



Office of General Services Procurement Services

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

Solicitation

BID OPENING DATE: February 25, 2025 TIME: 1:30PM ET SOLICITATION NUMBER: 23375		TITLE: Group 23106 – STEM/STEAM AND SCIENCE LABORATORY EDUCATIONAL SUPPLIES AND EQUIPMENT Classification Codes: 14 & 44	
CONTRACT PERIOD:		Shall commence upon mailing or electronic communication of the final executed documents to the Contractor for a Period of Five (5) years from the date of OSC approval	
DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.			
Laura Dempsey Contract Management Specialist 1 Telephone No. (518) 473-9825 E-mail address: laura.dempsey@ogs.ny.gov		Cheri McCullough Contract Management Specialist 2 Telephone No. (518) 402-5552 E-mail address: cheri.mccullough@ogs.ny.gov	

Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>		NYS Vendor Identification Number: <i>(See New York State Vendor File Registration Clause)</i>		
Legal Business Name of Company Bidding:				
D/B/A – Doing Business As (if applicable):				
Street	City	State	County	Zip Code
E-mail Address:		Company Web Site:		

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

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

WE ARE NOT BIDDING AT THIS TIME BECAUSE:

FOR PROCUREMENT SERVICES USE ONLY

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

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 90 days from the date of submission to the New York State (“NYS”) Office of General Services (“OGS”), or for such longer period as is set forth in the Invitation for Bids.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Invitation for Bids.
3. The Bidder has read and understands the provisions of the Invitation for Bids, and all appendices, attachments, and exhibits attached thereto, including Appendix A – *Standard Clauses for New York State Contracts* and Appendix B – *General Specifications*.
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS’s procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at <https://ogs.ny.gov/acpl>.

The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Bidder referenced above and that he or she signed this Bidder Certification as the legally binding act of the Bidder.

Print Full Bidder Entity Name

By:

Signature of Person Authorized to Legally Bind the Bidder

Print Name of Signatory

Print Title of Signatory

Date

RETURN THIS PAGE AS PART OF BID

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1. INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for STEM/STEAM and Science Laboratory Educational Supplies and Equipment as specified herein for all Authorized Users eligible to make purchases under the Contracts resulting from this Solicitation.

The Contracts resulting from this non-competitive Solicitation will be multiple-award, statewide, Centralized Contracts. When making purchases from the Contracts resulting from the Solicitation, Authorized Users shall procure products and services that best meet their form, function, and utility requirements. Authorized Users are encouraged to obtain quotes from all eligible Contractors prior to making a purchase. Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users shall base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.

Bids will be accepted from STEM/STEAM and science laboratory Manufacturers and/or Authorized Dealers meeting the minimum requirements; refer to Section 2-*Bidder Qualifications*. Contract awards will be made to responsive and responsible bidders who meet the minimum qualifications (See Section 2 *Bidder Qualifications*) and who are eligible for award (See Section 4 *Method of Award*).

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

1.2 Scope

The State of New York seeks to establish multiple award Centralized Contracts for the acquisition of STEM/STEAM and science laboratory educational supplies and equipment, specified in two (2) Lots:

1. Lot 1 – Non-Information Technology based STEM/STEAM or Science Laboratory Products

2. Lot 2 – Information Technology Based STEM/STEAM or Science Laboratory Products

The Solicitation includes the Lots and product categories listed below. Examples of products within each Lot are provided in the table below. Examples are not meant to be exhaustive.

Lot 1 – Non-Information Technology based STEM/STEAM or Science Laboratory Products

Products that **do not** have the ability to collect Data, examples of which include but are not limited to parts, tools, consumables, supplies, safety equipment, hands-on project materials and hard copy printed materials.

Table 1: Lot 1 Examples

<i>Product Category Number</i>	<i>Product Category Name</i>	<i>Examples (products that do not have the ability to collect Data)</i>
1	3D Printing	3D printing tools, supplies and accessories used in educational programs: <ul style="list-style-type: none"> • 3D drawing pens or tools • Replacement parts • Consumables • Related accessories

2	Science Laboratory and Teaching Supplies	Science laboratory and teaching supplies used in grade, middle, high school or college level science laboratories: <ul style="list-style-type: none"> • Laboratory equipment • Laboratory tools • Supplies for experiments • Safety equipment • Related accessories
3	Robotics Kits and Parts	<ul style="list-style-type: none"> • Robotics parts • Robotic kits • Related tools and accessories
4	Drone Kits and Parts	<ul style="list-style-type: none"> • Drone parts • Drone kits • Related tools and accessories
5	STEM/STEAM and Science Laboratory Educational Materials	Packaged lesson plans, experiment sets or model kits that teach STEM/STEAM or science laboratory subject matter such as: <ul style="list-style-type: none"> • Physics, math, biology, or chemistry • 3D Printing • Robotics or Drones • Virtual or Augmented Reality • Programming/coding/electronics • Artificial Intelligence (AI) • Engineering activities • Building or engineering design • Environmental science • Renewable energy
6	Virtual and Augmented Reality Equipment and Supplies	Accessories or parts that are used in high school or college level virtual or augmented reality laboratories
7	Packaged Virtual Reality Products and Simulation Equipment	Accessories or parts used for either a virtual reality program or for simulation equipment

Lot 2 – Information Technology Based STEM/STEAM or Science Laboratory Products

Products that **do** have the ability to collect Data or that require the acceptance of product terms and conditions, examples of which include, but are not limited to, technology products that come with software or apps, technology products that collect Data, on-line or downloadable apps, stand-alone software, subscription-based software products, cloud-based technology products and products that require user registration.

