGS may request up to ten Auction Virtual Services per year. Contractor may request that OGS allow more than ten Auction Virtual Services per year.

Contractor will be responsible for providing platform necessary to conduct virtual auction and any equipment necessary for platform to function.

With respect to the virtual live auction, Contractor shall be responsible for providing the following:

1. Contractor must include the Terms of Sale in the Virtual Online Auction Bidder registration.
2. Contractor must provide the electronic confirmation to Contractor that the Auction Bidder has read and understood the Terms and Conditions.
3. Contractor must collect Auction Bidder information as set forth in Section 2.11.2
4. Contractor must ensure subcontractor is following all applicable local, state, and federal laws.
5. Contractor will be responsible for collecting pre-bid information including current address, email address, and maximum bid per lot.

6. Contractor will produce a confirmation email and invoice to the winning Auction Bidder within two hours of the close of the auction. The invoice must include the sale price(s), Buyer's Premium, sales tax due, OGS payment portal link, and the time payment is due.
7. Contractor is required to check the list of banned Auction Bidders during registration and notify OGS representative at auction that banned Auction Bidder is trying to register.
8. At the end of each virtual auction, Contractor must submit a digital copy of the names, Auction Bidder number, company name, telephone number, email address, and addresses of all buyers, and a listing of all items sold including lot number and price to the designated NYS representative. All information must be submitted electronically in accordance with Section 2.11 – Administrative and Reporting Requirements.

2.6 Auction Staff

Minimum requirements for Auction Staff are as follows:

1. Staffing levels must be adequate to enable timely project completion even in the event of illness or other causes preventing completion by initially assigned staff. Alternate auctioneer and staff must be available in case of absences or sudden illnesses.
2. Contractor will provide personnel to be on hand for the setup and on the day of the auction to start and operate equipment, make minor adjustments and/or repairs, number and/or tag, arrange for sale (verify VINs, mileage, defects, etc.), and clean all items, including, insofar as is practical, to remove debris and any other non-vehicle-specific items from the interiors and trunks. "Operate" shall mean demonstration of the equipment to the extent possible, given the condition and location of the item, and shall include raising and lowering bulldozer blades, dump truck bodies, and loader buckets; and driving vehicles forward and backwards.
3. Staff are required to be at the site of the auction at least 90 minutes prior to the advertised and scheduled start time of the auction until after the last payment has been made and the completed auction reports have been presented to the OGS representative.
4. If motor vehicles are to be auctioned, Contractor shall provide a minimum of two people to move motor vehicles to ensure a steady movement of vehicles during the auction.
5. Clerical personnel are required to record all transactions, review valid exemption certificates, complete all required forms and reports, and maintain a yearly sales tax exemption file. All information will be transmitted electronically to OGS in accordance with Section 2.11-Administrative and Reporting Requirements.
6. Cashier is required to produce invoices, collect the proceeds, Buyer's Premium, and sales tax due.
7. At least one mechanical assistant shall be on hand to start vehicles and perform duties in the yard when the auction involves sale of mechanical equipment. Duties include, but are not limited to, jump starting vehicles, keeping track of keys, holding "Item Now Selling" sign, opening vehicle hoods, etc.
8. Contractor shall be responsible for providing their personnel with distinctive clothing to be identifiable as auction staff (e.g., name tags, caps, shirts). Contractor staff are required to wear this clothing on the day of the auction.

OGS expects that all services will be conducted diligently and effectively under the supervision of OGS staff. Further, OGS requires the following of all staff:

1. All Contractor staff shall conduct themselves in a professional manner with OGS staff and with the public.
2. All staff assigned shall report to work in appropriate dress and appearance.
3. All Contractor staff shall comply with all rules and requirements of this solicitation, including the prohibition of the use of drugs and alcohol prior to or during any period of work to which they are assigned.
4. All Contractor staff shall report and notify OGS staff of any collusion, consultation, communication, or agreement observed, for the purpose of restricting competition, with or by any potential Auction Bidders.
5. Any Contractor staff that fails to comply with any of the requirements of the Contract resulting from this solicitation may be removed from the premises and potentially banned from working at future auctions.

2.6.1 Contract Representative

During the term of this contract, the Contractor shall maintain a designated officer or employee as its representative for contact with the State and for all communication and transactions relating to this contract. The Commissioner's designated representative for all purposes of this contract shall be the Program Coordinator of the Surplus Property.

2.6.2 Background Checks

Requirements of this clause apply to the Contractor performing on-site work for OGS. Background checks shall be performed at no additional cost to the State. The cost to the Contractor for performing requirements of this section shall be taken into consideration when the proposer calculates its bid prices in response to this solicitation. Contractor shall not be entitled to charge separately, or otherwise be reimbursed, for any costs incurred in complying with this background check requirement.

For purposes of this clause, the following definitions apply:

On-Site: "On-site" refers to any State-owned or leased space open to the public or at which State business operations are conducted.

Suitability: "Suitability" refers to identifiable character traits and past conduct that are reasonably sufficient to indicate whether a given individual is likely to be able to perform the requirements of a contract at OGS on-site locations without undue risk to the interests of the State.

Suitability determination: A "suitability determination" is a determination that there are reasonable grounds to believe that an individual will likely be able to perform the contract requirements on-site without undue risk to the interests of the State.

Applicability

Contractors shall perform background checks and make suitability determinations on contractor employees before the individual employees can perform on-site contract services for the Office of General Services.

Contractor shall maintain a continuous list of background checks and suitability determinations noted above and shall provide this list to the Director of State and Federal Surplus Property and Administrative Specialist 1 prior to the contract commencement date. The list shall be updated and resubmitted to the Facility Manager as changes occur, continually keeping the Facility Manager updated.

The Commissioner of General Services, or his or her designee (the "Commissioner"), on a case-by-case basis, may, either temporarily or permanently, waive the requirements of this clause, in whole or in part, if they determine in writing that background checks and suitability determinations are not necessary at a specific location, or for a specific individual, in order to protect the State's interests.

Background Check

The Contractor is responsible for completing background checks and making suitability determinations on its employees prior to the employees beginning on-site work. Compliance with the requirement for performing a background check and making a suitability determination shall not be construed as providing a contractor employee clearance to secured areas. Contractors are required to maintain records of background checks and suitability determinations for the term of the contract, and to make them available to the State when requested.

At a minimum, the background check and suitability determination must include an evaluation of:

1. Verification that the individual is not listed on a national watched person database. The following link has information about data available <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>. The following link has a PDF file of a list of SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
2. Criminal History checks to be performed either by using a national database that contains criminal histories and supplement this search by checks of NYS Office of Court Administration ("NYSOCA") and comparable searches of states where the person has lived, worked, or attended school during the past 5 years; OR by obtaining the record of convictions from NYSOCA directly and from their equivalents from other states where the person might have lived, worked, or attended school during the last 5 years;
3. DMV driving records;
4. Social Security Number trace;
5. Verification of U.S. citizenship or legal resident status; and
6. Residence (past 3 years) (should be requested on employment application to compare against data from DMV license and other searches for verification).

Background Check Guidelines

In making a suitability determination, the Contractor shall consider the following factors and evaluate them against the work to be performed, the performance location, and the degree of risk to the State:

1. Any loyalty or terrorism issue;
2. Patterns of conduct (e.g., alcohol/drug abuse, financial irresponsibility/major liabilities, dishonesty, unemployability for negligence or misconduct, criminal conduct);
3. Dishonorable military discharge;
4. Felony and misdemeanor offenses; and

5. Employment related misconduct involving dishonesty, criminal or violent behavior.

The Contractor shall evaluate any adverse information about an individual by considering the following factors before making a suitability determination:

1. The nature, extent, and seriousness of the conduct;
2. The circumstances surrounding the conduct;
3. The frequency and recency of the conduct;
4. The individual's age and maturity at the time of the conduct;
5. The presence or absence of rehabilitation and other pertinent behavior changes;
6. The potential for pressure, coercion, exploitation, or duress;
7. The likelihood of continuation of the conduct;
8. How, and if, the conduct bears upon potential job responsibilities; and
9. The employee's employment history before and after the conduct.

Each suitability determination should be documented in a narrative. If negative items are mitigated by subsequent passage of time or completion of any relevant programs that are rehabilitative in nature, this rationale should be included in the narrative. 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 employee from a State site.

Employee Removal

Whenever a Contractor becomes aware that any employee working at an on-site location under an OGS contract becomes an unacceptable risk to the State; the Contractor shall immediately remove that employee from the site, notify the Commissioner that such a removal has taken place, and replace them with a qualified substitute immediately. If the approval of the Commissioner was initially required for the removed employee, Commissioner approval is required for the replacement employee.

Commissioner Notification

Prior to commencement of on-site contract performance, the Contractor shall notify the Commissioner that the background checks and suitability determinations required by this clause have been completed for affected individuals.

2.6.3 New York State Vendor Identification Badges

All Contractor employees must be easily identifiable as a Contractor employee. In addition, Contractor employees will be required to have a New York State Vendor Identification Badge which must be worn at all times. The Contractor will be responsible for applying, submitting the information, and the cost for the identification badges. The cost for a Vendor Identification badge is \$13.00, as well as any replacement badges. Proposers are encouraged to keep this in mind when preparing their cost Proposal.

2.7 Auction Resources

The Contractor shall be required to provide the following:

1. Provide sufficient small tools (e.g., jumper cables, portable starting device, wrenches, pliers, and screwdrivers) and a reasonable supply of gasoline, motor oil, starting fluid, and transmission fluid necessary to operate each vehicle and unit of highway equipment to be sold.
2. Provide identification labels for the individual lots based on lot descriptions and information provided by OGS at the time that the Set Up Report is sent. These labels must be clearly presented on each lot to be sold.
3. Provide and utilize a public-address system, elevated staging area, and a camera for digital recording of the auction process.
4. Provide a clean and environmentally accommodating office trailer on the day of the auction. Office space shall be sufficient to allow the NYS representative a functional working area including seating.
5. Provide a digital audio/video recording of each auction to the OGS representative prior to leaving the auction site.
6. Provide all hardware and connections required to enable virtual pre bids when agreed to do so with NYS.
7. Provide signage for each workstation used for auction clerical duties to identify the activities to be performed at that workstation (e.g., “register here” and “pay here”); the sign at the registration location shall include the terms of payment.
8. Provide staff to erect signs issued by NYS and imprinted with “State of New York Equipment Auction” at locations to identify the sale location. These signs shall be placed in appropriate locations by 8:00am or 90 minutes prior to the start of the auction and be returned to NYS at the end of the auction season. In the event that two OGS auctions are conducted on the same day, signs should be placed upon immediate arrival to the second auction location.
9. Provide safety equipment necessary to the operation of vehicle and equipment preparation. This equipment shall include, but not be limited to, a dry chemical fire extinguisher at least five pounds in size, a portable eyewash station, and a first aid kit. This equipment shall be kept accessible during the preparation and execution of the auction sale.

