



# Office of General Services Procurement Services

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

## Request for Proposal (Revised 3/3/2026)

<b>BID OPENING</b> <b>DATE:</b> April 2, 2026 <b>TIME:</b> 1:30 P.M. ET <b>REQUEST FOR PROPOSAL NUMBER:</b> 23383	<b>TITLE:</b> Group 73600 – Information Technology Umbrella Contract – Distributor Based (Statewide)  <b>Classification Codes:</b> 14, 43, 44 and 45
<b>CONTRACT</b> December 07, 2026 – December 06, 2031  <b>PERIOD:</b>	
<b>DESIGNATED CONTACTS:</b> In accordance with the Procurement Lobbying Law [State Finance Law § 139j(2)(a)], the following individuals are the Designated Contacts for this RFP. All questions relating to this RFP must be addressed to the Designated Contacts.	
Email Address: <a href="mailto:OGS.sm.Ps.DistUmbrella.Contractors@ogs.ny.gov">OGS.sm.Ps.DistUmbrella.Contractors@ogs.ny.gov</a>	
Karley Delaney, Rachael Smelyansky and Maureen Younkin	

<b>Bidder's Federal Tax Identification Number:</b> <i>(Do Not Use Social Security Number)</i>	<b>NYS Vendor Identification Number:</b> <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
Email Address:	Company Website:

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

<input type="checkbox"/> Lot 1A – Software up to \$10,000 <i>imited to SDVOBs, M/WBEs &amp; SBEs</i>	<input type="checkbox"/> Lot 1B – Software \$10,001 and up	<input type="checkbox"/> Lot 2A – Hardware up to \$10,000 <i>imited to SDVOBs, M/WBEs &amp; SBEs</i>	<input type="checkbox"/> Lot 2B – Hardware \$10,001 and up
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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:

**OGS Use Only:** # of Binders/Packages: \_\_\_\_\_ # of USB Flash Drives \_\_\_\_\_ Documented by: \_\_\_\_\_

### Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 270 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 this Request for Proposal.
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**

**Contents**

1. INTRODUCTION .....8

    1.1 Overview .....8

    1.2 Scope .....8

    1.3 Lot Overview .....9

    1.4 Related Services .....9

    1.5 Excluded Items .....10

    1.6 Prohibited Lists .....10

    1.7 Estimated Quantities .....12

    1.8 Key Events/Dates .....12

    1.9 NYS Contract Reporter .....12

    1.10 Bidder Questions .....13

    1.11 NYS Comptroller Approval .....13

    1.12 Summary of Policy and Prohibitions on Procurement Lobbying .....13

    1.13 Definitions .....13

    1.14 Appendices and Attachments .....16

    1.15 Conflict of Terms .....16

    1.16 Contractor Participation .....17

2. BIDDER QUALIFICATIONS .....17

    2.1 Minimum Qualifications .....17

        2.1.1 Lot 1A – Software Purchases Up To \$10,000 .....17

        2.1.2 Lot 1B – Software Purchases \$10,001 and Above .....18

        2.1.3 Lot 2A – Hardware Purchases Up To \$10,000 .....18

        2.1.4 Lot 2B – Hardware Purchases \$10,001 and Above .....18

    2.2 Experience Requirements .....18

3. BID SUBMISSION .....19

    3.1 Performance and Bid Bonds .....19

    3.2 NYS Vendor File Registration .....19

    3.3 Format of Bid Submission .....19

    3.4 Content .....20

    3.5 Bid Envelopes and Packages .....22

    3.6 Bid Delivery .....22

    3.7 Important Building Access Procedures .....22

    3.8 NYS Required Certifications .....23

    3.9 Bid Deviations .....23

    3.10 Bid Opening Results .....23

    3.11 Bid Liability .....23

    3.12 NYS Reserved Rights .....23

    3.13 Incorporation .....24

4. METHOD OF AWARD .....24

4.1 General.....24

4.2 Evaluation Components .....25

4.3 Technical Evaluation.....25

4.3.1 Pass/ Fail – Years in the Industry of the Request for Proposal .....25

4.3.2 Governmental Contract Dollar Values and Manufacturer Authorization Letters (20%) .....25

4.3.3 Desirable Characteristics (5%) .....26

4.3.5 Cost Evaluation (75%) .....26

4.4 Pricing Categories .....26

4.5 Cost Proposal Revision .....27

4.6 Notification of Award.....28

5. TERMS AND CONDITIONS .....28

5.1 Specifications .....28

5.2 Contract Term and Extensions .....28

5.3 Short term Extension.....28

5.4 Price .....29

5.5 NYS Labor Law § 220-i .....29

5.6 Price Updates.....29

5.7 Best Pricing Offer .....29

5.8 Price Structure.....30

5.9 Ordering .....30

5.10 Minimum Order .....30

5.11 Invoicing and Payment.....30

5.12 Product Shipping Dates and Delivery Time .....31

5.13 Product Returns and Exchanges .....31

5.14 Contract Administration.....32

5.15 NYS Financial System (SFS).....32

5.16 Web-Based Ordering .....32

5.17 N.Y. State Finance Law § 139-l.....33

5.18 Insurance .....33

5.19 Report of Contract Usage .....33

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.....34

5.21 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses ...36

5.22 Use of Recycled or Remanufactured Materials .....37

5.23 Bulk Delivery and Alternate Packaging.....37

5.24 Surplus/Take-Back/Recycling .....38

5.25 Environmental Sustainability and NYS Executive Order Number 22 .....39

5.26 Consumer Products Containing Mercury.....40

5.27 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.....40

5.28 Preferred Source Products .....40

5.29 NYS Vendor Responsibility .....40

5.30 NYS Tax Law Section 5-a .....41

5.31 Non-State Agencies Participation in Centralized Contracts.....42

5.32 Extension of Use .....42

5.33 New Accounts .....42

5.34 Centralized Contract Modifications .....42

5.35 Drug and Alcohol Use Prohibited .....43

5.36 Traffic Infractions.....43

5.37 Embedded Software/Firmware; Updates.....43

5.38 Purchasing Card Orders .....43

5.39 Replacement Contractor .....43

6. SPECIAL TERMS AND CONDITIONS.....44

6.1 Time to Return Phone calls or Respond to Emails .....44

6.2 Obtaining Quotes .....44

6.3 Distributor Who Has No Prior Relationship with a Manufacturer .....44

6.4 Consistent Quote Format .....44

6.5 Return of Unused Product.....44

6.6 Delivered Software Via Download.....44

6.7 Notification of Upcoming Maintenance Expiration .....45

6.8 Manufacturer Upgrades and/or “Patches” .....45

6.9 Authorized User Security Procedures .....45

6.10 State Security Policies and Procedures.....45

6.11 Reports Generated by State OGS Procurement Services.....45

6.12 Contract Termination and Maintenance Expiration .....46

6.13 Expiration of Contract; Survival of Authorized User Agreements .....46

**APPENDICES**

- Appendix A – *Standard Clauses for NYS Contracts* (June 2023) Appendix
- B – *General Specifications* (September 2021)
- Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023) Appendix
- D – *Contract Modification Procedure*

**ATTACHMENTS**

- Attachment 1 – *Bidder Submission Checklist* Attachment
- 2 – *NYS Required Certifications*
- Attachment 3 – *Encouraging Use of NYS Businesses*

Attachment 4 – *Insurance Requirements*

Attachment 5 – *Bidder Information Questionnaire* Attachment

6 – *Bidder Questions Form*

Attachment 7 – *Certification Under Executive Order No. 16*

Attachment 8 – *Manufacturer Authorization Letter*

Attachment 9 – *Report of Contract Sales*

Attachment 10 – *How to Use the Distributor Umbrella Contract*

Attachment 11A – *Pricing, Software, Lot 1A*

Attachment 11B – *Pricing, Software, Lot 1B*

Attachment 12A – *Pricing, Hardware, Lot 2A* Attachment

12B – *Pricing, Hardware, Lot 2B*

## 1. INTRODUCTION

### 1.1 Overview

This solicitation is issued by the New York State (NYS) Office of General Services, Procurement Services (OGS), a New York State Agency authorized by law to issue Centralized Contracts for use by NYS Agencies and other Authorized Users.