Table 2: Lot 2 Examples

Product Category Number	Product Category Name	Examples (Products that do have the ability to collect Data)
1	3D Printing	3D printing equipment and related software used in educational programs: <ul style="list-style-type: none"> • 3D Printers or scanners • 3D drawing pens or tools • Related software • Service plans • Extended warranties
2	Science Laboratory and Teaching Supplies	Science laboratory and teaching supplies used in grade, middle, high school or college level science laboratories
3	Robotics Kits and Parts	Robotic kits and related software used in educational programs: <ul style="list-style-type: none"> • Preassembled, programmable robotic kits • Related software

4	Drone Kits and Parts	Drone kits and related software used in educational programs: <ul style="list-style-type: none"> • Preassembled, programmable drone kits • Related software
5	STEM/STEAM and Science Laboratory Educational Materials	Packaged lesson plans, experiment sets or model kits that collect User Data and teach STEM/STEAM or science laboratory subject matter such as: <ul style="list-style-type: none"> • Physics, math, biology, or chemistry • 3D Printing • Robotics or Drones • Virtual or Augmented Reality • Programming/coding/electronics • Building or engineering design • Artificial Intelligence (AI) • Engineering activities • Environmental science • Renewable energy
6	Virtual and Augmented Reality Equipment and Supplies	Equipment and supplies, accessories and related software used in high school or college level virtual or augmented reality laboratories: <ul style="list-style-type: none"> • Virtual reality headsets • Hand, body, motion or voice controllers or trackers • Projection equipment • Cameras • Greenscreen equipment • Podcasting equipment • Related software
7	Packaged Virtual Reality Products and Simulation Equipment	Software or web-based virtual reality programs or simulation equipment that include a STEM/STEAM or science based educational component: <ul style="list-style-type: none"> • Virtual laboratories • Virtual learning platforms and classrooms • Flight or other simulation equipment that includes a STEM/STEAM educational component • Related software

Lot 2 Data Security and Privacy Mandates: Authorized User use of Lot 2 products or services offered by STEM/STEAM and science laboratory supply companies may be subject to various statutes and/or policies relating to the collection, use, and disposition of personally identifiable information. See Appendix E-‘Data Security and Privacy Mandates’. As a result of such statutes and/or policies, Authorized User use of STEM/STEAM products or services may require vendors of Lot 2 products or services to comply with additional terms and conditions relating to the collection, use, and disposition of personally identifiable information. Authorized Users will advise vendors of any such applicable statutes and/or policies prior to making a purchase under any contracts resulting from this Solicitation, and Vendor must comply with such statutes and/or policies as a condition of providing such products or services to the Authorized User.

Products offered through the resulting contracts are for use in a K-12 and/or college level educational setting. All product categories may require assembly, configuration, installation, and networking services, which are not considered Public Works pursuant to Section 5.34 *Assembly/Configuration/Installation/Networking Services*. Installation services which are considered Public Works in accordance with New York State Labor Law are not permitted.

Bidders are permitted to submit pricing for *Assembly/Configuration/Installation/Networking Services* with their bid, in Attachment 10 – *Contact and Supplemental Information*.

The scope of this Solicitation does not include stand-alone equipment and products such as computers and peripherals, printers or copiers, furniture, industrial tools and supplies, audio visual products, medical equipment, assistive technology products, books, serials or arts and craft supplies unless those products are part of a contractor’s general

product offering and are to be utilized in conjunction with a contractor’s STEM/STEAM or science laboratory based learning systems and curriculum. Industrial or commercial grade 3D printing equipment, robotics or drones that are not intended for an educational setting are also excluded.

1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is estimated to be between \$2,000,000 and \$3,000,000 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, *Estimated/Specific Quantity Contracts and Participation in Centralized Contracts*.

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

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

OGS is unable to provide estimated or historical quantities or dollar values for this Solicitation. By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially.

1.4 Key Events/Dates

EVENT	DATE	TIME
Solicitation Release	December 18, 2024	N/A
Deadline for Submission of Intent to Bid	January 10, 2025	5:00PM ET
Closing Date Bidder Questions	January 10, 2025	5:00 PM ET
OGS Procurement Services’ Responses to Bidder Questions	January 31, 2025 (approximately)	N/A
Bid Opening/Due Dates for Bids	February 25, 2025	1:30PM ET
Contract Approval Date/Award Publish Date	Upon OSC Approval	N/A

1.5 Intent To Bid

A Bidder is requested to indicate its intent to bid by sending an email titled “INTENT TO BID-[BIDDER NAME]” to laura.dempsey@ogs.ny.gov on or before the date and time indicated in the Key Events/Dates section. This email should include the Bidder’s company name and a contact name and contact information. The intent to bid is discretionary.

1.6 NYS Contract Reporter

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

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

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

1.7 Bidder Questions

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

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

1.8 NYS Comptroller Approval

In accordance with Section 112 of the State Finance Law, a Contract resulting from this Solicitation shall not be valid, effective or binding upon the State until such Contract has been approved by the Office of the New York State Comptroller (“OSC”). Purchase orders or other procurement transactions issued under such Contract(s) may also be subject to OSC approval.

1.9 Summary Of Policy And Prohibitions On Procurement Lobbying

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

1.10 Definitions

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

“Analytic Derivatives” The outcome from Data Mining or other aggregated Data analysis techniques.

“Authorized Dealer” is a company or individual (merchant) that purchases goods with the intention of selling them rather than consuming or using them.

“Authorized User Agreement” - Shall mean the Purchase Order and/or such other documents memorializing the Contractor’s obligations with respect to a given transaction resulting from an RFQ issued by an Authorized User.

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

“Business Day” – Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays.

“Business Entity” Any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.

“Data” - Any information, Analytic Derivatives, formula, algorithms, or other content that the Authorized User may provide to the Contractor pursuant to this Contract. Data includes, but is not limited to, any of the foregoing that the Authorized User and/or Contractor (i) uploads to the Product, and/or (ii) creates and/or modifies using the Product.

“Data Breach” - Refers to unauthorized access to Data or equipment which is used to transmit, store, or act upon such Data by any person, including employees, officers, partners or subcontractors of Contractor, who have not been authorized to access such Data.

“Data Categorization Study” shall refer to the process of risk assessment of Data. See also “High Risk Data”, “Moderate Risk Data” and “Low Risk Data”.

“Educational Entity” means a school district, board of cooperative educational services (BOCES), school, university or college located in the United States.

“Governmental Entity” shall refer to a federal, state, municipal entity, or tribal government located in the United States.

“High Risk Data” Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“High Impact Data”).

“ITS-ISO” – Information Technology Services – Information Security Officer

“Intellectual Property (IP)” Includes inventions, patents, Copyrights, trade secrets, trademarks, technical Data, industrial designs that are generally protected and proprietary.

“Low Risk Data” Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“Low Impact Data”).

“Manufacturer” An organization or Business Entity that creates, makes, programs, processes, or fabricates a Product that is branded, warranted, supported and maintained by that organization or Business Entity and which holds all IP rights of the Product.

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

“Moderate Risk Data” Is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“Moderate Impact Data”).

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

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

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

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

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

“**Request for Product Review (RFPR)**” A process used to review a Product that collects Data in order to conduct a Data Categorization Study, determine insurance requirements, incorporate additional Authorized User terms and conditions and request the Contractor’s most competitive pricing.

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

“**Security Incident**” - A violation or imminent threat of violation of computer security policies, acceptable use policies, or standard security practices. See NIST 800-61 or its successor for additional information.