2.8 Special Auctions

Occasionally the State will require special auctions for items as needed. These will be handled as special auctions if they vary from the previously planned auction schedule. Special Auctions are subject to the same fee as “regular” auctions. However, Special Auctions may be subject to reimbursement of mileage and lodging expenses if the auction is held more than 100 miles from Contractor’s nearest office. Travel distances exceeding 100 miles will be determined by MapQuest from Contractor’s location to auction site. Print out of MapQuest directions must accompany any invoice with charge for Mileage. If OGS authorizes travel expenses, Contractor must invoice for pre-approved travel expenses separately from Buyer’s Premium.

Special Auctions shall otherwise be governed as follows:

1. The State shall have the exclusive right, in its sole discretion, to designate an auction as a “Special Auction.”

2. Lodging and Mileage will be reimbursed at rates determined by the United States General Services Administration (found at <https://www.gsa.gov/travel/plan-book/transportation-airfare-pov-etc/privately-owned-vehicle-pov-mileage-reimbursement-rates>).
3. All expenses shall be pre-approved by the State in writing. The Contractor shall submit to the State a detailed proposed budget for each Special Auction which includes its proposed usual and extraordinary expenditures, separately listed and described therein.
4. OGS will provide as much advanced notice as possible prior to scheduling a special auction. The auctioneer must provide necessary staffing, including an additional auctioneer if required.

2.9 Marketing and Promotions

The Contractor is encouraged to assist in the advertising and promoting of each auction. Any advertising must include OGS Surplus Property's contact information. The Contractor shall direct all questions relating to OGS Auctions to OGS Surplus Property staff.

2.10 OSHA (Occupational Safety & Health Administration) Training Requirements

OGS Facility Manager's Obligations

Prior to beginning contract work/work assignment, the OGS Facility Manager or Designee shall inform or make available the Contractor/Contractor's representative(s) of the known specific hazard(s) and chemical(s) they may encounter while performing their contract obligations. For example; testing of materials may be performed, or previous reports may be available to inform on the location of Asbestos Containing Materials, lead or other environmental concerns if present, and any site-specific work practices that may be necessary to conduct work safely and in compliance with federal or state standards and OGS procedures such as those involving Lockout/Tagout and electrical procedures.

The Contractor/Contractor's Representative(s) shall also be provided with information about the use and provisions for Personal Protective Equipment required for the work. **Contractor/Contractor's Representative shall provide a signed acknowledgement to the Director of State and Federal Surplus Property and Administrative Specialist 1 or OGS Designee that they were provided with this information.**

Contractor / Contract Employee Obligations

General Contract Obligations:

These requirements only apply to on-site work at a State property.

Prior to or upon first reporting to the work location for assignment, the Contractor/Contractor employee(s) and employees of Sub-Contractors must present to the Director of State and Federal Surplus Property and Administrative Specialist 1 or OGS Designee proof of completion of the OSHA required training for the following, topic areas including but not limited to:

1. OSHA 10-hour training for work in construction or related assignments
2. Hazard Communication,
3. Personal Protective Equipment.

For environmental health and safety emergencies, an emergency contact must be provided for the facility manager or designee to contact prior to any work commencing. Any changes to this contact, including name and or contact information must be communicated to the OGS Designee immediately.

Specific Field-of-Work Requirements

In circumstances where specific OSHA or NYS Department of Labor regulated work is required, the Contractor/Contract Employee(s) shall have all pertinent and up-to-date certifications beyond the “awareness” level as required by regulations for the specific work. On-site employee will be trained to do the work, supervised by higher knowledge/training, as required by OSHA/DOL regulations.

It is the Contractor’s responsibility to provide the OGS Facility Manager or OGS Designee with all employee updates and/or renewals for the above general contract obligations and specific field of work requirements specified training.

The Contractor must coordinate with OGS to be informed of the site’s Emergency Action Plan.

Note: Contractor’s/Contractor’s Employee(s) and employees of Sub-Contractors failure to provide such documentation to the OGS Facility Manager or OGS Designee upon or prior to employee reporting to their initial work assignment may result in OGS rejecting the employee(s) until that documentation is provided.

2.11 Administrative and Reporting Requirements

The Contractor will be responsible for the completion of a variety of administrative and reporting requirements, and all costs incurred shall be included in the proposed Buyer’s Premium. The OGS designated representative for all purposes of this contract shall be the Director of Surplus Property or their designated representative.

2.11.1 Contract Kickoff Meeting

Upon award of the Contract and prior to the start of any work, the Contractor shall be available for Contract Kickoff Meeting with the Program Coordinator of OGS State Surplus Property (hereinafter “Program Coordinator”). The contract Kickoff Meeting will be held at OGS’ discretion.

The Contract Kickoff Meeting shall include:

1. Introductions and identification of appropriate contacts
2. Review of contract scope
3. Review of contract administrative and reporting requirements
4. Invoicing

2.11.2 Reporting Requirements

The Contractor will be responsible for the completion of a variety of administrative and reporting requirements, and the cost of same shall be included in the Buyer’s Premium. All reporting must conform to OGS requirements in both electronic and hard copy formats. All electronic formats must be made using Microsoft Excel. The following information must be reported in electronic Excel format for each auction conducted as soon as practicable but no later than 15 calendar days from the date of the auction:

1. Auction Bidder list, including but not limited to the following data: Auction Bidder ID number assigned at auction, first name, last name, middle initial, address, city, state, zip, company name, NY County of residence (if applicable), tax exempt status, auction catalog number (supplied by OGS), telephone number.
2. Sale recording data: auction catalog number, item identification number, lot number, Auction Bidder identification number, sale amount, date/time information collected at site
3. Sale invoice data: unique invoice number, catalog number, Auction Bidder identification number, item number, lot number, sale amount, Buyer’s Premium amount, sales tax amount, tax county identification number, payment type, paid date
4. Copy of deposit receipt

The following information must be reported in hard copy format for each auction conducted as soon as practicable but no later than 15 calendar days from the date of the auction:

1. Auction Bidder List to include Auction Bidder ID number assigned at auction, first name, last name, middle initial (same as driver license data), address, city, state, zip, company name and telephone number.
2. Consignment List to include auction catalog number/location, lot number and description of lot, Auction Bidder id and name and sale amount.
3. Sale Invoices to include unique invoice number, catalog number, auction location, Auction Bidder ID, lot number and description of lot, sale amount, Buyer's Premium amount, sales tax amount, county of tax, payment type/amount. Copies of sales tax exemption forms are also to be included. Note: Any such sales tax exemption forms must be updated annually at the beginning of each auction season.

A preliminary report with the above information must be given to the OGS representative within 15 minutes after the last payment is received.

No invoice submitted by the Contractor will be approved until this required paperwork has been accepted and completed in full.

2.12 Handling of Proceeds

The Contractor shall deposit all proceeds of the auction into a bank account identified by the State no later than two business days after each auction has been conducted. These deposits must include the gross receipts of each auction, i.e., the total amount collected for the auction including all sales tax collected and Buyer's Premiums. The Contractor shall not deduct or otherwise withhold from the deposits any sum or portion of the gross auction sales proceeds.

2.13 Liquidated Damages

Contractor's failure to timely meet the specified schedules herein may be grounds for cancellation of the Contract, and/or at the sole discretion of the State, subject the Contractor to liquidated damages. Liquidated damages shall be calculated as \$500.00 per day until the scheduled performance requirement is completed by Contractor and accepted by the State. If Contractor feels that delays are or will be outside their control, they may submit a written request for extension to OGS. Request must detail cause for delay, length of delay, and proposed remedy to avoid any subsequent delays in performance. Any extension of the time for performance must be approved in writing by OGS. At the discretion of OGS, liquidated damages may be deducted by the State from payments due, or to become due, to the Contractor on the same or another transaction.

2.14 Contractor's Compensatory Liability

In the event that the Contractor fails to complete any of the specified services within the timeframe required, OGS reserves the right to have such work completed either by another contractor or with in-house staff. In any such event, the Contractor shall be liable to reimburse OGS for all costs incurred to complete the work. OGS further reserves the right to collect such reimbursement from any outstanding payments due to the Contractor.

2.15 Bonding Requirements

Prior to actual performance under this contract, without expense to NYS, the Contractor shall supply a \$300,000 surety bond or irrevocable letter of credit to OGS in a form satisfactory to OGS, conditioned upon the faithful performance of this contract in accord with the intent and purpose thereof, and guaranteeing payment to the State of New York by the Contractor of all monies due to NYS pursuant to the terms of this contract. The bond or letter of credit must remain in effect for the duration of the contract term.

2.16 Warranties

Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards.

All materials and workmanship provided under this contract shall be warranted for a minimum of one year. Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties, such additional or more advantageous warranty shall apply. All warranties contained in this Contract shall survive the termination of this Contract.

3. Proposal Submission

3.1 RFP Questions and Clarifications

There will be an opportunity for submission of questions and/or requests for clarification. Questions and/or clarifications must be submitted via e-mail to the Designated Contact:

Seth Stark, Contract Management Specialist II
OGS Division of Financial Administration – Agency Procurement Office
32nd Floor, Corning Tower Building, Empire State Plaza
Albany, NY 12242
Phone : 518-486-2823
E-mail : seth.stark@ogs.ny.gov

All questions should cite the page, section, and paragraph number, where applicable. Please submit questions as early as possible following receipt of the RFP. The final deadline for submission of any questions/clarifications regarding this RFP is listed in Section 1.3- Key Events. Questions received after the deadline may not be answered. OGS will post an addendum at <https://ogs.ny.gov/procurement/bid-opportunities> with all questions and responses on or about the date listed in Section 1.3– Key Events, to the Primary Contact Person for all vendors that submitted an Intent to Submit a Proposal. Any additional addenda will be posted to the same location.

3.2 Proposal Format and Content

In order for the State to evaluate proposals fairly and completely, Proposers are strongly encouraged to follow the format set forth herein and should provide all the information requested. All items requested in this Submission section should be provided and addressed as clearly as possible. Failure to conform to the stated requirements may necessitate rejection of the proposal.

Proposers are encouraged to include all information that may be deemed pertinent to their proposal. Proposers may be requested to provide clarification based on the State's evaluation procedure. Any clarification will be considered a formal part of the Proposer's original proposal. If further clarification is needed during the evaluation period, OGS will contact the Proposer.