This RFP will establish up to twenty (20) Centralized Contracts (maximum of five (5) Contracts in each of the four (4) Lots included within this RFP) with Distributors to provide miscellaneous Software and Hardware, Maintenance, and Related Services (collectively referred to herein as Product) from multiple IT Manufacturers to NYS Authorized Users on a statewide basis. A Bidder may respond to and receive an Award for more than one (1) Lot.

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 RFP thoroughly and to precisely follow the instructions included in the RFP and all attachments.

The OGS Centralized Contracts will be established with Distributors meeting specific requirements and demonstrating best value as detailed in this RFP. These OGS Centralized Contracts will establish the standardized terms and conditions, guidelines, and processes that will govern the sale and purchase of Distributor based IT Products, at the transactional level, through a competitive RFQ process.

The RFQ will be developed based on the specific IT Product needs of the Authorized User made in accordance with the contract terms and distributed by the Authorized User to all Distributors in specific Lot(s) as determined by the Authorized User. An Authorized User will award an RFQ based on lowest price.

The RFQ award will result in an Authorized User Agreement for Distributor based IT Products. Each Authorized User Agreement for Distributor based IT Products will be governed first by the terms and conditions specified in the OGS Centralized Contract and second by terms and conditions added to the Authorized User RFQ. See Appendix B, Section 26 regarding modification of Contract terms.

Attachment 10 – *How to Use the Distributor Umbrella Contract* provides the Authorized User instructions on how to use the Information Technology Umbrella Contract – Distributor Based (Statewide).

### 1.2 Scope

It is the intent of this RFP to establish Contracts with Distributors to sell IT Products from multiple IT Manufacturers. Authorized Users will request Products from Distributors by issuing a competitive RFQ to all Distributors within a specific Lot(s).

#### In-Scope Items

This Request for Proposal and the resultant contracts include the purchase of the following:

- IT Products (software, hardware, maintenance, related services) from an IT manufacturer that does not hold an OGS Contract to sell its own Products

#### Out-of-Scope Items

This Request for Proposal and the resultant contracts exclude the purchase of the following:

- Products of a Manufacturer that holds an OGS Contract for the sale of the Manufacturer's Products that are the same or similar in scope of this RFP (please refer to Section 1.6, *Prohibited Lists*)
- ~~Products manufactured by a vendor which holds a Distributor contract resulting from this RFP~~
- ~~Product purchased from a vendor which holds a Distributor Contract resulting from this RFP~~

- All Cloud Products (see glossary definition for “Cloud”) regardless of if the Manufacturer has an OGS Contract
- Leasing
- Rentals
- Products, Maintenance, and Related Services not listed on the Manufacturer’s Price list

Individual Products cannot be Bid under this RFP. The Bidding structure for this RFP requires a Bidder to offer a Percentage Discount Off Manufacturer’s Suggested Retail Price (MSRP) that will be applied to all Products offered by the Manufacturer and will also apply to Product Maintenance and Related Services. Therefore, there will be no itemized price lists and no need for Product additions and/or deletions for any Contracts that result from this RFP.

**1.3 Lot Overview**

This Request for Proposal includes the following Lots:

Lot Type	Lot #	Lot Thresholds	Lot Description
Software	Lot 1A <b>Limited to SDVOBs, M/WBEs and SBEs</b>	Software up to \$10,000	Software Lots include commercially available software, Maintenance/Support for Manufacturer’s Proprietary Product line, and Related Services listed in the Manufacturer’s commercial price list.
	Lot 1B	Software \$10,001 and up	
Hardware	Lot 2A <b>Limited to SDVOBs, M/WBEs and SBEs</b>	Hardware up to \$10,000	Hardware Lots include Hardware Products (including new, refurbished, and remanufactured Hardware), Telecommunications Hardware, Appliances, Storage and the Hardware’s Related Ancillary Products and Related Software. This Lot also provides Warranties and Maintenance/Support for Manufacturer’s Proprietary Product line, and Related Services listed in the Manufacturer’s commercial price list.
	Lot 2B	Hardware \$10,001 and up	

**1.4 Related Services**

Related Services are limited to the following items:

- Installation
- Implementation
- Configuration
- Pre-packaged Training

- Volume License Agreement management

Related Services Requirements:

- All Related Services must be listed on the Manufacturer's commercial price list.
- Related Services cannot exceed the Price of the Related Service after the Percentage off MSRP from the NYS Pricelist or 20% of the total Products and Maintenance, whichever is lowest.
- Related Services must be completed within 12 months from the date listed on the Purchase Order for Products.

*Note: Authorized Users that purchase Related Services after initial purchase of the Product must include documentation of the initial purchase in the subsequent purchase's procurement record. The procurement record must include the total cost of Product previously purchased and must document that the Related Services do not exceed 20% of the total cost of the Product purchase.*

- The Related Services cost to Contractor cannot exceed the pricing on the Manufacturer's commercial price list.

Related Services may be performed by the Product Manufacturer or by another company but may not be performed by any of the Distributors under Contract.

### 1.5 Excluded Items

This Request for Proposal and the resultant awards exclude the purchase of the following Products:

- Products of a Manufacturer that holds an OGS Contract for the sale of the Manufacturer's Products (please refer to Section 1.6, *Prohibited Lists*)
- All Cloud Products (see glossary definition for "Cloud") regardless of if the Manufacturer has an OGS Contract
- Leasing
- Rentals
- Products, Maintenance, and Related Services not listed on the Manufacturer's Price list

### 1.6 Prohibited Lists

The Prohibited lists are lists of Manufacturers that are not available under the resulting Contracts due to the Manufacturers having other OGS Contracts or circumstances that prevent the Products from being purchased. Contractors cannot sell any Products of a Manufacturer within a Lot included in this Solicitation if the Manufacturer already holds an OGS Contract for the sale of the Manufacturer's Products that fall within the scope of the Lot. For example, if a Manufacturer holds another OGS Contract for Hardware, that Manufacturer's Products cannot be sold under Lot 2 – Hardware. The prohibited Software Manufacturer and prohibited Hardware Manufacturer lists will be updated by OGS from time to time and such updated lists will apply to this Contract.

A listing of prohibited Software Manufacturers can be found through the following link:

[https://online.ogs.ny.gov/purchase/snt/awardnotes/7360022876Prohibited\\_Software.xlsx](https://online.ogs.ny.gov/purchase/snt/awardnotes/7360022876Prohibited_Software.xlsx)

A listing of prohibited Hardware Manufacturers can be found through the following link:

[https://online.ogs.ny.gov/purchase/snt/awardnotes/7360022876Prohibited\\_Hardware.xlsx](https://online.ogs.ny.gov/purchase/snt/awardnotes/7360022876Prohibited_Hardware.xlsx)

If a Manufacturer included in the Contract price list obtains an OGS Contract for Software and/or Hardware, that Manufacturer will be added to the prohibited list for Lot 1 – Software and/or Lot 2 – Hardware and the Manufacturer's Products will no longer be eligible to be sold under this Contract.

~~NOTE: These lists are not all inclusive. Considering the frequent changes in the IT industry, an Authorized User is strongly encouraged to contact the NYS Office of General Services with any questions about whether a particular Product is produced by a prohibited Manufacturer.~~

**1.7 Estimated Quantities**

A Contract resulting from this RFP 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 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 *Centralized Contracts*.