“**STEM/STEAM**” shall refer to an educational approach to learning that uses science, technology, engineering, the arts and mathematics as access points for guiding student inquiry, dialogue and critical thinking.

1.11 Appendices and Attachments

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

- Appendix A – Standard Clauses for NYS Contracts (June 2023)
- Appendix B – General Specifications (April 2016)
- Appendix C – Federal Funding Agency Mandatory Terms and Conditions
- Appendix D – Contract Modification Procedure
- Appendix E – Data Security
- Attachment 1 – Pricing
- Attachment 2 – NYS Required Certifications
- Attachment 3 – Encouraging Use of NYS Businesses
- Attachment 4 – Insurance Requirements
- Attachment 5 – Bidder Information Questionnaire
- Attachment 6 – Bidder Submission Checklist
- Attachment 7 – Bidder Questions Form
- Attachment 8 – Report of Contract Usage
- Attachment 9 – Certification Under Executive Order No. 16
- Attachment 10 – Contact and Supplemental Information
- Attachment 11 – Price List Update Guide
- Attachment 12 – Manufacturer’s Certificate

Attachment 13 – Proof of Past Sales
Attachment 14 – Request for Product Review (RFPR) Template

1.12 Conflict of Terms

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

1. Appendix A, Standard Clauses for New York State Contracts;
2. Appendix C, Federal Funding Agency Mandatory Terms and Conditions;
3. The Solicitation;
4. Appendix B, General Specifications;
5. All other appendices and attachments to the Solicitation.

2. BIDDER QUALIFICATIONS

2.1 Bidder Qualifications

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

A Bidder shall meet the following qualifications:

1. The Bidder must have maintained an organization, in continuous operation, for a minimum of three (3) years immediately preceding the bid opening date selling STEM/STEAM or Science Laboratory related educational supplies and/or services.
2. The Bidder must have proof of past sales of at least \$100,000 of products described in Section 1.2 *Scope* to Governmental Entities and/or Educational Entities in each of the three (3) years immediately preceding the bid opening date; 2022, 2023 and 2024 (See Section 2.1 *Proof of Past Sales*).

Bidder shall provide proof of past sales in Excel format within Attachment 13 – Proof of Past Sales as part of its Bid submission, which shall include purchasing entity names, product item number and description, date of sale, list price, discount percentage, quantity sold, and extended net sale amount. In addition to the completed Attachment 13, at its discretion, OGS may request copies of invoices, purchase orders, vouchers, etc. as proof of past sales revenue. Bidder's failure to include proof of past sales as part of its Bid may result in rejection of Bid. OGS reserves the right to request additional documentation. OGS reserves the right to waive any or all of the requirements pertaining to past sales, if deemed to be in the best interest of the State.

3. For Lot 1 Non-Information Technology based STEM/STEAM or Science Laboratory Products the Bidder must either be:
 - a. An established Manufacturer of the products bid, or
 - b. An Authorized Dealer of an established Manufacturer of the products bid.
 - Any Authorized Dealer hereby guarantees that:
 - i. It is an Authorized Dealer of the Manufacturer;
 - ii. The Manufacturer has agreed to supply such Authorized Dealer with all quantities of products required to fulfill its obligations under any resultant Contract with the State, and
 - iii. The Authorized Dealer will provide a completed and signed Attachment 12 – *Manufacturer's Certificate*, acknowledging this level of support, with the Bid. If such Manufacturer's Certificate is not submitted with the Bid, Bidder must provide within three (3) Business Days of request by OGS, (via e-mail is acceptable).

4. For Lot 2 'Information Technology Based STEM/STEAM or Science Laboratory Products', the Bidder must

be the Manufacturer of the Products being bid.

3. BID SUBMISSION

3.1 Performance and Bid Bonds

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

3.2 NYS Vendor File Registration

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

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

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

For more information on the Vendor File please visit the following website: <https://osc.state.ny.us/vendors/>

3.3 Format of Bid Submission

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

Situations susceptible to disqualification may include:

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

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

- C. Any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the

Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.

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

3.4 Content

A. A complete Bid consists of submission of the following documents. All documents must be completed in accordance with the instructions for the individual document, which may include an original signature or an original notarized signature. At this time, OGS cannot accept an eSignature that has been generated by software. See also Attachment 6 – *Bidder Submission Checklist*.

	Bid Document	Required File Format (Submit on USB)	Original also Required (Submit paper original)
1	Page 1 of the Solicitation with original ink signature	PDF	X
2	Page 2 of the Solicitation – <i>Bidder Certification and Affirmation</i> , with original ink signature	PDF	X
3	Appendix C – <i>Federal Funding Agency Mandatory Terms and Conditions</i> , with Section 10 completed (page 6)	PDF	
4	Attachment 1 – <i>Pricing</i> (must be included with the Bid at the Bid Opening / Due date for Bids)	Excel	
5	Attachment 2 – <i>NYS Required Certifications</i> , with signature	PDF	
6	Attachment 3 – <i>Encouraging Use of NYS Businesses in Contract Performance</i>	PDF	
7	Proof of Compliance with Attachment 4 – <i>Insurance Requirements</i> .	PDF	
8	Attachment 5 – <i>Bidder Information Questionnaire</i>	Excel	
9	Attachment 6 – <i>Bidder Submission Checklist</i>	Excel	
10	Attachment 7 – <i>Bidder Questions Form</i>	Not required to be submitted with the bid	
11	Attachment 8 – <i>Report of Contract Usage</i>	Not required to be submitted with the bid	
12	Attachment 9 – <i>Certification Under Executive Order 16</i> , with signature	PDF	
13	Attachment 10 – <i>Contact and Supplemental Information</i>	Excel	
14	Attachment 11 – Price List Update Guide	Not required to be submitted with the bid	
15	Attachment 12 – Manufacturer’s Certificate (if applicable)	PDF	
16	Attachment 13 – Proof of Past Sales	Excel	
17	Attachment 14 – Request for Product Review (RFPR) Template	Not required to be submitted with the bid	
18	EEO 100 – <i>Equal Employment Opportunity Staffing Plan</i> , with signature (see https://ogs.ny.gov/mwbe/forms under “Commodity & Service Contracts”)	PDF	
19	Vendor Responsibility Questionnaire (copy of certification that a Questionnaire has been completed online, and certified no more than six (6) months prior to the bid opening date; see https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire)	PDF	

	Bid Document	Required File Format (Submit on USB)	Original also Required (Submit paper original)
20	ST-220-CA, <i>Contractor Certification to Covered Agency</i> , with signature and notary (see https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)	PDF	X
21	ST-220-TD, <i>Contractor Certification</i> , with signature and notary (see https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)	Must be submitted directly to the NYS Tax Department	
22	Bid Updates (if applicable), with signature	PDF	X
23	Certificate of Good Standing or equivalent from the state in which they are formed or incorporated (if applicable)	PDF	

B. Documents should be submitted as an electronic copy and in the format specified in the list above for each document (e.g., PDF, Excel), following the instructions provided in this section. Electronic copies of documents must be submitted on two (2) USB flash drives, with each USB flash drive containing a complete set of the submitted documents. When submitting electronic documents, include a printed copy of pages 1 and 2 of the Solicitation with the Bid (see 3.5 Bid Envelopes and Packages, below).