Note: OGS reserves the right to request any additional information deemed necessary to ensure that the Proposer is able to fulfill the requirements of the contract.

No overt reference to cost shall be made in the technical proposal.

3.2.1 Technical Proposal

3.2.1.1 Cover Letter

The cover letter should confirm that the Proposer understands all the terms and conditions contained and will comply with all the provisions of this RFP. Further, should the contract be awarded to your company, you would be prepared to begin services on the date indicated in Section 1.3 – Key Events. The cover letter should also include the full contact information of the Proposer's Representative that OGS shall contact regarding the proposal. A Proposer representative authorized to make contractual obligations must sign the cover letter.

3.2.1.2 Proof of Minimum Qualifications

Proposers should submit evidence that they meet the Minimum Proposer Qualifications set forth in Section 1.4.

1. Proposers should submit evidence from three live auctions as follows:
 - a. Proposers should provide receipts from no fewer than three auctions each valued more than \$100,000 dollars, within the last two years immediately preceding release of this RFP.
 - b. Proposer should provide advertisements or receipts demonstrating auctions referenced meeting the requirements of this section have been held within the last two years immediately preceding release of this RFP.
 - c. Proposer should provide evidence such as advertisements or receipts showing that they have experience in auctioning vehicles and/or heavy-duty equipment within the last two years immediately preceding release of this RFP.
2. Proposer should provide evidence of bonding capacity of \$300,000.00. Acceptable evidence of bonding capacity shall consist of a letter or other written document from a bond company or financial institution confirming their commitment to issue a bond or irrevocable letter of credit for proposer's performance of this contract.

3.2.1.3 Experience of Firm

Proposers should provide a detailed description of the firm's organization, experience, and personnel that will substantiate the firm's qualifications and capabilities to provide the services as described by this RFP. It is strongly encouraged that this submission include:

1. Comprehensive list of contracts of similar scope that have been successfully undertaken by the firm within the last two years. Provide the name, address and telephone number of a reference for at least three clients. Reference check information may be considered in the technical evaluation. Note: proposers are solely responsible for availability of the submitted references. The inability to contact a reference provided by the Proposer may be considered as part of the evaluation process.
2. Years of experience in auctioneer services for the firm and each auctioneer and key personnel.

3.2.1.4 Plan of Operation/Staffing Plan

Describe your operation plan for providing the services required by this RFP. It is strongly encouraged that this submission include:

1. Names, titles, and qualifications of key personnel who will be assigned to this contract.
2. Detailed resume of each proposed auctioneer assigned to this contract.
3. Any use of proposed subcontractors, including, but not limited to, virtual service provider.
4. Staffing Plan - number of employees and their function/duties at each auction. The plan should include a discussion of how alternate auctioneer and staff will be provided in case of absences or sudden illnesses.

5. Location of office responsible for managing this contract.
6. Tools, resources, and technology to be used for electronic record keeping and reporting.
7. Tools, resources, and technology to be used to ensure an orderly day of auction operations. This includes public address systems, staging area, and recording devices as described RFP 2687 Section 2.7 – Auction Resources.
8. Tools, resources, and technology to be used for the provision of Auction Virtual Service.
9. Detailed description of how requirements of service in RFP 2687 section 2.5 – Auction Virtual Service will be met.
10. Process for advertising and marketing, if applicable.
11. Processes and preparations in advance of auctions.
12. Process for site set up and preparations on day of auction.
13. Post auction activities and procedures.

Proposers are encouraged to submit any additional information intended to support and strengthen their proposal.

3.2.2 Cost Proposal

Proposers must submit a completed Cost Proposal Form - Attachment 1, in a separately sealed package within the proposal submission and should be clearly identified as the Cost Proposal. Each item must be complete with no lines omitted. Proposers shall not provide alternative pricing or deviate from the Cost Proposal Form. Alternative pricing methodologies will not be considered and may result in the rejection of the proposal.

3.2.3 Administrative Proposal

1. All required completed forms from RFP Appendix B.
2. Signed RFP addenda (if any).
3. Important Notes:
 - a. Insurance – Proposers are reminded of the insurance requirements as described in Appendix D. The selected Proposer will be required to provide all necessary documentation upon notification of selection.
 - b. Vendor Responsibility - Proposers are reminded of the requirement as described in RFP 2687 Section 6.11– NYS Standard Vendor Responsibility Questionnaire and are requested to complete the online questionnaire located on the OSC VendRep System website prior to bid submission. If the vendor has previously certified responsibility online, it shall ensure that the Vendor Request Questionnaire (VRQ) was recertified in the last 6 months.
 - c. Document Consistency - An award will only be made to the entity which has submitted the proposal. All submitted documents must be consistent with official name of proposing entity, FEIN and NYS Vendor ID number.

3.3 Proposal Preparation

All proposals must be completed in ink or machine produced. Proposals submitted handwritten in pencil will be disqualified.

3.4 Packaging of RFP Response

The Technical, Cost, and Administrative proposals should be separated and identified within the submission package as follows:

1. Technical – Submit one original and four copies in a clearly marked envelope. No overt statements about cost shall be included in the Technical Proposal.
2. Cost – Submit one original and one exact copy of Attachment 1 – Cost Proposal Form clearly marked “Cost Proposal” **in a separate sealed envelope**.
3. Administrative – Submit one original and one exact copy.

Please provide one digital record (Thumb Drive) containing technical, administrative, and cost proposals. If there are any differences between the paper submissions and the electronic submission, the paper submission shall take precedence.

Originals contain a unique wet signature for each of the signed and notarized pages. Exact copies can be photocopied and do not require a unique wet signature.

All proposal documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

- a. Proposer 's complete name and address
- b. Solicitation Number – 2687
- c. Proposal Due Date and Time: (as indicated in Section 1.3- Key Events)
- d. Proposal for Live Auctioneer Services

Failure to complete all information on the proposal envelope and/or packages may necessitate the premature opening of the proposal and may compromise confidentiality.

3.5 Instructions for Proposal Submission

Note that these instructions supersede the generic instructions posted on the OGS website bid calendar.

Only those Proposers who furnish all required information and meet the mandatory requirements will be considered.

Submit all required bid documents, to the NYS Office of General Services - Division of Financial Administration at the following address:

NYS Office of General Services
OGS Financial Administration, Agency Procurement Office
32nd Floor, Corning Tower Building, Empire State Plaza

Albany, NY 12242
Attn: Seth Stark
Request for Proposal #2687

E-MAIL OR FAX BID SUBMISSIONS ARE NOT ACCEPTABLE AND WILL NOT BE CONSIDERED.

The State of New York will not be held liable for any cost incurred by the Proposer for work performed in the preparation and production of a bid or for any work performed prior to the formal execution and approval of a contract.

Proposals must be received in the above office on or before 2:00 PM on the date indicated in Section 1.3- Key Events. Proposers assume all risks for timely, properly submitted deliveries. Proposers mailing their bid must allow sufficient mail delivery time to ensure receipt of their bid at the specified location no later than the specified date and time.

The received time of proposals will be determined by the clock at the above noted location.

Any Proposals received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner's sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, or (ii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the bidder. However, in no event will the Commissioner be under any obligation to accept a Late Bid.

The basis for any determination to accept a late bid shall be documented in the procurement record.

Proposals must remain open and valid for 180 days from the due date, unless the time for awarding the contract is extended by mutual consent of NYS OGS and the Proposer. A proposal shall continue to remain an effective offer, firm and irrevocable, after such 180-day period until either tentative award of the contract(s) by Issuing Office is made or withdrawal of the proposal in writing by Proposer. Tentative award of the contract(s) shall consist of written notice to that effect by the Issuing Office to the successful Proposer. This RFP remains the property of the State always, and all responses to this RFP, once delivered, become the property of the State.

Important Building Access Procedures for Delivered Proposals:

Building Access procedures are in effect at the Corning Tower. Photo identification is required. All visitors must register for building access, for delivering bids. Proposers are encouraged to pre-register by contacting the OGS Finance Office at 518-486-2823 at least 24 hours prior to arrival. Pre-registered visitors are to report to the visitor desk located at the Concourse level of the Corning Tower. Upon presentation of appropriate photo identification, the visitor will be allowed access to the building.

Upon arrival at the visitor desk, visitors that have not pre-registered will be directed to a designated phone to call the OGS Finance Office. The Finance Office will then enter the visitor's information into the building access system. Access will not be allowed until the system has been updated. Visitors are encouraged to pre-register to ensure timely access to the building. Vendors who intend to deliver bids

or conduct business with OGS should allow extra time to comply with these procedures. These procedures may change or be modified at any time.

Visitor parking information can be viewed at the following OGS web site:

<https://empirestateplaza.ny.gov/parking>

4. Evaluation and Selection Process

4.1 Proposal Evaluation

Proposals will be evaluated for best value to the State. A team of OGS employees will evaluate each proposal and initially determine whether a proposal is responsive to the requirements of the Solicitation and if proposer meets the minimum qualifications to propose. Responsive proposals will be evaluated and scored based upon the criteria set forth in this Section.

Proposals determined responsive will be evaluated using a 1000-point scale. Percentages listed in categories A through D in RFP 2687 Section 4.1.1 – Evaluation Categories will determine how many points a proposal is given for each evaluation category. For example, Category A – Proposer’s Experience of Firm is worth 22.5% of total available point or 225 Points.

Responsive technical proposals will be sent to a Technical Evaluation Team (TET). The TET will be responsible for evaluating Evaluation Categories A and B as described in RFP 2687 Section 4.1.1 – Evaluation Categories. Each TET member will score proposals on a 1 to 10 scale. TET Member’s scores are referred to as individual scores. The average of individual scores will be used to determine the percentage of possible points a proposal will receive. For example, if the average individual score for evaluation category A is 7, then that proposal would receive 157.5 points for evaluation category A (1000 total points x 22.5% (weight of A) = 225 possible points x 70% (average individual score) = 157.5 awarded points).

The TET reserves the right to interview key corporate personnel from the Proposers submitting responsive proposals. Should the TET choose to conduct interviews, they will be held at a time and place (in Albany NY) chosen by OGS. The TET may elect to have proposers attend remotely. If OGS elects to conduct interviews they will be held for all responsive proposers. If a proposer does not attend a requested interview, they may be found non-responsive.

An interview would not be an opportunity to introduce supplemental submission information. Rather, the Proposer will be requested to make a presentation covering the major points of its submitted proposal. The TET will ask questions related to the technical scope of the proposal. Information learned during the interview will be considered in the technical scoring. In addition to key corporate personnel being present for such interview, OGS requests the presence of key onsite personnel. OGS personnel conducting the interview must not inquire about any cost components of proposals and interviewees must not offer any information regarding cost components of their proposals. Any mention of cost components of the proposal may result in rejection of the proposal.