**1.8 Key Events/Dates**

Event	Date	Time
Request For Proposal Release	December 22, 2025	N/A
Closing Date for First Round of Bidder Questions	<del>January 7, 2026</del> January 14, 2026 (Updated)	5:00 PM ET
OGS Procurement Services' Responses to First Round of Bidder Questions	January 22, 2026 (tentative)	N/A
Closing Date for Second Round of Bidder Questions	<del>February 4, 2026</del> February 16, 2026 (Updated)	<del>11:59 5:00</del> PM ET
OGS Procurement Services' Responses to Second Round of Bidder Questions	February 17, 2026 (tentative)	N/A
Bid Opening / Due date for Bids	<del>March 12, 2026</del> April 2, 2026 (Updated)	1:30 PM ET
Contract Approval Date / Award Publish Date	December 7, 2026	N/A

**1.9 NYS Contract Reporter**

Bidders must register with the New York State Contract Reporter (“NYSCR”) at <https://www.nyscr.ny.gov> to receive notifications about this Request for Proposal. 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 RFP 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 RFP documents.**

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

### 1.10 Bidder Questions

All questions regarding this Request for Proposal must be submitted using Attachment 6 – *Bidder Questions Form*, citing the applicable RFP document name and document section. The completed form must be emailed to OGS.sm.Ps.DistUmbrella.Contractors@ogs.ny.gov by the date and time indicated in the *Key Events/Dates* section. 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 RFP.

If Bidder intends to submit a Bid that deviates from the requirements of this RFP in any way, the proposed deviations must be submitted during the *Questions* period so that they may be given due consideration prior to the submission of Bids. See Section 3.9 - *Bid Deviations* for additional information.

### 1.11 NYS Comptroller Approval

In accordance with Section 112 of the State Finance Law, a Contract resulting from this Request for Proposal 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.

### 1.12 Summary of Policy and Prohibitions on Procurement Lobbying

Pursuant to State Finance Law § 139-j and § 139-k, this Request for Proposal 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 RFP. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to State Finance Law §139-j and §139-k. Certain findings of non-responsibility can result in rejection for Contract award and, in the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at:

<https://ogs.ny.gov/acpl/>.

### 1.13 Definitions

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

“**Appliance**” shall refer to a device with integrated Software (firmware), designed to provide a specific computing resource. The Hardware and Software are pre-integrated and pre-configured before delivery to customers, to provide a “turnkey” solution to a particular problem. Unlike general purpose computers, Appliances are generally not designed to allow the customers to change the Software (including the underlying Operating System), or to flexibly reconfigure the Hardware. To be considered an Appliance, the (Hardware) device needs to be integrated with Software, and both are supplied as a package

**“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 this Request for Proposal.

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

**“Cloud”** shall mean any Product, Bundles or Service sold as an “as a Service” offering or in which Authorized User Data is transmitted, acted upon, or stored on Non-Authorized User Equipment. This may include, but is not limited to, hosted applications, managed Services, and Off-Site Data Storage. Cloud includes IaaS, PaaS, SaaS, and XaaS.

**“Configuration”** shall refer to an arrangement of elements in a particular form, figure, or combination which includes minor physical or Software setting changes that can be implemented without custom physical modifications or changes to the base code.

**“Deliverable”** shall refer to Products, Software, Information Technology, telecommunications technology, Hardware, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished within the provision of Services.

**“Discount”** shall refer to an allowance, reduction or deduction from a selling price or list price extended by a seller to a buyer in order for the net price to become more competitive. More common forms of Discounts include Trade Discounts, Quantity Discounts, Seasonal Discounts and Cash Discounts.

**“Distributor”** shall refer to a company or individual (merchant) that purchases a large volume of IT Hardware and Software Products from multiple Manufacturers with the intention of selling them rather than consuming or using them. Also known as large account value added reseller (VAR), channel partner or dealer.

**“Equipment”** shall refer to an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or Subsystem, including its Hardware and Operating Software (if any). See also “Appliance” and “Hardware”.

**“Hardware”** refers to IT Equipment and is contrasted with Software. See also Equipment.

**“Maintenance”** refers to the upkeep of Product that neither adds to its permanent value nor prolongs its intended life appreciably but instead keeps it in an efficient operating condition. Maintenance shall not include Cloud offerings or remote monitoring of any type.

**“Manufacturer”** refers to a person or business entity that creates, makes, processes, or fabricates a Product or something of value, which changes a raw material or commodity from one form to another or creates a new Product or commodity.

**“Manufacturer Authorization Letter”** refers to a document signed by an officer of a Manufacturer company who is authorized to sign on behalf of the company. The Manufacturer Authorization Letter provides proof that the Distributor has a relationship with the Manufacturer and is authorized to sell the Manufacturer’s Products.

**“Manufacturer List Price”** shall refer to the price suggested by Manufacturer or supplier of a Product. It is also known as the Manufacturer’s Suggested Retail Price (MSRP), suggested retail price, advertised price and published price.

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

“**Non-State Agencies**” shall refer to political subdivisions and other entities authorized by law to make purchases from OGS Centralized Contracts other than those entities that qualify as State Agencies. This includes all entities permitted to participate in centralized Contracts per Appendix B, §27(b), Non-State Agency Authorized Users and §27(c), Voluntary Extension and State Finance Law Section 163(1)(k).

“**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; Veterans’ Day; Thanksgiving Day; and Christmas Day.

“**NYS Small Business Enterprise (SBE)**” is defined as a company that is a resident to New York State, independently owned and operated, with 100 or fewer employees, and not dominant in its field. See State Finance Law §160(8).

“**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.

“**Office of the State Comptroller (OSC)**” refers to the New York State Office of the State Comptroller. <http://www.osc.state.ny.us/>

“**Percentage Discount Off Manufacturer’s Suggested Retail Price (MSRP)**”, shall refer to the Percentage Discount that the Distributor has applied on Attachment 11 (A&B), and Attachment 12 (A&B) with their Bid, and will provide the **discount sum** that is **applied to subtracted from** the MSRP to establish the not-to-exceed pricing, see Section 5.4 – *Price* herein, and Section 1.5 of the *How to Use* for further details.

“**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 (“NYSPPro”) and Procurement Services Group (“PSG”).

“**Product**” shall mean Hardware, Software, Maintenance, and Related Services. Product does not include Cloud.

“**Related Services**” are limited to the following items if listed in the Manufacturer’s price list: Installation; Implementation; Configuration; Pre-packaged Training; and Volume License Agreement management. Related Services cannot exceed 20% of total purchase of Product and Maintenance.

“**Related Software**” refers to Software which is bundled with Hardware and is required for installation, Configuration and is integral to the operation of the Hardware.

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

“**Service**” refers to the performance of a task or tasks and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For the purposes of this Request for Proposal, technology shall be deemed a Service.

“**Software**” is an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including operating Software, programming aids, application programs, and program Products.

“**Storage**” specific to technology, a computer memory that retains data for some period of time. Storage can be categorized in many ways such as: primary or secondary; read-only, random access and magnetic Storage.

“**System**” the complete collection of Hardware, Software and Services as described in the resulting Authorized User Agreements, integrated and functioning together, and performing in accordance with this Contract.

“**Training**” refers to Training that is designed to meet the special requirements of an Authorized User.

“**Usage**” refers to the quantity of an inventory item consumed over a period of time expressed in units of quantity or of value in dollars.

#### **1.14 Appendices and Attachments**

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

Appendix A – *Standard Clauses for NYS Contracts (June 2023)*

Appendix B – *General Specifications (September 2021)*

Appendix C – *Federal Funding Agency Mandatory Terms and Conditions*

Appendix D – *Contract Modification Procedure*

Attachment 1 – *Bidder Submission Checklist*

Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Encouraging Use of NYS Businesses*

Attachment 4 – *Insurance Requirements*

Attachment 5 – *Bidder Information Questionnaire*

Attachment 6 – *Bidder Questions Form*

Attachment 7 – *Certification Under Executive Order No. 16*

Attachment 8 – *Manufacturer Authorization Letter*

Attachment 9 – *Report of Contract Sales*

Attachment 10 – *How to Use the Distributor Umbrella Contract*

Attachment 11A – *Pricing, Software, Lot 1A*

Attachment 11B – *Pricing, Software, Lot 1B*

Attachment 12A – *Pricing, Hardware, Lot 2A*

Attachment 12B – *Pricing, Hardware, Lot 2B*

#### **1.15 Conflict of Terms**

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

1. Appendix A – *Standard Clauses for New York State Contracts*;
2. Appendix C – *Federal Funding Agency Mandatory Terms and Conditions*;
3. This *Request for Proposal*;
4. Appendix B – *General Specifications*;
5. All other appendices and attachments to this RFP;
6. The Bidder's Bid.