Electronic copies of documents provided in PDF format should be saved as an Adobe Acrobat PDF, AND THEN converted to allow for Optical Character Recognition (OCR) (see <https://www.adobe.com/acrobat/how-to/ocr-software-convert-pdf-to-text.html>).

- C. OGS shall consider documents submitted on multiple USB flash drives to be equal, provided that the date/time modified is the same for documents that have the same file name. In the case of discrepancies between file names and date/time modified, the file with the most recent date/time modified shall take precedence.
- D. Documents that are not indicated as “Original Also Required” in the above table should not be submitted in paper format and may not be reviewed by OGS if they are received. In the case of discrepancies between paper versions that are received (if applicable) and USB flash drive submissions of the documents submitted by the Bidder, the electronic USB flash drive copy shall take precedence over the paper version.
- E. Bidder is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically until a determination of award is made. If an award is made to Bidder, the documents with original signatures shall be retained by the Bidder for a period of six (6) years after the term of the contract has ended. Bidder shall submit such documents with original signatures to OGS upon request.

3.5 Bid Envelopes and Packages

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

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation number #23375
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

All Bids should also include a PRINTED copy of page 1 and page 2 of the Solicitation, completed with the Bidder’s information. This printed copy of page 1 and page 2 should be placed in the envelope with the USB flash drives.

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

3.6 Bid Delivery

Bids shall be delivered to the following address on or before 1:30 p.m. ET, on or before the Bid opening date as stated in Section 1.4 *Key Events/Dates*:

State of New York Executive Department
Office of General Services
Procurement Services
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242
Attn: Bid Enclosed – Solicitation 23375

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

3.7 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the Corning Tower Information Desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services Receptionist at (518) 474-6262 or Customer Services (518) 474-6717 at least 24 hours prior to the visit. If no answer, leave a detailed phone message including the following information: reason for visit and/or delivering a bid, solicitation number, date and estimated time of delivery or visit, first and last name of visitor, and visitor’s cell phone number. Visitor may email OGS.sm.customer.services@ogs.ny.gov providing the same information. Visitors who are not pre-registered will be directed to a designated phone at the Corning Tower Information Desk, where they are to call the Procurement Services Receptionist (518) 474-6262 or Customer Services (518) 474-6717 for access. The visitor will be registered at that time. Bids are not allowed to be left at the Corning Tower Information Desk. Please note that delays may occur. Building access procedures may change or be modified at any time.

3.8 NYS Required Certifications

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

3.9 Product Literature to Be Furnished with Bid

Bidder shall submit with its Bid detailed specifications, Product literature, and all necessary data on the Product to be furnished (“Product literature”). If the Product offered differs from the Product literature, such differences must be explained in detail. Failure to submit any of the Product literature may result in rejection of the Bid. The State, however, reserves the right to request any additional information deemed necessary for the proper evaluation of Bids.

3.10 Bid Deviations

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

Bidder is advised that OGS will not entertain any exceptions to Appendix A – *Standard Clauses for New York State Contracts*. OGS will also not entertain exceptions to the Solicitation or Appendix B – *General Specifications* that are of a

material and substantive nature.

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

3.11 Bid Opening Results

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

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

3.12 Bid Liability

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

3.13 Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least 90 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 90 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

3.14 NYS Reserved Rights

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

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;

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- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
 - S. Reject an obviously unbalanced Bid as determined by the State; and
 - T. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
 - U. Make no award for any Product, Region, or Lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, Regions, or Lots.
 - V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing.
 - W. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

3.15 Incorporation

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

4. METHOD OF AWARD

Awards shall be made to all responsive and responsible Bidders that are able to meet the terms and conditions of this Solicitation and the requirements detailed in Section 2 - *Bidder Qualifications* and whose product offerings meet the Scope of this Solicitation, as detailed in Section 1.2 - *Scope* and whose prices indicate that those products will be provided at a reasonable price as determined by the NYS OGS.

Reasonable prices may be determined by, but not limited to, reviewing discounts and net prices on any current or previously awarded State or government entity contracts, and/or other non-governmental entity contracts such as educational entities or hospitals.

Pricing shall be a discount per Category from manufacturer's list price and shall be equal to or better than any other offered to another entity for the same type of products. Discounts will be confirmed by comparison with other contracts held by the Bidder. The Bidder must supply copies of their current contract price lists with other Entities indicating the discount percentage. If a Bidder holds another contract that requires them to offer a better discount than to any other entity, then the Bidder will be required to provide a copy of the contract language. If a Bidder holds another contract in which the price is F.O.B. origin, then OGS may allow up to a three (3) percent difference in the discount structure. After the Bid Opening, each Bid will be screened for completeness and conformance with the stated Bidder Qualifications for Bid submission, as set forth in Section 2 of this Solicitation. Any Bid not meeting these requirements may be deemed non-responsive and denied further consideration for award.

Pricing will be collected using Attachment 1 – *Pricing* in accordance with the Instructions tab listed within Attachment 1. If the New York State Contract discount submitted is less than the comparable contract discount, the Bidder must provide a written explanation on the Bidder's letterhead that is acceptable to OGS in order to establish the reasonableness of price. Failure to provide an acceptable discount or an acceptable explanation may result in the pricing being found unreasonable and that item and/or Category being rejected. Bidders who currently hold a New York State OGS Contract at time of bid submission must offer the same or better discounts for the item and/or Category(s) bid. OGS reserves the right to request further information to make a determination of price reasonableness, such as copies of Invoices or quotes.

Bids will be reviewed to ensure that the Bidder has provided all required Attachments, completed in full, and in original hard copy, where requested. Failure by a Bidder to provide properly completed required documents and/or Attachments may result in their Bid being deemed non-responsive and denied further consideration for award.