OGS also reserves the right to conduct reference checks. In such cases, the Proposer shall be responsible for the availability of the reference contacts.

For Item C, proposers will receive 2.5% of possible evaluation points if proper certification declaring MWBE, SDVOB, and/or Small Business criteria is met.

OGS Division of Financial Administration will evaluate all cost proposals from responsive Proposers. The cost proposal with the lowest total price will be awarded the maximum possible points (i.e., 500), (refer to item D listed in RFP 2687 Section 4.1.1 Evaluation Categories). Each subsequent proposal will receive a proportionate number of points based on the difference between the cost of the lowest proposal and the cost of the proposal being evaluated ((lowest cost proposal/proposal being evaluated) x number of available points). For example, if Proposer #1 proposes a cost of \$100, Proposer #2

proposes \$200 and Proposer #3 proposes \$300, then Proposer #1 would receive the entire 500 points available for cost. Proposer #2 points would be calculated as follows: $100/200 = .5 \times 500 \text{ point} = 250 \text{ points}$. Proposer #3 points would be calculated as follows $100/300=.33 \times 500 \text{ points} =165 \text{ points}$.

Once the TET has finished its evaluation OGS Financial Administration will add points awarded for Evaluation Categories A through D. The Proposal having the highest score will be ranked number one; the Proposal with the second highest total score will be ranked number two and so on.

4.1.1 Evaluation Categories

A. Proposer’s Experience of Firm 22.5%

Each Proposal will be evaluated as to the extent by which proposing firm’s relevant experience and length of service in the industry, exceeds the minimum requirements.

B. Plan of Operation/ Staffing Plan 25%

Each proposal will be evaluated for the completeness of, and the extent to which, the operational plan and staffing plan (including experience of proposed staff) information meet the goals and requirements of the RFP.

C. MWBE, SDVOB or SBE Status 2.5%

Proposers that are New York certified Minority and Women Owned Business, New York State certified Service-Disabled Veteran-Owned Business or a New York State small business will receive an additional 2.5% for such status.

- i. The Proposer is a New York State Certified Minority-Owned Business or
- ii. The Proposer is a New York State Certified Women-Owned Business or
- iii. The Proposer is a New York State Certified Service-Disabled Veteran-Owned Business or
- iv. The Proposer is a Small Business as defined in Executive Law Section 310(20)

Note: Although a Proposer may meet more than one criteria, credit is to be awarded for only one category, not multiple categories

D. Cost 50%

OGS Division of Financial Administration will evaluate all cost proposals in proportion to lowest proposed cost as described in RFP 2687 Section 4.1 Proposal Evaluation. The Grand Total, as indicated on submitted cost proposal forms, will be the evaluated total.

5. Administration Information

5.1 Issuing Office

This RFP is being released by the New York State Office of General Services Division of Financial Administration on behalf of OGS Bureau of Surplus Personal Property Disposition.

5.2 Method of Contract Award

OGS intends to award one contract under this solicitation. A contract will be awarded to the responsive and responsible Proposer affording the best value to the State. Best value shall be determined by the highest point total using the evaluation criteria listed in Section 4 – Evaluation and Selection Process.

Upon determination of the best value Proposal, a Contract, a sample of which is attached to the RFP as Appendix C - Sample Contract will be completed with the successful Proposer's information and appended to this RFP and the successful Proposer's proposal to form the contract between the parties. This contract will be forwarded to the successful Proposer for execution and returned to the Issuing Office to be processed for all necessary signatures and State approvals. Upon final approval, a fully executed copy will be forwarded to the Contractor.

The grand total bid amount of the selected Contractor shall be used to establish the contract value. The established contract value shall not be exceeded.

5.3 Notification of Award

After the evaluation, all Proposers will be notified of the name of the selected Proposer. The selected Proposer will be notified that its submitted proposal has been selected and that a contract will be forthcoming for execution. The original proposal and any additions or deletions to the proposal become part of the contract.

Public announcements or news releases pertaining to any contract resulting from this Solicitation shall not be made without prior written approval from the Issuing Office.

5.4 Term of Contract

The contract will become effective January 1, 2024 and term December 31, 2028.

5.5 Price

Proposers must submit their cost proposal to provide the State with the required services using Attachment 1 marked "Cost Proposal Form." Any alterations, exceptions, qualifiers, ranges, etc. will result in rejection of the proposal. A percentage shall be provided for each year of the contract, as stated on the Cost Proposal Form.

The proposed Buyer's Premium percentage(s) shall be inclusive of all ancillary costs and expenses (including, but not limited to travel [except if pre-authorized], lodging, meals, insurance, bonding, administrative, overhead and profit, etc.). For evaluation purposes, an estimated annual dollar value will be used. Each Cost Proposal must include:

5.5.1 Item 1 Live Auction Buyer's Premium

Shall be a percentage of the Hammer Price of items sold to live auction participants.

5.5.2 Item 2 Virtual Auction Buyer's Premium

Shall be a percentage of the Hammer Price of items sold to virtual auction participants.

The sum of Items 1 and 2 shall be the grand total bid. The grand total bid will be used to determine the contract value.

5.6 Method of Payment

For the purposes of this contract, payment will be issued on a per auction basis. Payment will be based on the Live and Virtual Buyer's Premiums as collected at auction. The Live and Virtual Buyer's Premiums will not be available to the Contractor until all proceeds have been deposited into the State's designated bank account and the Contractor has completed all required paperwork as described in Section 2.11 – Administrative and Reporting Requirements. Once all proceeds have been deposited and all required paperwork has been approved, the Contractor may submit an invoice to OGS. Auction proceeds must be deposited in the State's designated bank account within two days of the auction.

If OGS authorizes travel expenses for special auctions, Contractor must invoice for pre-approved travel expenses separately from Buyer's Premium.

5.7 Invoicing

All invoices must contain the following:

- a. A unique invoice number
- b. Contract Number (OGS01-X00XXXX-1140000)
- c. Contractor's New York State Supplier ID
- d. Information regarding which action is being invoiced for including auction date, auction location, total sales (without tax), and application of Buyer's Premium

Payment cannot be processed until the Bureau of Surplus Property has approved each invoice.

When approved by the OGS Bureau of Surplus Property, the invoice will be processed in accordance with established procedures in section 5.6 Method of Payment. Payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law. For clarification purposes, it is understood that the clock for the purpose of the prompt payment provision shall not begin until the invoice is received by the Program Coordinator, and in no case shall that date be earlier than the date of written approval of the auction report.

Invoices without the above stated information will be returned to Contractor to be completed as required in the paragraph above. Payment will not be issued and will not be due and owing until a correct invoice is received and approved by OGS.

5.8 Electronic Payment

Contractor shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract, the agency, and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the

Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Information is available at the following website: <http://www.sfs.ny.gov/index.php/vendors>, by e-mail at Helpdesk@sfs.ny.gov, or by phone at 518-457-7717. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Please note that in conjunction with New York State's implementation of a new Statewide financial system, the Office of the State Comptroller requires all vendors doing business with New York State agencies to complete a substitute W-9 form. Vendors registering for electronic payment can complete the W-9 form when they register. Vendors already registered for electronic payment are requested to go to the above website and complete the Substitute W-9 form and submit following the instructions provided.

5.9 Exceptions and Extraneous Terms

The Issuing Office will consider all requests to waive any solicitation requirement. The Term "solicitation requirement" as used herein shall include any and all terms and conditions included in the solicitation documents. Bidders should be aware that failure to obtain a waiver of any proposal requirement in advance of bid submission, and/or inclusion of extraneous terms in the form of exceptions, assumptions, qualifiers, ranges, modifications, etc. with bid submission, may result in rejection of Bidder's proposal and disqualification from the bidding process.

Bidders wishing to obtain an exemption or waiver for any part of this solicitation must contact the Issuing Office in writing by the 'Questions Due Date' as identified in Section 1.3 – Key Events. The request must cite the specific section and requirement in question, and clearly identify any proposed alternative. Requests will be considered and responded to in writing, either with the 'Answers to Questions' as identified in Key Events (if the response results in a change to the RFP), or directly to the requesting vendor.

5.10 Dispute Resolution

For purposes of this RFP, it is the intention of the OGS Financial Administration to provide Proposers with an opportunity to administratively resolve disputes, complaints or inquiries related to Proposals, this solicitation or contract awards. OGS encourages vendors to seek resolution of disputes through consultation with OGS Financial Administration staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Financial Administration Dispute Resolution Procedures for Vendors may be obtained by contacting the Designated Contact identified on the front of the solicitation document.

5.11 Examination of Contract Documents

Each Proposer is under an affirmative duty to inform itself by personal examination of the specifications of the proposed work and by such other means as it may select, of the character, quality, and extent of the work to be performed and the conditions under which the contract is to be executed.

Each Proposer shall examine specifications and all other data or instruction pertaining to the work. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the work to be performed in the execution of the contract will be accepted by the State as an excuse for any failure or omission on the part of the Proposer to fulfill every detail of all the requirements of the documents governing the work. The Proposer, if awarded the contract, will not be allowed any extra compensation by reason of any matter or thing concerning which such Proposer might have fully informed itself prior to proposing.

Any Proposer in doubt as to the true meaning of any part of the specification or the proposed contract documents shall submit to Seth Stark, Division of Financial Administration, 32nd Floor, Corning Tower Building, Empire State Plaza, Albany, New York 12242 e-mail: seth.stark@ogs.ny.gov a written request for an interpretation thereof. If a major change is involved to which all Proposers must be informed, such request for interpretation shall be delivered, in writing, no later than the question due date listed in Section 1.3– Key Events. Any interpretation of the proposed documents will be made only by an addendum duly issued.

Any addendum issued prior to the proposal due date as stated in Section 1.3 - Key Events must be acknowledged by signature, dated, and be submitted as part of the Administrative Proposal. In awarding a contract any addenda will become a part thereof.

Any verbal information obtained from, or statements made by, representatives of the Commissioner of General Services at the time of examination of the documents or conference shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued, in writing, to all Proposers shall become a part of the contract.

5.12 Rules of Construction

Words of the masculine and feminine genders shall be deemed and construed to include the neuter gender. Unless the context otherwise indicates, the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this RFP, refer to this RFP.