### **1.16 Contractor Participation**

Any Contract resulting from this RFP may be made inactive for a period of up to six (6) months or terminated if, on the one-year anniversary date of the Contract Award, and annually thereafter, the Contractor has six (6) or more instances of not responding to Requests for Quotes (RFQs) and/or has not made sales under the Contract due to lack of participation (i.e. not replying to RFQs or replying "no bid" to RFQs) the previous year.

Termination of a Contract under this Section is in addition to Appendix B - *Termination*, and shall take effect upon written notification to the Contractor. A Contract may also be terminated for failure to timely submit the reports required under the Contract.

## **2. 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 must meet the following qualifications:

### **2.1 Minimum Qualifications**

#### **2.1.1 Lot 1A – Software Purchases Up To \$10,000**

##### Qualifications

1. At least 1 year of continuous operation for the year prior to and including the Bid opening date
2. At least 1 year of experience as a Software Distributor for multiple IT Manufacturers. Experience must be with government entities and within the past 2 years

In addition, eligibility for this lot is limited to the following:

- Bidder is a New York State Certified Minority- or Women-Owned Business Enterprise; or
- Bidder is a New York State certified Service-Disabled Veteran-Owned Business; or
- Bidder meets the definition of a New York State Small Business which is as follows:

A business which is resident in New York State, independently owned and operated, not dominant in its field, and employs one hundred or less persons (see State Finance Law section 160(8)).

### 2.1.2 Lot 1B – Software Purchases ~~\$10,001~~ ~~\$10,000~~ and Above

#### Qualifications

1. At least 3 years of continuous operation for the 3 years prior to and including the Bid opening date
2. At least 3 years of experience as a Software Distributor for multiple IT Manufacturers. Experience must be with government entities and within the past 6 years

### 2.1.3 Lot 2A – Hardware Purchases Up To \$10,000

#### Qualifications

1. At least 1 year of continuous operation for the year prior to and including the Bid opening date
1. At least 1 year of experience as a Hardware Distributor for multiple IT Manufacturers. This experience must be with government entities and within the past 2 years

In addition, eligibility for this lot is limited to the following:

- Bidder is a New York State Certified Minority- or Women-Owned Business Enterprise; or
- Bidder is a New York State certified Service-Disabled Veteran-Owned Business; or
- Bidder meets the definition of a New York State Small Business which is as follows:

A business which is resident in New York State, independently owned and operated, not dominant in its field, and employs one hundred or less persons (see State Finance Law section 160(8)).

### 2.1.4 Lot 2B – Hardware Purchases ~~\$10,001~~ ~~\$10,000~~ and Above

#### Qualifications

2. At least 3 years of continuous operation for the 3 years prior to and including the Bid opening date
3. At least 3 years of experience as a Hardware Distributor for multiple IT Manufacturers. This experience must be with government entities and within the past 6 years

## 2.2 Experience Requirements

The Bidder must attest to having the required number of year(s) of experience as a Distributor of IT Products for multiple IT Manufacturers (Hardware and/or Software). The “Bidder” is the company whose Tax Employer Identification Number (EIN) appears on the documents submitted in response to this RFP. All responses must pertain to this entity, not to a parent entity, a subsidiary company with a different FEIN, or an operating division within the entity, except as described below. For example:

- Company A has been in business as a Distributor of IT Products for multiple IT Manufacturers for two (2) years. Its parent company, company B, has been in business for more than three (3) years but not as a Distributor. Neither company meets the definitions of a M/WBE, SDVOB, or a New York State Small Business. Neither company is eligible to respond to this RFP.
- Company C has been in business as a Distributor of IT Software Products for multiple IT Manufacturers for more than three (3) years. Its parent company, company D, has been in business for more than three (3) years but not as a Distributor. Neither company meets the definitions of a M/WBE, SDVOB, or a New York State Small Business. Company C is eligible to respond to Lot 1B of this RFP. Company D is not eligible to respond to this RFP

There are two (2) qualifications to the above. First, changes to the EIN which did not involve another organization – for example, a change in tax identification number as a result of changing from a corporation to an LLC are not considered EIN changes for the purposes of this section. Second, in the case of entities that have new EINs or that have undergone mergers or acquisitions, the State may consider the relevant experience and qualifications of

the companies which combined to create the new entity. In the response to this section, Bidders must provide a sufficient description of each such merger or acquisition to enable the State to easily determine the years of Distributor experience of the combined entity. All determinations of eligibility are solely up to the State and are final.

### **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 Request for Proposal, the 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 RFP. (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](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 this RFP. OGS will initiate the vendor registration process for all Bidders. 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. 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.

A Bid that fails to conform to the requirements of the RFP may be considered non-responsive and may be rejected prior to evaluation. This includes, but is not limited to:

1. Responses received after the date and time of the Bid opening (late bid responses)
2. E-mail or facsimile Bid submissions
3. Bids not submitted in the format(s) specified in this RFP
4. Incomplete, absent, and/or inaccessible Price Pages (Attachment 11 – *Pricing, Software* and Attachment 12 – *Pricing, Hardware*) are not acceptable.
5. Bids submitted with unauthorized changes to Bid documents issued by OGS

- 6. Bids submitted with material deviations (including additional, inconsistent, conflicting, or alternative terms)
- 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 RFP requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the RFP 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.

**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 1 – *Bidder Submission Checklist*.

	<b>Bid Document</b>	<b>Required File Format (Submit on USB)</b>	<b>Original also Required (Submit paper original)</b>
<b>1</b>	Page 1 of the Request for Proposal	PDF	<b>X</b>
<b>2</b>	Page 2 of the Request for Proposal – <i>Bidder Certification and Affirmation</i> , with signature	PDF	<b>X</b>
<b>3</b>	Acknowledgment of RFP update(s)	<b>PDF</b>	<b>X</b>
<b>4</b>	Appendix C – <i>Federal Funding Agency Mandatory Terms and Conditions</i> , with Section 10 completed (page 6)	PDF	
<b>5</b>	Attachment 1 – <i>Bidder Submission Checklist</i> (must be included with the Bid at the Bid Opening / Due date for Bids)	Excel	
<b>6</b>	Attachment 2 – <i>NYS Required Certifications</i> , with signature	PDF	
<b>7</b>	Attachment 3 – <i>Encouraging Use of NYS Businesses</i>	PDF	
<b>8</b>	Proof of Compliance with Attachment 4 – <i>Insurance Requirements</i> .	PDF	
<b>9</b>	Attachment 5 – <i>Bidder Information Questionnaire</i>	Excel	
<b>10</b>	Attachment 6 – <i>Bidder Questions Form</i>	Not required to be submitted with the Bid	
<b>11</b>	Attachment 7 – <i>Certification Under Executive Order 16</i> , with signature	PDF	
<b>12</b>	Attachment 8 – <i>Manufacturer Authorization Letter</i>	PDF	

13	Attachment 9 – <i>Report of Contract Sales</i>	Not required to be submitted with the Bid	
14	Attachment 10 – <i>How to Use the Distributor Umbrella Contract</i>	Not required to be submitted with the Bid	
15	Attachment 11A – <i>Pricing, Software, Lot 1A</i>	Excel	
16	Attachment 11B – <i>Pricing, Software, Lot 1B</i>	Excel	
17	Attachment 12A – <i>Pricing, Hardware, Lot 2A</i>	Excel	
18	Attachment 12B – <i>Pricing, Hardware, Lot 2B</i>	Excel	
19	EEO 100 – <i>Equal Employment Opportunity Staffing Plan</i> , with signature (see <a href="https://ogs.ny.gov/mwbe/forms">https://ogs.ny.gov/mwbe/forms</a> under “Commodity & Service Contracts”)	PDF	
20	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 <a href="https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendorresponsibility-questionnaire">https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendorresponsibility-questionnaire</a> )	PDF	
21	ST-220-CA, <i>Contractor Certification to Covered Agency</i> , with signature and notary (see <a href="https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf">https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf</a> )	PDF	
22	ST-220-TD, <i>Contractor Certification</i> , with signature and notary (see <a href="https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf">https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf</a> )	Must be submitted directly to the NYS Tax Department	

- B. Documents must 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.