Bidder must be financially stable and able to demonstrate the financial stability of the company. In addition to sales

history, current financial statements or other financial information, as requested and deemed appropriate by OGS, must be provided within five (5) Business Days of request. New York State reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this contract.

Bidders that have a physical presence in NYS such as a storefront, an office, a warehouse or any other kind of facility within NY, must be registered with the NYS Department of State, and provide proof of such, to be considered for contract award.

Bidders, located outside of New York State, that do not have a physical presence in NYS, must provide a current Certificate of Good Standing or equivalent from the state in which they are formed or incorporated to be considered for contract award.

The Commissioner reserves the right to evaluate and/or reject any and all Bids, in whole or in part and to waive technicalities, irregularities and omissions if in his or her considered judgment, the best interests of the State will be served. In the event satisfactory Bids, fully in accord with the Bid documents, are not received, the Commissioner reserves the right to consider late or non-conforming Bids as stipulated in "Late Bid" clause of Appendix B – *General Specifications*.

4.1 Periodic Recruitment

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids.

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

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for categories covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

4.2 Procurement Instructions for Authorized Users

- A. The Contracts resulting from this Solicitation will be centralized Contracts issued under a multiple award structure. Before proceeding with a purchase, an Authorized User shall check the list of Preferred Source offerings and must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities or services of Preferred Source suppliers such as the Division of Correctional Industries (Corcraft), the New York State Preferred Source Program for People who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities or services meet the form, function, and utility of the Authorized User and the price offered by Corcraft does not exceed a reasonable fair market price and the price offered by NYSPSP and NYSID is within 15% of prevailing market prices. If a Preferred Source does not meet an Authorized User's form, function, and utility, or the Preferred Source price is more than fair market price or 15% above prevailing market prices, then the Authorized User may use this Contract.
- B. Each Contractor's contract Price List and Contact and Supplemental Information document will be posted on the OGS website without exception so that Authorized Users can find contact information, as well as discount structure, volume discounts (if applicable), prompt payment discount (if applicable), and NYS Purchasing Card information (if applicable).
- C. Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.
- D. When placing orders under this Award, the Authorized User should follow and be familiar with the terms and conditions governing the Contract and are responsible for determining that the product(s) they intend to purchase fit within the scope of the Award. Bidders/Contractors are encouraged, though not required, to self-identify products

meeting EO22 requirements within the product name/description on their Price List.

Authorized Users are strongly encouraged to confirm the accuracy of the entries by contacting the Contractor directly. Authorized Users have the responsibility to document purchases, and such documentation should include:

1. A statement of need and associated requirements;
2. Proof of obtaining all necessary prior approvals;
3. A summary of the Contract alternatives considered for the purchase; and
4. The reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

Authorized Users will place orders directly to the Contractor or the Contractor's authorized reseller (if applicable), as specified by the Contractor, and specify any shipping/delivery requirements, including inside delivery and/or installation. Inside delivery and installation terms must be agreed upon at time of order and prior to delivery.

All orders should clearly note the OGS Contract Name and Award Number, Contract Number, and Contractor Name. A Contractor shall not initiate delivery of products until the order is placed by an Authorized User.

Contractor must disclose any forms or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents, which contain additional terms or conditions, must receive pre-approval by the Authorized User. Additional terms or conditions that were not pre-approved by the Authorized User, or which conflict with the Contract terms and conditions, are void and unenforceable at the sole discretion of the State. Authorized Users should refer to Attachment 14 *Request for Product Review (RFPR) Template* an aid to the Authorized User for the completion of a Request for Product Review. OGS reserves the right to unilaterally make revisions, changes, additions and/or updates to the 'Request for Product Review (RFPR) Template', as well as to Attachment 8 – *Report of Contract Usage*, Attachment 10 – *Contact and Supplemental Information Form*, and Appendix D - *Contract Modification Procedure* without processing a formal amendment and/or modification.

4.3 Notification of Award

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

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

5. TERMS AND CONDITIONS

5.1 Contract Term and Extensions

The term of the resulting contracts will be for five (5) years commencing after all necessary approvals and shall become effective upon the date of OSC approval of the final executed documents, and the Contract term shall end five years from the date of OSC approval. "All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, if mutually agreed between OGS and the Contractor, and subject to the approval of OSC, the Contract may be extended for up to an additional three (3) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

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

terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

5.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B *Contract Term – Extension*. In the event that OGS determines that a short term extension is in the best interests of the State, (e.g., a replacement Contract has not been issued, or an extended period is needed for Authorized Users to transition to another procurement method), any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any previously approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, unless otherwise noted in the extension notification or agreement, this extension automatically terminates should a replacement Contract be issued in the interim.

5.3 Price

Pricing must be submitted using Attachment 1 – *Pricing* in accordance with the Instructions tab listed within Attachment 1. Bidder must offer discount(s) by category for the products listed in Attachment 1 from their regularly published commercial price list, or published catalog in effect at the time of the bid opening. The discount must be greater than zero (0.00) percent. All monetary values shall be extended to two decimal points (e.g., \$.123 shall be rounded to \$.12) and rounded to the nearest whole cent. All discount percentage values shall not exceed two decimal places (e.g., 6%, 6.5%, 6.25%). Accepted discounts at time of contract award are to be firm for the Contract term. Discount increases are permitted at any time (see Section 5.5 - *Price List Updates*).

Bidder shall include ALL products they intend to offer, that fall within Section 1.2 – *Scope*, on Attachment 1 – *Pricing*. A Bidder shall submit its proposed products and pricing within Attachment 1 – *Pricing* in Excel format only, on USB Flash Drives, as per Section 3.3 – *Format of Bid Submission* and Section 3.4 – *Content*.

Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State, as designated by the Authorized User, including dock delivery and tailgating of load, which means bringing the truck to the loading dock or loading area and bringing the load to the tailgate of the truck or liftgate for Authorized User personnel to remove the load without entering the truck. In addition, upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause.

Bidders are encouraged to offer their best possible pricing at time of bid; however, once awarded a contract, contractors may negotiate better pricing with customers either on an individual or statewide basis at any time throughout the contract term. (See Section 5.6 – *Best Pricing Offer*).