5.13 Debriefings

Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by OGS that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

5.14 Procurement Rights

The State of New York reserves the right to:

1. Reject any and all proposals received in response to this Solicitation.

2. Disqualify a Proposer from receiving the award if the Proposer, or anyone in the Proposer's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
3. Correct Proposers' mathematical errors and waive or modify other minor irregularities in proposals received, after prior notification to the Proposer.
4. Adjust any Proposer's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said Proposer will cause the State to incur additional costs.
5. Utilize any and all ideas submitted in the proposals received.
6. Negotiate with Proposers responding to this Solicitation within the Solicitation requirements to serve the best interests of the State.
7. Begin contract negotiations with another bidding Contractor(s) in order to serve the best interests of the State of New York should the State of New York be unsuccessful in negotiating a contract with the selected Contractor within 21 days of selection notification.
8. Waive any non-material requirement not met by all Proposers.
9. Not make an award from this Solicitation.
10. Make an award under this Solicitation in whole or in part.
11. Make multiple contract awards pursuant to the Solicitation.
12. Have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.
13. Seek clarifications of proposals.
14. Disqualify any Proposer whose conduct and/or proposal fails to conform to the requirements of the RFP.
15. Prior to the proposal opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available.
16. Waive any requirements that are not material.
17. If two or more bids are found to be substantially equivalent, the Commissioner of OGS, at their sole discretion, will determine award using the pre-established process. For best value procurements, cost will be the determining factor.

Please Note: The State is not liable for any cost incurred by a Proposer in the preparation and production of a proposal or for any work performed prior to the issuance of a contract.

6. Contract Clauses and Requirements

6.1 Appendix A / Order of Precedence

Appendix A — Standard Clauses for New York State Contracts, dated June 2023, attached hereto, is hereby expressly made a part of this solicitation document as fully as if set forth at length herein. Appendix A is a separate document to this RFP and shall be retained for reference by the Proposer.

The agreement resulting from a successful award will include the following documents. Conflicts between these documents will be resolved in the following descending order of precedence:

1. Appendix A (dated June 2023)
2. Contract Agreement
3. OGS RFP 2687 (This Document) Including any addenda)
4. Selected Contractor's Proposal including Attachment 1

6.2 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 Vendor during the procurement process. A Vendor is restricted from making contacts from the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("Restricted Period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page and in Section 1.2 – Designated Contact. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Vendor pursuant to these two statutes. 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 Vendor is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: <http://www.ogs.ny.gov/acpl/>

6.3 Tax and Finance Clause

TAX LAW § 5-A:

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the 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 are 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.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use

taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this RFP. Form ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s) a new Form ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two 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 Bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at **1-800-698-2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <https://www.tax.ny.gov>

6.4 Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid/proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. Should you feel your firm's bid/proposal contains any such trade secrets or other confidential or proprietary information, you must submit a request to except such information from disclosure. Such request must be in writing, must state the reasons why the information should be excepted from disclosure and must be provided at the time of submission of the subject information. This can be accomplished by completion of the applicable question on the contractor information page in Appendix B hereto. Requests for exemption of the entire contents of a bid/proposal from disclosure have generally not been found to be meritorious and are discouraged. Kindly limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your firm.

6.5 General Requirements

1. The Proposer agrees to adhere to all State and Federal laws and regulations in connection with the contract.
2. The Proposer agrees to notify OGS of any changes in the legal status or principal ownership of the firm, 45 days in advance of said change.
3. The Proposer agrees that in any contract resulting from this RFP it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.

4. The Proposer agrees that any contract resulting from this RFP may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of OGS.
5. For reasons of safety and public policy, in any contract resulting from this RFP, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.
6. For purposes of any contract resulting from this RFP, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
7. OGS interpretation of specifications shall be final and binding upon the Contractor.
8. The Commissioner of OGS will make no allowance or concession to the Proposer for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
9. Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Proposer has based its bid on the more expensive option. Final decision will rest with OGS.
10. INSPECTION – For purposes of any contract resulting from this RFP the quality of service is subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, OGS may terminate the contract and employ another Contractor to fulfill the requirements of the contract. The existing Contractor shall be liable to the State of New York for costs incurred on account thereof.
11. STOP WORK ORDER – OGS reserves the right to stop the work covered by this RFP and any contract(s) resulting there from at any time that it is deemed the Contractor is unable or incapable of performing the work to the State's satisfaction. In the event of such stopping, OGS shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the proposal, the Contractor shall be liable to the State of New York for any such costs on account thereof. In the event that OGS issues a stop work order for the work as provided herein, the Contractor shall have ten working days to respond thereto before any such stop work order shall become effective. Provided, however, that if an emergency situation exists, as reasonably determined by OGS, then the stop work order shall be effective immediately.
12. OGS reserves the right to reject and bar from the facility any employee hired by the Contractor.

6.6 Subcontractors

The State will contract only with the successful Bidder who is the Prime Contractor. The Issuing Office considers the Prime Contractor, the sole Contractor with regard to all provisions of the solicitation and the contract resulting from the solicitation. When bidding, any known / planned use of subcontractors must be disclosed in detail with bid submission. If subcontractors are to be used for base scope

services, it shall be understood that the bid price includes the cost of the subcontractor, and no additional markups will be allowed.

No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this solicitation or the resultant contract. The Contractor accepts full responsibility for the actions of any employee or subcontractor/subcontractor's employee(s) who carry out any of the provisions of any contract resulting from this solicitation.

The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the work in accordance with the contract. The Contractor shall coordinate and control the work of the subcontractors.

The Contractor shall be responsible for informing the subcontractors of all terms, conditions, and requirements of the contract documents.

During the term of the Contract, before any part of the contract shall be sublet, the Contractor shall submit to the Director Support Services located at, Governor Nelson A. Rockefeller Empire State Plaza, 40th Floor, Albany, New York 12242, in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in the work of this contract.

The Contractor shall promptly furnish such information as the Director of Surplus Property may require concerning the proposed subcontractor's ability and qualifications.

6.7 Past Practice

The failure to exercise any right hereunder in the past shall not operate as a waiver of such right. No breach of this Agreement shall be deemed waived unless such waiver shall be in writing and signed by the party claimed to have waived. No waiver of any breach of the Agreement at any time in the past shall constitute a waiver of subsequent breach.

6.8 Extent of Services

OGS reserves the right to re-negotiate at its discretion, to reduce the amount of services provided under any contract resulting from this solicitation. This reduction in services shall be effectuated by written amendment to the contract and subject to approval by the Office of the State Comptroller.

6.9 Termination

A. Termination

The Office of General Services may, upon 30 days' notice, terminate any contract resulting from this solicitation in the event of the awarded Bidder's failure to comply with any of the proposal's requirements unless the awarded Bidder obtained a waiver of the requirement.

In addition, OGS may also terminate any contract resulting from this solicitation upon ten days' written notice if the Contractor makes any arrangement for assignment for the benefit of creditors.

Furthermore, OGS shall have the right, in its sole discretion, at any time to terminate a contract resulting from this solicitation, or any unit portion thereof, with or without cause, by giving 30 days' written notice of termination to the Contractor.

B. Procurement Lobbying Termination

The Office of General Services reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

C. Effect of Termination

Any termination by OGS under this Section shall in no event constitute or be deemed a breach of any contract resulting from this solicitation and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

6.10 New York State Vendor File Registration

Prior to being awarded a contract pursuant to this Solicitation, the Bidder(s) 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, unique New York State ten-digit vendor identification numbers will be assigned to your company for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors 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, list the ten-digit vendor ID number on the Contractor Information page included in Appendix B of this solicitation.

If the Bidder is not currently registered in the Vendor File and is recommended for award, OGS shall request completion of OSC Substitute W-9 Form. A fillable form with instructions can be found at the link below. The Office of General Services will initiate the vendor registration process for all Bidders recommended for Contract Award. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application. For more information on the vendor file please visit the following website: <http://www.osc.state.ny.us/vendors/index.htm>

Form to be completed: <https://www.osc.state.ny.us/sites/default/files/vendors/2017-11/vendor-form-ac3237s-fe.pdf>

6.11 NYS Standard Vendor Responsibility Questionnaire

OGS conducts a review of prospective contractors ("Proposers") to provide reasonable assurances that the Proposer 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 Proposer'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, Proposer agrees to fully and accurately complete the Questionnaire. The Proposer acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Proposer is responsible, and that the State will be relying upon the Proposer's responses to the Questionnaire when making its responsibility determination.

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

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>. Proposers opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

In order to assist the State in determining the responsibility of the Proposer prior to Contract Award, the Proposer must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date. A Proposer's Questionnaire cannot be viewed by OGS until the Proposer has certified the Questionnaire. It is recommended that all Proposers 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 Proposer 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 or her designee, 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 or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under 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 or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

6.12 Ethics Compliance

All Proposers/contractors and their employees must comply with the requirements of §§73 and 74 of the Public Officers Law, other state codes, rules, regulations, and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Contract, the Contractor certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relations, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

In accordance with New York Public Officers Law and the rules, regulations, opinions, guidelines, and policies (the "Ethics Requirements") issued by the New York State Joint Commission on Public Ethics or its predecessors ("JCOPE"), former OGS employees may neither appear nor practice before OGS,

nor receive compensation for services rendered on a matter before OGS, for a period of two years following their separation from OGS service. In addition, former OGS employees are subject to a “lifetime bar” from appearing before OGS or receiving compensation for services regarding any transaction in which they personally participated, or which was under the active consideration during their tenure with OGS. The Contractor agrees, by entering into this contract with OGS, that the two-year and lifetime bars also apply to the Contractor’s contract employees who are assigned to work directly for and on behalf of OGS. The Contractor further agrees to advise all such contract employees that upon cessation of their direct work assignment for OGS through the Contractor, they are restricted from appearing or practicing before OGS as provided herein but are not restricted from working directly for or on behalf of OGS through another direct contract position.

6.13 Indemnification

The Contractor shall assume all risks of liability for its performance, or that of any of its officers, employees, subcontractors or agents, of any contract resulting from this Solicitation and shall be solely responsible and liable for all liabilities, losses, damages, costs or expenses, including attorney's fees, arising from any claim, action or proceeding relating to or in any way connected with the performance of this Agreement and covenants and agrees to indemnify and hold harmless the State of New York, its agents, officers and employees, from any and all claims, suits, causes of action and losses of whatever kind and nature, arising out of or in connection with its performance of any contract resulting from this Solicitation, including negligence, active or passive or improper conduct of the Contractor, its officers, agents, subcontractors or employees, or the failure by the Contractor, its officers, agents, subcontractors or employees to perform any obligations or commitments to the State or third parties arising out of or resulting from any contract resulting from this Solicitation. Such indemnity shall not be limited to the insurance coverage herein prescribed.