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. Request for Proposal number (23383)
3. Bid Opening Date and Time (April 2, 2026, at 1:30 p.m.)
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

All Bids should also include an ORIGINAL and PDF copy of pages 1 and 2 of the Request for Proposal, and the Bid Solicitation Update form(s) completed with the Bidder's information. The printed copy of pages 1 and 2 and the Bid Solicitation Update form(s) 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 the Bid opening date and time as stated in Section 1.8 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 – RFP 23383

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the time clock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid opening. Late Bids shall be rejected. 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, RFP number, date and estimated time of delivery or visit, first and last name of visitor, and visitor's cell phone number. Visitor may email [customer.services@ogs.ny.gov](mailto: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 Bid Deviations**

Bids must conform to the terms set forth in this Request for Proposal. As set forth in Bidder Questions, if Bidder intends to submit a Bid that deviates from the requirements of the RFP in any way, the proposed deviations must 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 RFP 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 will not be considered part of the Bid or resulting Contract but may be included for informational or promotional purposes only.

### **3.10 Bid Opening Results**

OGS Procurement Services posts Bid information on the OGS Procurement Services website. The Bid Opening Results webpage makes available the list of Bidders that responded to this RFP. 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>.

### **3.11 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.

### **3.12 NYS Reserved Rights**

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

- A. Reject any or all Bids received in response to this RFP;
- B. Withdraw the RFP at any time at the sole discretion of the State;
- C. Make an award under the RFP in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the RFP; E. Seek clarifications and revisions of the Bid;
- F. Amend the Request for Proposal 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 Request for Proposal 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 RFP 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 RFP;
- 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 RFP;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of Bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/Product/model/code number is stated by the State or the Bidder; S. Reject an obviously unbalanced Bid as determined by the State;
- T. Conduct Contract negotiations with the next Responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, region, or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in this RFP (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 Request for Proposal.

### **3.13 Incorporation**

Portions of the successful Bidder's Bid and of this Request for Proposal 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**

### **4.1 General**

Each Lot will be awarded to Bidders having the highest total points within a Lot. Point allocation will be based on a Best Value evaluation of Bidder qualifications and desirable characteristics satisfied by a Bidder. Point allocation will also be based on pricing for each Lot, which will be assessed by using information obtained from Attachment 11(A & B) – *Pricing, Software* and/or Attachment 12(A & B) – *Pricing, Hardware*.

Up to five (5) Contracts will be awarded per Lot, OGS reserves the right to award a Centralized Contract for any Lot with three or more Bidders that are eligible for Contract award.

Bidders are strongly encouraged to read the language of this RFP thoroughly and to precisely follow the instructions included in the attachment pages.

**4.2 Evaluation Components**

The following components have points assigned in the evaluation criteria:

Factor	Weight
<b>Technical</b>	<b>25% (as divided below)</b>
<b>Minimum Qualification –Years of continuous operation and in scope experience (Pass/Fail)</b>	0%
Governmental Contract Dollar Values and Manufacturer Authorization Letters	Government Contract Values 8% Manufacturer Authorization Letters 12%
Desirable Characteristics	5%
<b>Cost</b>	<b>75%</b>
Pricing Category 1	50%
Pricing Category 2	5%
Pricing Category 3	20%

**4.3 Technical Evaluation**

**4.3.1 Pass/ Fail – Years in the Industry of the Request for Proposal**

In order to qualify for a Contract, Bidder must demonstrate the required years of continuous operation and experience as a Distributor of IT Products for multiple IT Manufacturers, as stated in Section 2.1 – *Minimum Qualifications*. Evidence of years of experience must be provided through government contract dates. This qualification is a Pass/Fail qualification. If a Bidder does not have the required years of continuous operation and experience, their proposal will not be considered for a Contract award.

**4.3.2 Governmental Contract Dollar Values and Manufacturer Authorization Letters (20%)**

Up to three (3) governmental Contract dollar values, similar in Scope to this RFP will be evaluated for each Bidder in each Lot. The governmental Contract dollar values submitted by Bidders will be tallied and a median Tallied Contract Value will be determined. Bids that have a Tallied Contract Value equal to or greater than the median Tallied Contract Value for that Lot, will proceed in the evaluation process. Bids that have a Tallied Contract Value that is less than the median Tallied Contract Value for that Lot, will be removed from further consideration for

Contract award. However, if there are less than ten (10) Bids with Tallied Contract Values that are equal to or above the median Tallied Contract Value within a Lot, the ten (10) highest Tallied Contract Values for the Lot will proceed in the evaluation process.

Points will be allocated for the Bidders that move on from the evaluation process above. The Bidders with the highest combined governmental Contract dollar values for their prospective Lots will receive the most points. Governmental Contract dollar values are the Contract values as determined by governmental entity. The Contract value will be the estimated value as determined by the governmental entity. During the evaluation phase, OGS Procurement Services will contact the references, provided by Bidders in Attachment 5 – *Bidder Information Questionnaire*, to verify Contract values. References will be given five (5) Business Days to respond. If a reference for a Contract dollar value has not responded after five (5) Business Days, the Contract dollar value associated with that reference will be excluded from inclusion in the evaluation process. Bidders may also opt to secure a signed letter from a reference listing Contract dollar values and all other points of information in Attachment 5 and include it with their Bid submission to ensure the reference is included in the evaluation process.

Bidders must submit Authorization Letters from the qualified Manufacturers they have established relationships with. A blank Authorization Letter is included as Attachment 8 – *Manufacturer Authorization Letter*. Bidders with the highest amount of Authorization Letters submitted in pricing Categories 1 and 2 will receive the most points.

#### 4.3.3 Desirable Characteristics (5%)

Bidders can choose to offer/meet Desirable Characteristics included in Attachment 5 – *Bidder Information Questionnaire*. Additional points will be awarded for each desirable characteristic satisfied.

#### 4.3.5 Cost Evaluation (75%)

Attachment 11(A & B) – *Pricing, Software* and Attachment 12(A & B) – *Pricing, Hardware*

A Bidder's cost proposal shall be submitted by completing one or more of the following Attachments: Attachment 11A (for Software purchases up to \$10,000 and limited to SDVOBs, M/WBEs and SBEs), Attachment 11B– *Pricing, Software* and/or Attachment 12A (for Hardware purchases up to \$10,000 and limited to SDVOB, M/WBEs and SBEs), and/ or Attachment 12B – *Pricing, Hardware*. Each Bid must include a Percentage Discount Off Manufacturer's Suggested Retail Price (MSRP) for the Manufacturers listed. The Percentage Discount Off MSRP will apply to all Products the Manufacturer offers commercially. The Discount and the three pricing categories are described in Section 4.4 – Pricing Categories.

All Percentage Discount values shall not exceed two decimal places (e.g. 20.25222% shall be rounded to nearest one hundredth 20.25%). A Percentage Discount value cannot be expressed as a range (ex 10%-20%, or "varies").

### 4.4 Pricing Categories

Pricing Category 1 contains prepopulated lists of Manufacturers that Authorized Users commonly purchase Products from. Bidders will apply a Percentage Discount Off MSRP for each Manufacturer listed for each Lot Bid. A total cost will be calculated for all Bids to determine point allocation based on the weight for cost in the above table under Section 4.2 – *Evaluation Components*.

In Pricing Category 2, Bidder should list all the Manufacturers not listed in Pricing Category 1 that Bidder plans to use in the Contract and offer a Percentage Discount Off MSRP for each Manufacturer. OGS will only include Category 2 in the evaluation if there are common Manufacturer(s) listed across all Bidders' bids in Category 2.

Category 2 evaluation, if applicable, will only include the common Manufacturers identified in Category 2. All other Manufacturers offered in Category 2 will be evaluated as part of Pricing Category 3.

Pricing Category 3 contains a line item for a single Percentage Discount Off MSRP Bid for all other Manufacturers not identified for evaluation in Pricing Category 1 and Pricing Category 2.

**The Percentage Discounts Off MSRP bid will apply to all Products that the Manufacturer offers commercially.**

Each pricing category will be scored, and Contracts will be awarded to Bidders per the terms of this RFP based on the **combined technical plus cost score** offered to the State.