5.4 Volume Discounts

Bidders may, and are encouraged to, offer volume discounts, which shall apply to orders delivered to the same Authorized User and/or location, at the same requested time. Volume discounts, if offered, shall be based on products and pricing as submitted within Attachment 1 – *Pricing*. Volume discounts, if offered, shall be entered within Attachment 10 – *Contact and Supplemental Information*. Any restocking fees must also be included within Attachment 10 and entered as a percentage (%) of the net price, and may be reduced, but not increased during the Contract term. All approved discounts shall remain in effect for the entire contract term. Discounts may be increased during the Contract term, and as per Section 5.5 – *Price List Updates*. Volume discounts may be applied per Purchase Order, cumulatively per ordering entity, or cumulatively statewide. The Bidder shall indicate the basis for applying the volume discount(s) within Attachment 10 – *Contact and Supplemental Information*. Volume discounts shall be defined and applied as follows: Purchase Order volume discounts shall be additional discounts applied to individual Purchase Orders over a specified dollar amount. Cumulative agency volume discounts shall be additional discounts applied to all future orders made by an individual ordering entity once an established volume has been met by that entity. Cumulative statewide volume discounts shall be additional discounts applied to all future orders for all state and non-state orders once an established volume has been met under this Contract.

5.5 Price List Updates

- A. Updates to a Contractor's OGS Price List (price list updates) will be allowed at any time, twice per year, after the first anniversary date of the Bid Opening. Price list update requests at any other time may not be granted, unless OGS determines that it is within the best interest of the State and/or its Authorized Users. Requests for price list updates must be submitted, via email, to the OGS contract administrator listed on the OGS Website for the Award. The price list update request must be dated, complete and accurate, and in the format required by OGS. Contractors shall adhere to the instructions in Attachment 11 – *Price List Update Template* and use the provided template along with Appendix C - Contract Modification Procedure for all price list update requests.
- B. Contractors may update their OGS price list to include price increases and decreases, Product additions and deletions, and/or Product item number or description changes. New Products will be considered for inclusion provided they are within the Contract scope, are within the same Lots and category(s) originally awarded to the Contractor and offered to the State under the same terms and conditions as per the Contract, and at discounts/pricing deemed to be reasonable and in the best interest of the State. The discount offered on new Products requested to be added to the Contractor's price list shall be no lower than the minimum established discount under the category in which the new Product corresponds.
- C. Contract prices may be subject to increase or decrease during the contract period in accordance with changes made by the Manufacturer or Authorized Dealer in their established, regularly published commercial Price List or published catalog; however, the percentage discount accepted at time of contract award, or a price list update under the Contract, may not be decreased during the Contract term. Once approved by OGS, discounts offered from Manufacturer Price Lists may not be decreased unless satisfactory proof of undue hardship is submitted by the Contractor and approved by OGS. Proof may include, but not be limited to, signed statements by the Manufacturer detailing and attesting to the need for the discount reduction. Determination of undue hardship is at the sole discretion of OGS. OGS may, at their discretion, require the deletion of Products and/or product lines from the Contractors OGS price list should a Contractor be unable to support their approved discount structure. Price decreases or discount increases are permitted and encouraged at any time and may be provided to the Authorized User without a price list update having been processed. The State reserves the right to request copies of existing contracts, Manufacturer's Price Lists, or internal price lists to ensure that the prices offered to the State are reasonable. In connection with any price list update, OGS reserves the right to request additional information, reject price list updates, remove Products from Contracts, remove Products from price list update submissions, and request additional discounts for new or existing Products.
- D. New Manufacturer Product lines may be offered within a price list update by a Contractor provided they are within Contract scope and within the category(s) originally awarded to the Contractor. Products and/or product lines that fall within a Lot not originally awarded to a Contractor will not be accepted. Categories not originally awarded to a Contractor shall not be added post award.
- E. Price list updates will not be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or other documentation that is required under the resulting Contract. OGS reserves the right to deny price list updates within the last six months of the contract term, without prior notice.
- F. It is OGS's intention that all Contractor price lists be maintained and updated regularly to keep Product offerings, pricing, Product numbers and Product descriptions current. Contractors are required to honor their posted contract pricing at all times and may not charge greater than Contract price at any time during the Contract term or offer items that are not listed on the posted price list. Contractors are encouraged to review their posted price list regularly and submit a request to update their price list at least once per year. Contractors should contact the OGS contract manager for the most current price list update procedures and forms. Contractors shall submit their price list update request to the OGS Procurement Services contract manager pursuant to the requirements of this Section for review and written approval prior to use. Revised pricing is effective upon the date in which OGS approves the request. Revised price lists shall be posted by OGS on the contract website within five (5) Business Days after approval, or as soon as possible thereafter.
- G. OGS reserves the right to request justification for any price increase within a contractor's price list update request and reserves the right to reject any increase deemed unreasonable by OGS.

5.6 Best Pricing Offer

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

5.7 Price Structure

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

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

5.8 Ordering

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

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

5.9 Purchasing Card Orders

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

5.10 Minimum Order

Minimum order, if required, shall be established by the Bidder and stated on Attachment 10 – *Contact and Supplemental Information* where indicated (See Section 3.3 – *Format of Bid Submission*). The Bidder may offer to ship orders less than the minimum order with the freight prepaid and added to the invoice. It shall be the Authorized User's choice if they wish to accept the offer. Bidder must establish minimum order, if they so choose, at time of Bid submission. The minimum order amount may be decreased, but not be increased, once established.

5.11 Invoicing and Payment

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

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

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

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

5.12 Product Delivery

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

5.13 Product Returns and Exchanges

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

Products shall be replaced within 10 Business Days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

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

5.14 Contract Administration

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

Bidder shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in Attachment 5 – *Bidder Information Questionnaire*. Contractor must notify OGS within five Business Days

if it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS contract manager.

5.15 NYS Financial System (SFS)

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

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

5.16 Americans with Disabilities Act (ADA)

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

5.17 N.Y. State Finance Law § 139-I

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

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

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

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

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

5.18 Insurance

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

5.19 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* twice each year for the periods covering January 1st through June 30th and July 1st through December 31st. The report shall include total sales to Authorized Users of the Contract by Contractor, and all authorized resellers, dealers and distributors, if any, and shall be submitted no later than July 15th for the period of January 1st through June 30th, and January 15th for the period of July 1st through December 31st. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the report.

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

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

The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

This Contract may be terminated if, on the one-year anniversary date of the Contract Award, and annually thereafter, the reports required to be filed under this Section show that the Contractor has made no sales to any Authorized User under the Contract for the prior year. Termination of the Contract under this Section is in addition to Appendix B *Termination*, and shall take effect upon written notification to the Contractor. The Contract may also be terminated for failure to file the reports required under this Section.

5.20 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
1. To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
- C. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)
1. The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January. To report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>.
 2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors.
 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. Contract Goals

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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/>. 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>

Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.