6.14 Force Majeure

Neither party hereto will be liable for losses, defaults, or damages under any contract resulting from this solicitation which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this solicitation, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, strikes, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

6.15 Encouraging Use of NYS Businesses in Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders/Proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Bidders are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public-sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects Bidders to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

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

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

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

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

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

6.17 Sexual Harassment Prevention

Pursuant to N.Y. State Finance Law § 139-I, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the Bidder

has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

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

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

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

The certification required above can be found on Appendix B – NYS Required Certifications, which Bidder must submit with its bid.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Contractor” herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER’S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

4. WORKERS’ COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this

law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

Solicitation

Appendix B – Required Forms

Required Forms – Table of Contents

The following required forms are to be submitted with the proposer's proposal. The forms include:

- Contractor Information Page
- Corporate Acknowledgement (must be notarized)
- Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law §139-j (3) and §139-j (6) (b)
- Offerer Disclosure of Prior Non-Responsibility Determinations
- Offerer's Certification of Compliance with State Finance Law §139-k(5)
- NYS Required Certifications
 - Nondiscrimination In Employment In Northern Ireland Macbride Fair Employment Principles
 - Non-Collusive Bidding Certification
 - Diesel Emission Reduction Act
 - Executive Order No 177 Certification
 - State Finance Law § 139-I Certification
 - Small Business Certification
- Certification Under Executive Order No. 16- Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia
- ST-220 -TD Taxation & Finance Contractor Certification
(Submitted directly to Taxation & Finance)
- ST-220 -CA Taxation and Finance Covered Agency Certification
- EEO 100- Equal Employment Opportunity Staffing Plan

Contractor Information

Solicitation Number

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible contacts as required by New York State Finance Law §139-j (3) and §139-j (6) (b).

Authorized Signature		Date	
Print Name		Title	
Company Name			
Federal ID Number		NYS Vendor ID Number	
Address			
City	State	Zip	County
Telephone Number	Ext	Toll Free Telephone	Ext
Fax Number		Toll Free Fax Number	
Email of Designated Contact			

Please identify if any of the following apply:

New York State Small Business as defined in Executive Law Section 310(20) and as detailed in the "New York State Required Certifications" included in Appendix B herein.	Yes	No
New York State Certified Minority Owned Business	Yes	No
New York State Certified Woman Owned Business	Yes	No
New York State Certified Service-Disabled Veteran-Owned Business	Yes	No
Do you understand and is your firm capable of meeting the insurance requirements to enter into a contract with New York State?	Yes	No
Will New York State Businesses be used in the performance of this contract?	Yes	No
If yes, identify New York State Business(es) that will be used; (Attach identifying information).		
Does your proposal meet all the requirements of this solicitation?	Yes	No

<p>Is your firm making a claim that any portions of its bid should be exempt from release under the Freedom of Information Law, as they constitute trade secrets, or information the disclosure of which would cause a substantial injury to your firm's competitive position? (Please review the clause entitled "Freedom of Information Law / Trade Secrets" of this Solicitation before answering).</p>	<p>Yes</p>	<p>No</p>
<p>If "Yes", please identify the specific portions of your bid for which you are claiming this exemption, and the reasons for such claimed exemption. Attach additional sheets, if necessary</p>		

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF _____ }

_____ : **SS.:**
COUNTY OF _____ }

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

_____ ,

Town of _____ ,

County of _____ ,

State of _____ ; and further that:

[Check One]

If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

If a corporation): __he is the _____ of _____ , the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, __he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, __he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

If a partnership): __he is the _____ of _____ , the partnership described in said instrument; that, by the terms of said partnership, __he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, __he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

If a limited liability company): __he is a duly authorized member of _____ , LLC, the limited liability company described in said instrument; that __he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, __he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public
Registration No. _____
State of: _____

Offerer’s Affirmation of Understanding of and Agreement pursuant to New York State Finance Law §139-j (3) and §139-j (6) (b)

New York State Finance Law §139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer’s understanding of and agreement to comply with the Governmental Entity’s procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible contacts as required by New York State Finance Law §139-j (3) and §139-j (6) (b).			
Authorized Signature		Date	
Print Name		Title	
Company Name			
Address			
City	State	Zip	

Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract			
Address			
City	State	Zip	
Person Submitting this Form	Title	Date	Contract Procurement Number

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?	No	Yes
<i>If yes, please answer questions 2-4 before proceeding to question 5. If no, please go to question 5.</i>		
2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j	No	Yes
3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?	No	Yes
4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.		
Governmental Entity	Date of Finding of Non-responsibility	
Basis of Finding of Non-Responsibility (Add additional pages as necessary)		
5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?	No	Yes
6. If yes, please provide details below.		
Governmental Entity	Date of Termination or Withholding of Contract	
Basis of Termination or Withholding (Add additional pages as necessary)		

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____
Signature

Offerer's Certification of Compliance with State Finance Law §139-k(5)

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer that all information provided to the Office of General Services with respect to State Finance Law §139-k is complete, true and accurate.

Offerer Certification:			
<i>I certify that all information provided to the Office of General Services with respect to State Finance Law §139-k is complete, true and accurate.</i>			
Authorized Signature		Date	
Print Name		Title	
Company Name			
Address			
City	State	Zip	

Procurement Lobbying Termination

The Office of General Services reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.

NYS REQUIRED CERTIFICATIONS

Nondiscrimination In Employment In Northern Ireland Macbride Fair Employment Principles

In accordance with Section 165 of the State Finance Law, the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either (answer yes or no to one or both of the following, as applicable):

- | | | | |
|--|----|-----|---------------|
| 1. have business operations in Northern Ireland | No | Yes | |
| | | | , and if yes: |
| 2. shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such principles. | | | |
| | No | Yes | |

Non-Collusive Bidding Certification

In accordance with Section 139-d of the State Finance Law, by submitting its bid each bidder and each person signing on behalf of any other bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor.
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

In the event that the Bidder is unable to certify as stated above, the Bidder shall provide a signed statement which sets forth in detail the reasons why the Bidder is unable to furnish the certificate as required in accordance with State Finance Law § 139-d(1)(b).

Diesel Emission Reduction Act

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

The Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations

set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

Executive Order No. 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

State Finance Law § 139-I Certification

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

If the bidder cannot make the foregoing certification, such bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the bidder cannot make the certification.

Small Business Certifications

State Finance Law § 163(1)(j) (Authorizes Award of Quantitative Factor Credit for Small Business Status in Evaluation for Best Value Contracts)

For purposes of New York State Finance Law § 163(1)(j), the contractor certifies that it:

IS NOT a Small Business as defined in New York State Executive Law § 310(20).

IS a Small Business as defined in New York State Executive Law § 310(20).

"Small Business" is defined under New York State Executive Law § 310(20) as a business that:

- A. has a significant business presence in New York demonstrated through one of the following:
 - 1. pays taxes in New York State, or
 - 2. purchases New York State products or materials, or
 - 3. has any payroll in New York State
- B. is independently owned and operated;
- C. is not dominant in its field; and,
- D. employs less than 300 persons.

State Finance Law § 163(6) (Authorizes Discretionary Purchases of Commodities or Services from Small Business Concerns)

For purposes of New York State Finance Law § 163(6), the contractor certifies that it:

IS NOT a Small Business Concern or Small Business as defined in New York State Finance Law § 160(8).

IS a Small Business Concern or Small Business as defined in New York State Finance Law § 160(8).

"Small Business Concern" or "Small Business" is defined under New York State Finance Law § 160(8) as a business that:

- A. is resident in New York State;
- B. is independently owned and operated;
- C. is not dominant in its field; and
- D. employs 100 or less persons.

By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Certifications document and that all information provided is complete, true and accurate.

Authorized Signature		Date	
Print Name		Title	
Company Name			
D/B/A – Doing Business As (if applicable)			
Address			
City	State	Zip	

Certification Under Executive Order No. 16- Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia

Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found [here](#).

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.
- 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)
- 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)
3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor’s business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Authorized Signature		Date	
Print Name		Title	
Company Name			
Address			
City	State	Zip	

NYS Department of Taxation and Finance - FORMS

CONTRACTOR CERTIFICATION (ST-220-TD 12/11)
CONTRACTOR CERTIFICATION TO COVERED AGENCY
(ST-220-CA 12/11)



Contractor Certification

(Pursuant to Tax Law Section 5-a, as amended, effective April 26, 2006)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name				
Contractor's principal place of business		City	State	ZIP code
Contractor's mailing address (if different than above)		City	State	ZIP code
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)		Contractor's telephone number ()	
Covered agency or state agency	Contract number or description		Covered agency telephone number ()	
Covered agency address	City	State	ZIP code	
Is the estimated contract value over the full term of the contract (but not including renewals) more than \$100,000?				
Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown at this time <input type="checkbox"/>				

General information

Tax Law section 5-a, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file Form ST-220-CA, *Contractor Certification to Covered Agency*, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and *Individual, Corporation, Partnership, or LLC Acknowledgement* on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.


Mail completed form to:

**NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227-0826**

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?


 Visit our Web site at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

 **Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Complete Sections 1, 2, and 3 below. Make only one entry in each section.

Section 1 – Contractor registration status

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 – Affiliate registration status

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 – Subcontractor registration status

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)



Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-CA

(12/11)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name		For covered agency use only Contract number or description	
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)		Estimated contract value over the full term of contract (but not including renewals)	
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)		\$
Contractor's telephone number	Covered agency name		
Covered agency address		Covered agency telephone number	

I, _____, hereby affirm, under penalty of perjury, that I am _____

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20___, before me personally appeared _____,
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
_he resides at _____,
Town of _____,
County of _____,
State of _____; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

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

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



- Visit our Web site at www.tax.ny.gov
• get information and manage your taxes online
• check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.



EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN

General instructions: Contact the Designated Contact(s) for the solicitation if you have any questions. **All Offerors** must complete an EEO Staffing Plan (EEO 100) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor’s total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor’s total work force, the Offeror shall complete this form for the contractor’s total work force. Subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor must complete this form upon request of OGS.

Instructions for completing:

1. Enter the Solicitation Number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and enter under the heading "Work force by Gender."
6. Break down the total work force by race/ethnic background and enter under the heading "Work force by Race/Ethnic Identification." Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

WHITE - (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

BLACK - A person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.

HISPANIC - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

ASIAN & PACIFIC ISLANDER - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

AMERICAN INDIAN OR ALASKAN NATIVE (Not of Hispanic Origin) - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.



SUBMIT WITH BID OR PROPOSAL or within a reasonable time thereafter as requested by OGS, but prior to Contract Award.