After Contracts are awarded, a Bidder's listed Contract rates shall be the Percentage Discount Off MSRP that were offered in Bidder's submission. More favorable pricing can be offered to Authorized Users in the RFQ process. At time of purchase, to facilitate competition, Authorized Users will be required to solicit quotes from all awardees within a Lot; Bidders are encouraged to quote the best pricing possible during the RFQ process.

#### **4.5 Cost Proposal Revision**

The State reserves the right to request a cost proposal revision, in accordance with State Finance Law §163.9(c), from any Bidder determined by the State to be **provisionally** eligible for tentative award. Any such cost proposal revision process will be completed prior to release of tentative awards. To be eligible for a tentative award, a Bidder's bid must be responsive, complete, and within the five (5) **bids with the highest combined technical and cost score** in either of the four (4) individual Lots **following the cost proposal revision process**. Up to twenty (20) Contracts with a maximum of five (5) Contracts per Lot will be awarded as a result of this RFP.

All Bidders are encouraged to propose the best possible offers at the onset of the initial Bid as there is no guarantee that any proposal will be allowed an opportunity to submit a revised cost proposal. Bidders are also advised that partially participating in the cost proposal revision process, or not participating at all, may result in a change in the Bidder's rank if other Bidders choose to submit a **higher lower** Percentage Discount Off MSRP in the cost proposal revision process.

A Bidder who is requested to participate in a cost proposal revision process must submit the Attachment 11 (A&B)– *Pricing, Software* and/or Attachment 12(A&B) – *Pricing, Hardware* provided by Procurement Services, revised with the Bidder's cost proposal revision, in accordance with the format described in Section 3.3, *Format of Bid Submission*, by the date required by Procurement Services in the cost proposal revision notice sent to the Bidder. The Bidder must also submit a **signed** form provided by Procurement Services, by the date required, that **acknowledges** that the cost proposal revision has been submitted by an individual with the express authority to sign on behalf of the Bidder. The cost proposal revision process, including information sent to the Bidder and the Bidder's submission of the revised Attachment 11 – *Pricing, Software* and/or Attachment 12 – *Pricing, Hardware*, will be provided via e-mail to Bidder's designated point of contact. Information about the cost proposal revision process will be sent via email to eligible Bidders prior to release of the cost proposal revision process, and Bidders will be given the opportunity to submit questions at that time. Answers to questions will be provided to all Bidders **participating in the Cost Proposal Revision**.

A cost proposal revision must offer a discount off MSRP that is equal to or great than the discount in the initial bid. Bidders participating in the cost proposal revision process cannot add Manufacturers that were not in the initial Bid or remove Manufacturers that were in the initial Bid. Procurement Services shall not consider a cost proposal revision for the following: (1) Manufacturers not identified in the notice sent to the Bidder as being included in the cost proposal revision process; (2) a cost proposal revision that includes a lower Percentage Discount Off MSRP than the initial Bid.

Bids from Bidders participating in a cost proposal revision will be re-evaluated based on their cost proposal revision **submission** If a Bidder participating does not respond to a cost proposal revision request or responds after the due

date established by OGS, the Bidder will only be evaluated based on the Percentage Discount Off MSRP submitted in their initial Bid, or **the most** recent Attachment 11 (A&B) – *Pricing, Software* and/or Attachment 12 (A&B) – *Pricing, Hardware*, if there had been a previous cost proposal revision request in which the Bidder participated.

OGS reserves the right to conduct multiple rounds of the cost proposal revision process, if doing so is determined to be in the best interest of the State.

#### **4.6 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 Specifications**

Product shall be designed and assembled in accordance with all applicable industry standards and comply with all governmental regulations. If applicable, the appropriate decals indicating compliance shall be affixed to the Product. Product shall conform to any and all applicable New York State laws, regulations and directives, including but not limited to, New York Codes, Rules and Regulations (NYCRR) and Environmental Protection Agency (EPA) and Occupational Safety & Health Administration (OSHA) requirements.

#### **5.2 Contract Term and Extensions**

The Contract shall be in effect for a term of up to five (5) years. The Contract term shall commence after all necessary approvals and shall become effective on December 7, 2026, or upon the date of OSC approval of the final executed documents, whichever is later, and the Contract term shall end five (5) years from the date of OSC approval or December 7, 2031, whichever is later.

All OGS Centralized Contracts resulting from this Request for Proposal shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for five (5) 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 the approval of OSC and any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B - *Contract Term – Extension*.

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

#### **5.3 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.

#### **5.4 Price**

Pricing will be collected using Attachment 11 (A&B) – *Pricing, Software* and Attachment 12 (A&B)– *Pricing, Hardware*. The Attachment 11 (A&B) and Attachment 12 (A&B) price lists do not contain Products or prices. Instead, they list a Percentage Discount Off Manufacturer’s Suggested Retail Price (MSRP) for a variety of Manufacturers. All Percentage Discounts Off MSRP listed on Attachment 11 (A&B) and Attachment 12 (A&B) are **the minimum percentages** which the Contractor may not **reduce** when providing quotes under the Contract. Contractors may offer higher Percentage Discounts Off MSRP to the Authorized User for more favorable pricing.

#### **5.5 NYS Labor Law § 220-i**

All Contractors and subcontractors submitting Bids to an Authorized User for construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication work on Authorized User public work projects or private projects covered by Article 8 of the Labor Law are required to register with the New York State Department of Labor (NYSDOL) under Labor Law Section 220-i.

Labor Law Section 220-I (6) prohibits Contractors from Bidding on public work and subcontractors from commencing work unless the Contractor or subcontractor is registered with NYSDOL. Contractors are required to submit its Certificate of Registration with its Bid materials when responding to an RFQ that is subject to Section 220-I, as determined by the Authorized User. Such Contractors shall submit its Certificate of Registration to Authorized Users in its response to the RFQ. Failure to provide proof of registration may disqualify a Contractor from receiving an award under the RFQ. Subcontractors must also be registered as required by Labor Law Section 220-I before commencing work on a covered project.

Any Contractor offering services under the Contract that involves the performance of work that is covered by Article 8 of the Labor Law must obtain and maintain an active valid Certificate of Registration for the duration of the Contract Term. Any Contractor that must obtain and retain a Certificate of Registration under this section that is using any Subcontractor(s) to provide a service covered by Article 8 of the Labor Law under this Contract must require all subcontractor(s) to register with NYSDOL and obtain a Certificate of Registration before commencing work on a covered project, and any such subcontractor must maintain an active valid registration for the duration of the Contract Term.

#### **5.6 Price Updates**

All Percentage Discounts Off MSRP shall remain firm (unchanged) for the duration of the Contract. **Distributors may give Authorized Users a higher Percentage Discount Off MSRP on RFQs** at any time during the Contract term, without prior approval from OGS.

#### **5.7 Best Pricing Offer**

During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor 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, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

### **5.8 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.

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

### **5.9 Ordering**

Purchase Orders shall be made in accordance with the terms set forth in Appendix B - *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering or e-mail 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. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized Username, and sales representative (if applicable).

### **5.10 Minimum Order**

There is no minimum order for this Contract.

### **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 pricing on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date

- Invoice Date
- Invoice Number
- Invoice Amount
- 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 Shipping Dates and Delivery Time**

Delivery shall be expressed in number of calendar days required to make delivery after receipt of a Purchase Order. Delivery time will be based on timeframes specified by each Authorized User's RFQ at time of purchase. Pursuant to Appendix B - *Shipping/Receipt of Product*, freight terms are FOB Destination.

The following provisions for Shipping Dates and Delivery Time shall apply:

- A. Contractor shall provide the Authorized User with written acknowledgement of orders, which will include anticipated shipping date, within two (2) Business Days after receipt of order.
- B. Contractor shall provide the Authorized User with written acknowledgement of the shipping date at least five (5) calendar days prior to shipment.
- C. If shipment will not be made within the delivery time, the Contractor shall provide Authorized User written notice as soon as a delay is anticipated, but no less than three (3) calendar days prior to the latest date of the original delivery obligation. This notification must include the reasons for the delay and the latest date the Product will be shipped.
- D. All correspondence on shipping dates and delivery time shall be directed to the ordering Authorized User's contact person.