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

Article 3 of the New York State Veterans’ Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

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

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

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

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

5.22 Overlapping Contract Products

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

5.23 Preferred Source Products

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

5.24 NYS Vendor Responsibility

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

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

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the *NYS Vendor File Registration* section. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

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

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

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

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

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

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

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

5.25 NYS Tax Law Section 5-a

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

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

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

5.26 "OGS or Less" Guidelines

Purchases of the Products included in the Solicitation and resulting Contract are subject to the "OGS or Less" provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and

are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

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

5.27 Non-State Agencies Participation in Centralized Contracts

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

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

5.28 Extension of Use

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in any resultant Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions. Requests must be submitted to the OGS contract manager prior to the use of any Contract. Requestors will be provided with instructions and the proper form(s) to be completed for review and approval by OGS.

5.29 Resellers

A. Definitions

“Reseller” is a company or individual (merchant) that purchases goods or services with the intention of selling them rather than consuming or using them. Also known as Value Added Reseller (VAR) or channel partner. Resellers must be eligible to quote statewide, independently and lower than Manufacturer (Contract) pricing for procurements under resulting Contracts. Reseller must also be able to accept orders, invoice and receive payment for Products.

B. Conditions of Reseller Participation

Resellers must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Resellers and their participation under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria (“qualifying criteria”), provided that:

1. such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;

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3. those qualifying criteria met by the Reseller must be identified in Reseller designations (See Attachment 10 *Contract and Supplemental Information Form*) at the time that Reseller approval is requested; and,
 4. immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term. In addition to notification, if the Contract has goals, Contractors MUST submit to OGS a completed MWBE 100 EVERY TIME they add or remove a reseller that has been certified by NYS as an MWBE.

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

C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 10 *Contact and Supplemental Information*. Contractor shall also specify whether orders must be placed directly with Contractor or may be placed directly with designated Resellers.

D. Responsibility for Reporting/Performance

Contractor shall be fully liable for a Reseller's performance and compliance with all Contract terms and conditions. Product purchased through a Reseller must be reported by Contractor in the required quarterly sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor's sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User's Contract activity with the Reseller.

E. Applicability of Contract Terms

Product ordered directly through Resellers shall be limited to Products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

5.30 New Accounts

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references.

5.31 Centralized Contract Modifications

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

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

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

execution.

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

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

5.32 Compliance with Federal, State and Local Regulations

The Contractor shall comply with all State and Authorized User policies regarding compliance with various confidentiality and privacy laws, rules and regulations. As part of such compliance, Contractor shall execute written confidentiality/non-disclosure agreements as requested by the State or an Authorized User. Upon request by the Authorized User, Contractor will provide verification of compliance with specific Federal, State and local regulations, laws and IT standards with which the Authorized User is required to comply. See, Appendix D Data Security and Privacy Mandates.

5.33 Instruction Manuals

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

5.34 Licensing Terms and Conditions

An Authorized User looking to acquire Products under a Contract resulting from this Solicitation must review the contractual terms and conditions. The Authorized User must ask the Contractor if “click through”, “shrink wrap” or other pass-through or licensing/subscription terms and conditions are present, and if so, the Authorized User is responsible for reviewing and approving such terms and conditions prior to ordering the Products and services. If the terms and conditions are not acceptable to the Authorized User, it is the responsibility of such Authorized User to negotiate any needed amendments. **Any additional licensing terms agreed to by the Authorized User shall not conflict with Appendix A, this Solicitation, any resultant Contract, or Appendix B. Any such conflicting terms shall be void and unenforceable.**

Assembly/Configuration/Installation/Networking Services

Assembly/Configuration/Installation Services may include moving materials and equipment to its final location, uncrating, assembling, adjusting, connecting to the network and leaving free-standing equipment ready to operate to the full extent of its design capabilities. These services do not include any installation that is considered Public Works under the New York State Labor Law. See Appendix B, §37, *Installation*, for terms applicable to installation. These services may include, but are not limited to, the following:

1. System setup (e.g., key operator orientation, system parameters);
2. System enhancement (e.g., memory upgrades, network interfaces);
3. Network set up, including but not limited to, applying network settings, and verification of network functionality;
4. Software installation; and
5. Hardware verification (including appropriate tests and diagnostics to ensure proper Product operation).

Installation work which is considered Public Works in accordance with the New York State Labor Law is **excluded** from purchase under this Contract. Historically, the New York State Bureau of Public Works has maintained that installation, maintenance and repair of equipment attached to any wall, ceiling or floor or affixed by hard wiring or plumbing is Public Work. In contrast, installation of a piece of equipment which is portable or a “plug-in” free-standing unit would not be

considered Public Work. Thus, this Solicitation and any resulting Contracts do not authorize installation where the equipment becomes a permanent part of the building structure, or is otherwise incorporated into the fabric of the building (e.g., installation on a wall, ceiling or floor in a fixed location, or affixed by hard-wiring or plumbing). See Appendix B, *Prevailing Wage Rates - Public Works and Building Services Contracts*. For questions about whether a proposed installation constitutes public work, please contact the New York State Department of Labor's Bureau of Public Work District Office in your area. A listing of district offices and contact information is available at: www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm.

5.35 Removal of Records from Premises

Contractor shall not remove any documents, papers, files, or Data (records), whether in hard copy or electronic form, from the premises of an Authorized User or from electronic storage media used by the Authorized User without prior written approval of the Authorized User. In addition, Contractor shall not, remotely or otherwise, access, modify, copy, destroy, or delete such records without prior written approval of the Authorized User.

5.36 Environmental Sustainability and NYS Executive Order Number 22

New York State is committed to environmental sustainability, and seeks to minimize the environmental impact of any Products that the State Procures. Executive Order No. 22 Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program ("EO 22"), requires State Agencies, authorities, and public benefit corporations ("Affected Entities") to follow GreenNY procurement specifications for commodities, services and technology. The GreenNY specifications consider a wide range of factors including avoidance of toxic substances, pollution reduction and prevention, sustainable manufacturing, reduction of greenhouse gas emissions, packaging, and water conservation. Resources are available on the OGS website at <https://ogs.ny.gov/greeny-purchasing-requirements-and-tools> for procurement managers and Contractors to learn about which Contracts provide environmentally preferable Products.

A list of currently approved specifications is located on the OGS website at <https://ogs.ny.gov/greeny/approved-greeny-specifications>.