Solicitation No.:	Reporting Entity: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	Report includes Contractor's <input type="checkbox"/> Contractor's work force to be utilized on this contract <input type="checkbox"/> Contractor's total work force <input type="checkbox"/> Subcontractor's work force to be utilized on this contract <input type="checkbox"/> Subcontractor's total work force
Contractor/Subcontractor's Name:		
Contractor/Subcontractor's Address:		
FEIN:		

Enter the total number of employees for each classification:

EEO Job Category	Total Work Force	Work force by Gender		Work force by Race/Ethnic Identification													
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		American Indian or Alaskan Native (M) (F)		Veteran (M) (F)			
Executive/Senior level Officials & Managers																	
First/Mid-level officials & Managers																	
Professionals																	
Technicians																	
Sales Workers																	
Administrative Support Workers																	
Craft Workers																	
Operatives																	
Laborers and Helpers																	
Service Workers																	
Totals																	

PREPARED BY (Signature):	TELEPHONE NO.:	DATE:
	EMAIL ADDRESS:	
NAME AND TITLE OF PREPARER (Print or Type):		

RFP 2687
Appendix C

Sample Contract

SAMPLE

**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES**

**AGREEMENT FOR
LIVE AUCTIONEER SERVICES**

WITH

(CONTRACTOR)

CONTRACT #OGS01-X00XXXX-1140000

THIS AGREEMENT, made this ____ day of _____, 202_ by and between the People of the State of New York, acting by and through the Commissioner of General Services, whose office is in the Corning Tower Building, at the Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter "Commissioner", "OGS" or "State"), and (Company Name), (hereinafter "Contractor"), with an office at _____.

WITNESSETH:

WHEREAS, the OGS is responsible for the disposition of a wide variety of surplus property and in fulfilling its responsibility deems it necessary to obtain live auctioneer services therefore, and

WHEREAS, OGS has determined after having solicited proposals from proposers willing to supply these services, that the Contractor submitted the proposal affording the State the best value for such services and that the Contractor possesses the necessary capacity, experience and expertise for provision of live auctioneer services, and that Contractor is ready, willing and able to perform such services on the terms hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties do hereby agree as follows:

1. CONSIDERATION

The Contractor shall remit to OGS all proceeds from Auction Sales. Once proceeds are received, OGS shall pay the Contractor the Buyer's Premium for all live auction and virtual auction service fees and expenses in accordance with the amounts and rates put forth in the Contractor's proposal attached hereto as Appendix "C". Appendix C is hereby incorporated by reference and made a part hereof as fully as if set forth at length herein. This contract will be established with a not to exceed value of \$ _____. Services performed beyond this amount will not be compensated.

2. TERM

This Agreement shall commence January 1, 2024 and will be in effect through December 31, 2028.

3. SERVICES

The Contractor agrees to perform this Agreement and to furnish the services, labor and materials required in connection therewith in accordance with all the specifications, conditions, covenants and representations contained in the request for proposals # 2687, which is annexed as Appendix "B" hereto, and the Contractor's bid, annexed as Appendix "C" hereto, except as such Appendices B and C have been revised by the terms hereof. Appendix B is hereby incorporated by reference and made a part hereof with the same force and effect as if set forth at length herein.

4. TERMINATION

This Agreement may be terminated in accordance with the termination provisions set forth in the solicitation attached hereto as Appendix B hereof.

5. RECORDS

The Contractor will maintain accurate records and accounts of services performed and monies expended under this Agreement. Such records will be maintained for six (6) years following the close of the State fiscal year to which they pertain and will be made available to representatives of OGS or the New York State Comptroller, as may be necessary for auditing purposes, upon request.

6. TAXES

The Contractor will be responsible for all applicable Federal, State and Local taxes and all FICA contributions.

7. INDEPENDENT CONTRACTOR

It is understood and agreed that the legal status of the Contractor, its subcontractors, agents, officers and employees is that of an independent contractor and in no manner shall they be deemed employees or agents of the State of New York and, therefore, are not entitled to any of the benefits associated with such employment or designation.

8. APPENDIX A

Appendix A, Standard Clauses for New York State Contracts, attached hereto, is hereby expressly made a part of this Agreement as fully as if set forth at length herein.

9. ASSIGNMENT

Contractor agrees that it will not assign this Agreement, or any interest therein without the prior written consent of the Commissioner of General Services.

10. LAW

This Agreement shall be governed by the laws of the State of New York.

11. CONDITIONS PRECEDENT

This Agreement shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the State Comptroller.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto.

13. EXECUTORY CLAUSE

This Agreement shall be deemed executory only to the extent of money available to the State for performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for purposes thereof.

14. INCONSISTENCIES

In the event of any discrepancy, disagreement or ambiguity between this contract agreement and Appendix B "Solicitation" and/or Appendix C "Bid", or between any Appendices, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

1. Appendix A
2. This Contract Agreement
3. Appendix B – Solicitation #2687 including Addenda
4. Appendix C – Contractor's Bid

The parties understand and agree that any and all deviations or exceptions taken by Contractor to the State's Invitation to Bid are hereby withdrawn except only to the extent that such exceptions or deviations have been explicitly incorporated into this contract agreement.

15. FORCE MAJEURE

Neither party hereto will be liable for losses, defaults, or damages under this Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this Agreement, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, strikes, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

16. ASSIGNMENT BY STATE

The State agrees not to assign this Agreement without prior notice to and reasonable consent of the Contractor provided, however, that this Agreement may be assigned without such consent to another agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the pertinent functions of OGS as an agency are transferred to a successor agency or subdivision of the State.

17. NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Agreement shall be in writing and shall be validly given when mailed by registered or certified mail, overnight carrier or hand delivered, (i) if to the State, addressed to the State at its address set forth above, and (ii) if to Contractor, addressed to Contractor at its address set forth above. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Agreement by giving fifteen (15) days written notice to the other party. The parties agree to mutually designate individuals as their respective representatives for the purposes of this Agreement.

18. CAPTIONS

The captions contained in this Agreement are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

19. SEVERABILITY

In the event that any one or more of the provisions of this Agreement shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Agreement, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Agreement.

20. INFORMATION SECURITY BREACH

In accordance with the Information and Security Breach Notification Act (ISBNA) (Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws of 2005), a Contractor with OGS shall be responsible for all applicable provisions of the ISBNA and the following terms herein with respect to any private information (as defined in the ISBNA) received by or on behalf of OGS under this Agreement.

1. Contractor shall supply OGS with a copy of its notification policy, which shall be modified to be in compliance with this provision, as well as OGS's notification policy.
2. Contractor must encrypt any database fields and backup tapes that contain private data elements, as set forth in the ISBNA.
3. Contractor must ensure that private data elements are encrypted in transit to / from their systems.
4. In general, contractor must ensure that private data elements are not displayed to users on computer screens or in printed reports; however, specific users who are authorized to view the private data elements and who have been properly authenticated may view/receive such data.
5. Contractor must monitor for breaches of security to any of its systems that store or process private data owned by OGS.
6. Contractor shall take all steps as set forth in ISBNA to ensure private information shall not be released without authorization from OGS.

7. In the event a security breach occurs as defined by ISBNA Contractor shall immediately notify OGS and commence an investigation in cooperation with OGS to determine the scope of the breach.
8. Contractor shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches.
9. Contractor shall immediately notify OGS following the discovery that OGS's system security has been breached.
10. Unless the Contractor is otherwise instructed, Contractor is to first seek consultation and receive authorization from OGS prior to notifying the individuals whose personal identity information was compromised by the breach of security, the New York State Chief Information Security Office, the Department of State Division of Consumer Protection, the Attorney General's Office or any consuming reporting agencies of a breach of the information security system or concerning any determination to delay notification for law enforcement investigations.
11. Contractor shall be responsible for providing all notices required by the ISBNA and for all costs associated with providing said notices.
12. This policy and procedure shall not impair the ability of the Attorney General to bring an action against the Contractor to enforce all provisions of the ISBNA or limit the Contractor's liability for any violations of the ISBNA.

21. CONTRACTOR RESPONSIBILITY

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, 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 or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under 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 or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

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

Sample Contract

Appendix A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**[Text not included at this time because it is included
elsewhere in the solicitation. Will be added when contract
is finalized]**

Sample Contract

Appendix B

Request for Proposals 2687

SAMPLE

Sample Contract

Appendix C

Contractor's Bid

SAMPLE

RFP Appendix D

Insurance Requirements

Insurance Requirements

The Bidder shall be required to procure, at its sole cost and expense, all insurance required by this Attachment.

The Bidder shall be required to provide proof of compliance with the requirements of this Attachment, as follows:

- Proof of all insurance required by Section B below shall be provided in accordance with the provisions hereof;
- After award, the Contractor shall be required to provide proof of all insurance after renewal or upon request according to the timelines set forth in Section A.13 below.

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation, policies of insurance as required by this Attachment. All insurance required by this Attachment shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Attachment should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Bidders and Contractors shall deliver to OGS evidence of the insurance required by this Solicitation and any Contract resulting from this Solicitation in a form satisfactory to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OGS does not, and shall not be construed to, relieve Bidders or Contractors of any obligations, responsibilities or liabilities under this Solicitation or any Contract resulting from this Solicitation.

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

A. General Conditions Applicable to Insurance. All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from Bidders and Contractors are specified in Paragraph B *Insurance Requirements* below.

2. Policy Forms. Except as otherwise specifically provided herein, or agreed to in the Contract resulting from this Solicitation, all policies of insurance required by this Attachment shall be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy.

3. Certificates of Insurance/Notices. Bidders and Contractors shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section A.13. below. Certificates shall name **The New York State Office of General Services, Agency Procurement Office, 32nd Floor, Corning Tower, Empire State Plaza, Albany, New York 12242** as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OGS and in accordance with the New York State Insurance Law (e.g., an ACORD 25 certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: **Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.**

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

OGS requires Contractors to submit only certificates of insurance and additional insured endorsements. Contractors should refrain from submitting entire insurance policies. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation. OGS reserves the right to request other proof of insurance, including, but not limited to, policies, and Contractors agree to comply with all reasonable requests.

4. Primary Coverage. All Commercial General Liability, Business Automobile Liability, and Excess Umbrella Liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New

York State Office of General Services, and their officers, agents, and employees shall be excess of and shall not contribute with the Bidder/Contractor's insurance.

5. Breach for Lack of Proof of Coverage. The failure to comply with the requirements of this Attachment at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Office of General Services, and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.

6. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

7. Subcontractors. Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 12 19 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.

8. Waiver of Subrogation. For all Commercial General Liability, Business Automobile Liability, Excess/Umbrella Liability policies and the workers' compensation insurance required below, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of General Services, and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

9. Additional Insured. The Contractor shall cause to be included in each of the Commercial General Liability, Business Automobile Liability, and Excess/Umbrella Liability policies required below for on-going and completed operations naming as additional insured

(via ISO form CG 20 10 12 19 and CG 20 37 12 19 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): The People of the State of New York, the New York State Office of General Services, and their officers, agents, and employees. An Additional Insured Endorsement, or the equivalent, evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section A.13. below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.