### **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 ten (10) Business Days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error 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 thirty (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 (5) Business Days if it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

#### 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. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <https://www.osc.ny.gov/stateagencies/gfo/chapter-iii/iii1-statewide-financial-system-sfs-overview>.

#### 5.16 Web-Based Ordering

The State requires that the Distributor establish and maintain a dedicated NYS website specifically for the resulting Contract that has a web-based ordering system with the capability of receiving electronic orders from over 5,000 Authorized Users. The web-based ordering system shall have the full order inquiry capabilities and shall acknowledge receipt of an Authorized User's order. Distributor shall be required to post their Percentage Discounts off MSRP Manufacturers MSRP list(s) on the website. The Bidders website link(s) will be listed under the Contractor information on the OGS website. The Distributor's website will be the responsibility of the Distributor to maintain and keep updated. The Distributor's website shall be operational and able to accept orders within thirty (30) calendar days of Contract execution. The State reserves the right to request demonstrations of the Contractor's website.

The web-based ordering system must be capable of controlling, documenting, and reporting on the following minimum data elements:

- Contractor Name and Address
- Contract Number
- Ordering Agency
- Ordering Agency Contact
- Ordering Agency Address
- Purchase Order Number
- Delivery Location
- Delivery Instructions
- Stock Number
- Manufacturer
- Description
- Unit of Measure
- List Price (Unit)
- Net Price (Unit)

### **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 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-harassmentworkplace/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 9 – *Report of Contract Sales* including total sales to Authorized Users of this Contract by Contractor no later than fifteen (15) days after the close of each calendar quarter. 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 quarterly report.

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual 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 9 – *Report of Contract Sales* 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.

In accordance with Section 5.26 *Environmental Sustainability and NYS Executive Order Number 22*, Contractor shall identify any Products that meet GreenNY Specifications on Contract Usage Reports. The report must also include, at a minimum, details about the third-party sustainability certifications and other environmental attributes of the Products and related packaging offered under the Contract.

The Authorized User reserves the right to request its applicable sales data from the Contractor, based on criteria identified by the Authorized User, over the life of the Contract. If sales data is requested, Contractor must provide datapoints that are required by Attachment 9 – *Report of Contract Usage*.

## **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

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

- 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](mailto: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 Use of Recycled or Remanufactured Materials**

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Request for Proposal. Warranties on refurbished or remanufactured components or Products must be identical to the Manufacturer's new Equipment warranty or industry's normal warranty when remanufacturer does not offer new Equipment. See Appendix B - *Remanufactured, Recycled, Recyclable or Recovered Materials*.

## **5.23 Bulk Delivery and Alternate Packaging**

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A Contractor is encouraged to use reusable materials and containers and to utilize packaging Configurations that take advantage of Storage containers designed to be part of the Product for the shipment of multi-unit purchases. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

A. Packaging is REQUIRED to have the following sustainability attributes:

1. Pursuant to [NYS Hazardous Packaging Law Section 37-0205](#), the vendor is prohibited from offering packaging or packaging components (inks, dyes, pigments, adhesives, stabilizers, or any other additives) with lead, cadmium, mercury, or hexavalent chromium at concentration levels exceeding 100 parts per million by weight (0.01%).
2. Pursuant to [NYS Expanded Polystyrene Foam Container and Loose Packaging Law Section 27-3003](#), the vendor is prohibited from offering polystyrene loose fill packaging.
3. Packaging must not contain polyvinyl chloride (PVC).
4. Plastic packaging must not be labeled with terms "biodegradable", "decomposable", "degradable", or "oxo-degradable".

5. If packaging is labeled as compostable it must be certified by the Biodegradable Products Institute (BPI), Compost Manufacturing Alliance (CMA), or an equivalent certifier approved by the State.

B. Contractor is ENCOURAGED to offer one (1) or more of the following sustainability attributes:

1. Bulk shipping, order consolidation, and right-sizing packaging
2. Ship Products in only the Manufacturer's packaging
3. Packaging that is:
  - Reusable, including pallets, pallet wrap, boxes, and other types of containers
  - Free of expanded polystyrene
  - Free of per- and polyfluoroalkyl substances (PFAS) (Note: Items that are certified by BPI or CMA are verified PFAS-free)
  - Compostable (Note: Compostable packaging should only be used in areas where a composting facility exists and will accept the material)
  - Recyclable (i.e., accepted by most recycling Service providers in NYS)
  - Made of a single material
  - Contains a minimum of 25% post-consumer recycled content

C. Verification of Packaging Requirements and Additional Desirable Attributes

At the request of OGS or the Authorized User, the Contractor must provide verification of compliance with one (1) or more of the minimum requirements for packaging. OGS and the Authorized User also reserve the right to request information documenting the packaging desirable attributes and other Contractor environmental claims. The following types of verification Documentation will be accepted:

- Third-party certification
- Product test results
- Compliance certification or affidavit signed by the Manufacturer
- Other acceptable Documentation as approved by OGS or the Authorized User

#### **5.24 Surplus/Take-Back/Recycling**

The Contractor is encouraged to offer Product and packaging takeback and recycling Services for its Products, and Manufacturers must offer such Services for Electronic Equipment (see Paragraph C below). Takeback Services may include those offered by the Manufacturer or the Contractor. When offered, the Contractor should provide the OGS Contract Manager with, at a minimum, a list of accepted Products and packaging materials, estimated pricing (if applicable), and contact information for the Service.

- A. A State Agency is reminded of its obligation to comply with the NY State Finance Law § 167, Transfer and Disposal of Personal Property, and § 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of Equipment that is still in operable condition.
- B. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide Documentation that the units were disposed of in an environmentally sound manner

in compliance with applicable local, state and federal laws. See Paragraph C below for specific requirements governing Electronic Equipment Recycling.

- C. The NYS Department of Environmental Conservation (“DEC”) Electronic Equipment Recycling and Reuse Act (“Act”) (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires Manufacturers to establish a convenient System for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a Manufacturer of Electronic Equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>

If a Contractor offers a take-back/recycling program or offers an Electronic Equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered Electronic Equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other Storage media that meets or exceeds the National Institute of Standards and Technology (“NIST”) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

### **5.25 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/greenny-purchasing-requirements-and-tools> for procurement managers and Contractors to learn about which Contracts provide environmentally preferable Products.

#### **A. GreenNY Specifications.**

A list of GreenNY specifications is located on the OGS website at <https://ogs.ny.gov/greenny/approvedgreeny-specifications>.

#### **B. Product Labeling per GreenNY Specifications**

Over the life of the Contract, the Contractor must label the environmental attributes of all environmentally preferable Products per the GreenNY specifications, or other applicable environmental specifications for this Contract, on its Contract price list, and in any catalogs, marketing materials, or online ordering portal associated with this Contract.

Contractor(s) shall note Products that meet GreenNY Specifications on Contract Usage Reports (see Section 5.20 *Report of Contract Usage*), in the format requested by OGS.

All claims made about the environmental attributes of the Products and packaging offered shall be consistent with the Federal Trade Commission’s (FTC’s) [Guidelines for the Use of Environmental Marketing Terms](#). The State of New York reserves the right to require the Contractor to remove any environmental claims that are false, vague, misleading or unsubstantiated in catalogs, price sheets, websites or other marketing materials that are provided to the Authorized User under this Contract.

### **C. Verification of Contractor Compliance with GreenNY Requirements and Other Environmental Claims**

At the request of OGS or the Authorized User, Contractor must provide verification of Product and packaging compliance with GreenNY specifications, required third-party certification(s), minimum amount of recycled content, or other environmental attributes required in the Contract. OGS and the Authorized User also reserves the right to request information documenting the Product and packaging desirable attributes and other Contractor environmental claims. The following types of verification Documentation will be accepted:

- Third-party certification
- Product test results
- Compliance certification or affidavit signed by the Manufacturer
- Other acceptable Documentation as approved by OGS or the Authorized User

#### **5.26 Consumer Products Containing Mercury**

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

#### **5.27 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment**

In accordance with Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019, under any Contract or Subcontract resulting from this Request for Proposal, Bidder or resultant Contractor or Subcontractor shall not provide to the State or Authorized User any Equipment, System, or Service that uses covered Telecommunications Equipment or Services, as defined by the NDAA, as a substantial or essential component of any System, or as critical technology as part of any System, unless an exception applies or the covered Telecommunications Equipment or Services are covered by a waiver, as set forth in the NDAA and the rules and regulations promulgated thereunder.