5.37 Contract Documents; Electronic Format

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the contract and any extensions thereof, and for a period of six (6) years after the term of the contract has ended. Contractor shall submit such documents with original signatures to OGS upon request. If Contractor seeks to assign the contract during the term, Contractor shall provide all documents relating to the bid and contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.

5.38 State Security Policies

For Authorized Users subject to NYS security policies/standards, it is strongly suggested that the Authorized User review statewide policies and guidelines available at: Policies | Office of Information Technology Services (ny.gov). The Contractor and its personnel shall review and comply with all State security policies, procedures and directives currently existing or implemented during the term of the Piggyback Contract, including ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)). The Contractor and its personnel shall also review and comply with any additional policies, procedures, or directives provided in the Authorized User Agreement. Authorized Users shall provide the Contractor with any updated policies when available.

5.39 Reporting Security Incidents

Unless otherwise specified in the Authorized User Agreement, Contractor shall report any Security Incidents to the Authorized User in the manner prescribed in ITS Policy NYS-P03-002 Information Security Policy and associated standards ITS Policy NYS-S13-005 Cyber Incident Response Standard (or successor policy(ies)).

5.40 Data Breach- Required Contractor Actions

Unless otherwise provided by law or in the Authorized User Agreement, in the event of an actual or potential Data Breach, the Contractor shall:

- I. notify the ITS Enterprise Information Security Office and any potentially affected Authorized User(s), or their designated contact person(s), by telephone as soon as possible, but in no event more than four (4) hours from the time the Contractor either has knowledge of a Data Breach, or has knowledge of a potential Data Breach;
- II. consult with and receive authorization from the Authorized User(s) as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by the Authorized User;
- III. coordinate all communication regarding the Data Breach with the ITS EISO and Authorized User(s);
- IV. cooperate with the Authorized User and ITS EISO in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and
- V. take corrective action in the timeframe required by the Authorized User. If Contractor is unable complete the corrective action within the required timeframe, in addition to the remedies provided in Appendix B, Section 48, *Remedies for Breach*, the Authorized User may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the Authorized User, or until the Authorized User has completed a new procurement for a replacement service system. The Contractor will be responsible for the cost of these services during this period.

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

5.41 Data Ownership

The Authorized User shall own all right, title, and interest in Data provided and/or created during the provided services.

The Authorized User shall have access to its Data at all times, including when an account is suspended or terminated. The Authorized User shall have the ability to import or export Data in piecemeal or in its entirety at the Authorized User's discretion, without interference from the Contractor. This includes the ability for the Authorized User to import or export Data to/from other Contractors.

The Contractor shall not copy or transfer Data unless authorized by the Authorized User. In such an event, the Data shall be copied and/or transferred in accordance with the provisions of this Section. Contractor shall not access any Data for any purpose other than fulfilling the service. At no time shall any Data or processes (e.g. workflow, applications, etc.), which either are owned or used by the Authorized User be copied, disclosed, or retained by the Contractor or any party related to the Contractor.

5.42 Data Location And Related Restrictions

Unless otherwise agreed to by the Authorized User within the Authorized User Agreement, all Data shall remain in the Continental United States (CONUS). Any Data transmitted, stored, or acted upon, must be located solely in data centers in CONUS. Services which directly or indirectly access Data may only be performed from locations within CONUS.

All helpdesk, online, and support services which access any Data must be performed from within CONUS. At no time will any Follow the Sun support (workflow being done by staff in different time zones) be allowed to access Data directly or indirectly from outside CONUS.

5.43 Transferring Of Data

The Contractor shall not transfer Data unless directed to do so in writing by the Authorized User.

At the request of the Authorized User and at no additional cost to the Authorized User, the Contractor will provide the services required to transfer Data from existing databases to physical storage devices or other forms of storage as required by the Authorized User.

The Authorized User may require several cloud providers to share or transfer Data for a period of time. This requirement will be provided for in the Authorized User Agreement or shall be assumed to be limited to a six month duration.

At the end of this Contract and/or Authorized User Agreement, Contractor may be required to transfer Data to a new Contractor. This transfer must be carried out as specified by the Authorized User Agreement. This transfer may include, but is not limited to, conversion of all Data into or from an industry standard format(s) including comma/delimited files, txt files, or Microsoft standard file formats. Such transfer of data shall be done at no charge to the Authorized User.

In the event of a breach or termination for breach of this Contract or any purchases made under it, costs of all transfers of Data shall be borne by the Contractor.

5.44 Encryption

All Data must be encrypted at all times unless specifically outlined otherwise in the Authorized User Agreement. At a minimum, encryption must be carried out at the most current Federal Information Processing Standards (FIPS) 46-1 (or successor policy(ies)), with key access restricted to the Authorized User only, unless with the express written permission of the Authorized User. The Authorized User Agreement shall specify any additional encryption requirements and the respective duties of the Contractor and Authorized User.

5.45 Requests For Data By Third Parties

Unless prohibited by law, Contractor shall notify the Authorized User in writing within 12 hours of any request for Data (including requestor, nature of Data requested, and timeframe of response) by a person or entity other than the Authorized User, and the Contractor shall secure written acknowledgement of such notification from the Authorized User before responding to the request for Data.

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

5.46 Upgrades, System Maintenance, And Changes

The Contractor shall give a minimum of five (5) Business Days advance written notice to the designated Authorized User(s) contact of any upgrades or system changes that will impact services as provided pursuant to this Contract.

5.47 Termination Or Suspension Of Service

During any period of suspension of service, the Contractor shall not take any action to destroy and/or withhold any Data. In the event of termination of this Contract or Authorized User Agreement, in whole or in part, the Contractor shall implement an orderly return of Data in a format and timeframe agreed upon by the Authorized User. The Contractor must certify all Data has been removed from its system and removed from backups within any agreed upon timeframes. At a minimum, Contractor shall not take any action to destroy and/or withhold any Authorized User Data for a period of:

- 30 calendar days after the effective date of termination, if the termination is for convenience; or
- 60 calendar days after the effective date of termination, if the termination is for cause.

Additional time prior to erasure may be agreed upon in writing by the Authorized User and Contractor.

5.48 Secure Data Disposal

When requested by the Authorized User for any reason, the Contractor shall destroy Data in all of its forms, including all back-ups or storage media containing the data. Data shall be permanently deleted and shall not be recoverable, according to ITS Policy S13-003 Sanitization/Secure Disposal or successor and S14-003 Information Security Controls or successor or other relevant policies and procedures per the Authorized User Agreement. Certificates of destruction, in a form acceptable to the Authorized User, shall be provided by the Contractor to the Authorized User.

5.49 Embedded Software/Firmware; Updates

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