10. Excess/Umbrella Liability Policies. Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

11. Notice of Cancellation or Non-Renewal. Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.

12. Policy Renewal/Expiration Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to OGS. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Contract resulting from this Solicitation, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.

13. Deadlines for Providing Insurance Documents after Renewal or Upon Request. As set forth herein, certain insurance documents must be provided to the OGS Agency Procurement Office contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days;
- For information on self-insurance or self-retention programs: 15 calendar days;
- For other requested documentation evidencing coverage: 15 calendar days;
- For additional insured and waiver of subrogation endorsements: 30 calendar days; and
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: 5 business days from request or renewal.

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

B. Insurance Requirements

Bidders and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of any Contract resulting from this Solicitation, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
Commercial General Liability	No less than \$1,000,000 each occurrence	Upon notification of tentative award and updated in accordance with Contract
General Aggregate	\$2,000,000	
Products-Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Medical Expenses Limit	\$5,000	
Crime Insurance	\$1,000,000	
Professional Error & Omissions	\$1,000,000 each claim	
Business Automobile Liability Insurance	No less than \$1,000,000 each accident	
Workers' Compensation		
Disability Benefits		

1. Commercial General Liability Insurance: Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage.

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence

Coverage shall include, but not be limited to, the following:

- Premises liability arising from operations;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under the Contract;
- Cross liability for additional insureds; and
- Products/completed operations for a term of no less than one (1) year, commencing upon acceptance of the work, as required by the Contract.

2. Crime Insurance (Employee Dishonesty): If performance under this Contract shall require work on State property, the Contractor shall maintain, during the term of the Contract, Crime Insurance on a “loss sustained form” or “loss discovered form,” and coverage must include the following:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one year with respect to events which occurred but were not reported during the term of the policy.
- Any warranties required by the Contractor’s insurer as a result of the Contract must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Contractor as a result of this Contract.
- The policy shall include coverage for third party fidelity and name “The People of the State of New York, the New York State Office of General Services, and their officers, agents, and employees” as “Loss Payees” for all third party coverage secured. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

3. Professional Error & Omissions: If providing professional occupation job titles, the Contractor shall maintain Professional Liability insurance.

- Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services.
- Such insurance shall cover broad areas, including but not limited to: defamation, invasion of privacy, infringement of copyright, and plagiarism.
- If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under this Contract is completed. Written proof of this extended reporting period must be provided to OGS prior to the policy’s expiration or cancellation.
- The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

4. Business Automobile Liability Insurance: Such insurance shall cover liability arising out of automobiles used in connection with performance under the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such

coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

5. Workers' Compensation Insurance and Disability Benefits Requirements

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Bidder will not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to OGS.** Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to OGS at the time of notification of tentative award, policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

Proof of Compliance with Workers' Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.businessexpress.ny.gov);
- Form C-105.2 (9/15), *Certificate of Workers' Compensation Insurance*, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.businessexpress.ny.gov);
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to OGS by the Contractor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

Information clarifying the New York State Workers' Compensation Law requirements is available at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov/content/main/Employers/requirements-businesses-applying-government-permits-licenses-contracts.pdf> .

Contractor acknowledges that failure to obtain and/or keep in effect any or all required insurance on behalf of OGS constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to OGS. Contractor's failure to obtain and/or keep in effect any or all required insurance shall also provide the basis for OGS' immediate termination of any contract resulting from this Solicitation, subject only to a five (5) business day cure period. Any termination by OGS under this section shall in no event constitute or be deemed a breach of any contract resulting from this Solicitation and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

RFP Appendix E
M/WBE and EEO Requirements

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

I. New York State Law

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

II. General Provisions

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

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

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

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

services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.

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

B. Form EEO 100 – Staffing Plan

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

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

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

2. Separate forms shall be completed by Contractor and all subcontractors.

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

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

IV. Contract Goals

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

at: <https://ny.newnycontracts.com/FrontEnd/SearchCertifiedDirectory.asp?XID=1559&TN=ny>
Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

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

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

V. Fraud

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

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

RFP Attachment 1 Cost Proposal Form

Item 1 Live Auction Buyer's Premium

Item 1 Live Auction Buyer's Premium shall be a percentage of the Hammer Price of items sold to live auction participants.

	Percentage Live Auction Buyer's Premium		Est. Annual Live Proceeds		Estimate for Evaluation
Year 1	%	X	\$5,375,000.00	=	\$
Year 2	%	X	\$5,375,000.00	=	\$
Year 3	%	X	\$5,375,000.00	=	\$
Year 4	%	X	\$5,375,000.00	=	\$
Year 5	%	X	\$5,375,000.00	=	\$

Item 1 Total (Sum total of Years 1-5) = \$ _____

Item 2 Virtual Auction Buyer's Premium

Item 2 Virtual Auction Buyer's Premium shall be a percentage of the Hammer Price of items sold to virtual auction participants.

	Percentage Virtual Auction Buyer's Premium		Est. Annual Virtual Proceeds		Estimate for Evaluation
Year 1	%	X	\$1,300,000.00	=	\$
Year 2	%	X	\$1,300,000.00	=	\$
Year 3	%	X	\$1,300,000.00	=	\$
Year 4	%	X	\$1,300,000.00	=	\$
Year 5	%	X	\$1,300,000.00	=	\$

Item 2 Total (Sum total of Years 1-5) = \$ _____

Grand total (Item 1 Total _____ + Item 2 Total _____) = \$ _____

IMPORTANT NOTE: Bids submitted must include a value for Items 1 and 2 listed on the Cost Proposal Form. Failure to do so will result in the rejection of the Bid. Buyer's Premiums proposed shall be inclusive of all costs and expenses (except for Special Auctions) to be incurred in the performance of any contract resulting from this RFP.

Authorized Signature

PRINT NAME

TITLE

OFFICIAL

COMPANY NAME

RFP Attachment 2
Traditional NYS Auction Locations

<u>Counties Included</u>	<u>Location of Auction Sites</u>
Suffolk, Nassau, Queens, Kings, Richmond, New York, Bronx	Central Islip, Stony Brook, E. Farmingdale, Staten Island, W. Babylon,
Madison, Chenango, Broome, Otsego, Delaware, Sullivan, Schoharie, Greene, Ulster, Orange, Columbia, Dutchess, Putnam, Rockland, Westchester	Binghamton, Poughkeepsie, Unadilla, and Bear Mountain, Wassaic, Middletown, Salt Point, Theills, Oneida
St. Lawrence, Franklin, Clinton, Jefferson, Lewis, Oneida, Herkimer, Fulton, Hamilton, Essex, Warren, Washington, Saratoga, Schenectady, Albany, Rensselaer, Montgomery	Albany, Utica, Saranac Lake, Saratoga, Tupper Lake and Watertown, Raybrook, Waterford, Ogdensburg
Niagara, Erie, Chautauqua, Orleans, Genesee, Wyoming, Cattaraugus, Allegany, Monroe, Livingston, Steuben, Wayne, Ontario, Yates, Seneca, Schuyler, Chemung, Cayuga, Oswego, Onondaga, Tompkins, Cortland, Tioga	Canandaigua, Hamburg, Hornell, Romulus, Syracuse, and West Seneca, Letchworth, Rochester, Batavia, Pittsford

RFP Attachment 3
Proposal Submission Checklist

In order for the State to evaluate bids fairly and completely, proposers are strongly encouraged to provide all of the information requested. Proposers should indicate in the column "Proposal Location" the page number of their proposal that addresses each stated checklist item.

Covered by RFP 2639 Section	Checklist Item	Quote Location (pg #)
Technical Proposal-		
Cover Letter		
Section 3.2.1.1	Did you state in your Cover Letter that you understand and will comply with all the provisions of this RFP?	
Sections 1.3 and 3.2.1.1	Have you addressed how your company will be prepared to start services in accordance with the date as indicated on Section 1.3 – Key Events of the RFP?	
Section 3.2.1.1	Did you include the full contact information of your designated contact? Did you include the name of the principal(s) of the company responsible for this contract if awarded including their function, title?	
Section 3.2.1.1	Did a Proposer Representative authorized to make contractual obligations sign the Cover Letter?	
Minimum Requirements		
Section 3.2.1.2 #1	Did you provide proof that you have conducted at least three auctions valued at least \$100,000.00 within the last two year immediately preceding release of this RFP?	
Section 3.2.1.2 #2	Did you provide evidence such as advertisements or receipts showing that they have experience in auctioning vehicles and/or heavy-duty equipment within the last two years immediately preceding release of this RFP?	
Section 3.2.1.2 #3	Did you provide a letter or other written document from a bond company or financial institution confirming their commitment to issue a bond or irrevocable letter of credit for \$300,000 for proposer's performance of this contract?	
Proposer Experience of Firm		
Section 3.2.1.3 #1	Did you provide a comprehensive list of contracts of similar scope that have been successfully undertaken by the firm within the last two years. Did you provide the name, address and telephone number of a reference for at least three clients?	
Section 3.2.1.3 #2	Did you indicate years of experience in auctioneer services for the firm and each auctioneer and key personnel?	
Plan of Operation/Staffing Plan		
Section 3.2.1.4 #1	Did you provide names, titles, and qualifications of key personnel who will be assigned to this contract?	
Section 3.2.1.4 #2	Did you provide detailed resume of each proposed auctioneer assigned to this contract?	
Section 3.2.1.4 #3	Did you identify proposed subcontractors and the functions they will perform?	
Section 3.2.1.4 #4	Did you describe your staffing plan and role of each staff member and alternate staff?	
Section 3.2.1.4 #5	Did you provide location of office responsible for managing this contract?	
Section 3.2.1.4 #6	Did you describe tools, resources, and technology to be used for electronic record keeping and reporting?	
Section 3.2.1.4 #7	Did you describe tools, resources, and technology to be used to ensure orderly day of auction operations. This includes public address systems, staging area, and recording devices as described RFP 2687 Section 2.6 – Auction Resources?	
Section 3.2.1.4 #8	Did you describe tools, resources, and technology to be used for the provision of Auction Virtual Service?	
Section 3.2.1.4 #9	Did you describe how requirements of service in RFP 2687 section 2.7 – Auction Virtual Service will be met?	
Section 3.2.1.4 #10	Did you describe advertising and marketing, if applicable?	
Section 3.2.1.4 #11	Did you describe preparations in advance of auctions?	
Section 3.2.1.4 #12	Did you describe site set up and preparations on day of auction	
Section 3.2.1.4 #13	Did you describe post auction activities and procedures	