#### **5.28 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.

#### **5.29 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](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.

### **5.30 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](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](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 nonresponsible. 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 website at <https://www.tax.ny.gov/> for additional information.

### **5.31 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 website (<https://ogs.ny.gov/procurement/nys-laws-extending-use-state-centralized-Contracts>). 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.

### **5.32 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.

### **5.33 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.

### **5.34 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 make price level revisions, update the Prohibited Lists, 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*.

### **5.35 Drug and Alcohol Use Prohibited**

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

### **5.36 Traffic Infractions**

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

### **5.37 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.

### **5.38 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, 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.

### **5.39 ~~Per~~ Replacement Contractor**

In the event that OGS terminates a Contract resulting from this RFP for any Lot, OGS reserves the right to then make an award to the Bidder with the next highest Total Score from this RFQ that is willing to accept a Contract without rebidding. Under no circumstances will the new awardee be permitted to decrease its discount percentages.

## **6. SPECIAL TERMS AND CONDITIONS**

### **6.1 Time to Return Phone calls or Respond to Emails**

Contractor must return phone calls or respond to emails within a maximum of four business hours (8:00 AM – 5:00 PM between Monday and Friday) after a phone call is placed or an email is received.

### **6.2 Obtaining Quotes**

Contractor must provide quotes within four (4) business hours after receiving a request for a quote, or as specified within the RFQ. If a requested Product is not currently in the Contractor's catalog, Contractor must indicate that in their reply to the request for quote. The Contractor is required to honor all quotes for thirty (30) calendar days, regardless of price increases, unless otherwise specified in Authorized User Request for Quote.

Contractor must accept requests for quotes via email, or online, and must provide quotes, via email or online as requested by the Authorized User. Quotes generated online must be guaranteed in the same manner as quotes provided through other means.

The quote must clearly indicate the method of Product delivery, and whether Software is delivered via media, download, or some other means.

### **6.3 Distributor Who Has No Prior Relationship with a Manufacturer**

Contractor must work to establish relationships with Manufacturers who are new to them to obtain quotes and be able to deliver Product in a timely fashion. If after three (3) Business Days a Contractor has been unable to obtain a quote and assurances that the Contractor will be able to provide the Product, the Contractor must contact the Authorized User with a status report. Authorized User will determine whether or not the RFQ period should be extended, so the Contractor can continue to pursue a quote and agreement with the Manufacturer.

If the Contractor has been unable to obtain a quote and agreement with the Manufacturer within 10 days (unless another time period is specified by Authorized User) of the request for quote, Contractor must respond "Product not in Catalog", in writing, to the RFQ.

### **6.4 Consistent Quote Format**

Contractor must use a standard quote format when providing best and final pricing to Authorized Users. It will be a requirement that Product terms and conditions included in the quote match the terms and conditions that are associated with the Product. If a Product or Maintenance agreement attached to the quote identifies different types of licenses or Maintenance, the quote must indicate which is being quoted.

### **6.5 Return of Unused Product**

The Contractor must allow unopened Product to be returned with no restocking fee up to thirty (30) calendar days from the date of receipt. Return shipping and delivery costs for Product will be paid by the Authorized User. If custom orders require a restock fee mandated by the Manufacturer, the Contractor must state this information on the Quote.

### **6.6 Delivered Software Via Download**

The Contractor must allow downloaded Software to be returned with no additional fees up to thirty (30) days from the date of download, if allowed by the Manufacturer, provided that the Authorized User provides any certifications required by the Manufacturer concerning the Authorized User's use of the Software. If the Manufacturer has a shorter timeframe for returns or requires additional fees, this must be stated on the quote.

If the Authorized User encounters difficulty in downloading or installing the Software, the Contractor must provide or arrange for provision of assistance to the Authorized User within eight (8) business hours of being informed of the problem.

If requested by the Authorized User during the order process, download information, including keys if applicable, will be provided by the Contractor to a party other than the individual placing the order (the “end user”). The individual placing the order will supply contact information for the end user.

#### **6.7 Notification of Upcoming Maintenance Expiration**

The Contractor must notify Authorized Users sixty (60) days prior to the expiration date of any Product Maintenance Services, and monthly thereafter until an order is placed, unless the Authorized User confirms that they do not wish to renew the Maintenance Services, or the expiration date has passed. If the email notification to the Authorized User is returned as undeliverable, the Contractor must notify other contacts at the Authorized User, if any, and if unable to communicate the upcoming Maintenance expiration to any representative of the Authorized User, to notify the OGS Procurement Services.

#### **6.8 Manufacturer Upgrades and/or “Patches”**

In cases where the Distributor is the only entity to receive Software version upgrades or Patches from the Manufacturer, the Distributor must agree to ensure means of distributing these to license holders. Acceptable methods include distribution of media, provision of access to a secure website to download the upgrades or Patches, or information provided to license holders which will enable them to access the appropriate area of the OEM website (refer to Appendix B - *Definitions - Licensed Software*).

#### **6.9 Authorized User Security Procedures**

Contractor must perform all Services in accordance with all security requirements defined by the Authorized User in writing during the Request for Quote process. These may include, but are not limited to, ID badges for all Service technicians, signing of an Authorized User confidentiality agreement, limitations on the number of Service technicians, and procedures for ensuring the destruction of confidential data stored in memory or other Storage media before removal of Equipment from Authorized User’s premises.

#### **6.10 State Security Policies and Procedures**

The Contractor and its personnel shall review and be familiar with all State security policies, procedures and directives currently existing or implemented during the term of the Contract, including ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)).

Contractor shall address any Security Incidents in the manner prescribed in ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)), including the New York State Cyber Incident Reporting Procedures incorporated therein or in such successor policy(ies).

#### **6.11 Reports Generated by State OGS Procurement Services**

Contractor must provide Procurement Services with the ability to generate reports using a report template or other easy to use query tool such as a portal or Access. Information must be maintained and accessible for the life of the Contract. Reports must be downloadable in comma delimited format or in Excel. Available fields must at a minimum include: Customer Name, Customer Number, Customer PO #, Order #, Distributor Item #, Manufacturer Item #, Product Description, Manufacturer, Quantity Ordered, Unit Price, Extended Price, Date Ordered, Date of Invoice,

Ship Date, Quantity Shipped, Product Type, Ship To: Name, Address Line 1, Address Line 2, City, State, Zip, Ship To: Name, Address Line 1, Address Line 2, City, State, Zip, Maintenance Expiration Date (if applicable).

## **6.12 Contract Termination and Maintenance Expiration**

At no additional charge and at the request of the OGS Procurement Services, Contractor will provide any information and cooperation needed to facilitate the transfer of all Volume Software License Agreements to other vendors.

### **6.135 Expiration of Contract; Survival of Authorized User Agreements**

Authorized User Agreements fully executed prior to the expiration of the OGS Centralized Contract may survive the expiration date of the OGS Centralized Contract, as provided below:

1. Pre-paid Maintenance/Support Services within an Authorized User Agreement that is fully executed prior to the expiration of the OGS Centralized Contract cannot survive more than 60 months beyond the expiration date of the OGS Centralized Contract, with pricing agreed upon and documented prior to expiration.
2. Consumption based Maintenance/Support Services within an Authorized User Agreement that is fully executed prior to the expiration of the OGS Centralized Contract cannot survive more than twenty-four (24) months beyond the expiration date of the OGS Centralized Contract, with pricing agreed upon and documented prior to expiration.

State Agencies subject to OSC oversight must work with the appropriate Agencies (e.g. OSC, BSC) to continue to make payments against the Authorized User Agreement prior to the expiration of the Contract.