



# 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 Proposals (Updated 03/31/26)

<b>BID OPENING</b> <b>DATE:</b> May 20, 2026 <b>TIME:</b> 1:30 P.M. ET <b>SOLICITATION NUMBER:</b> 23311	<b>TITLE: Group 73012 – Hourly Based Information Technology Services</b>  <b>Classification Codes: 43, 80, 81, 82, 83, 84, &amp; 86</b>
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**CONTRACT PERIOD:** Five (5) years with a two (2) year extension option

**DESIGNATED CONTACTS:** In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.

Email Address: [ogs.sm.ps\\_hbits@ogs.ny.gov](mailto:ogs.sm.ps_hbits@ogs.ny.gov)

David Gambacorta, CMS 3 Phone (518) 473-6914  Katherine Bradley, CMS 2 Phone (518) 473-8537 Email: <a href="mailto:ogs.sm.ps_hbits@ogs.ny.gov">ogs.sm.ps_hbits@ogs.ny.gov</a>	Sean Hume, Procurement Manager 1 Phone: (518) 486-1692  Antonia Obeya, CMS 1 Phone (518) 474-0912 Email: <a href="mailto:ogs.sm.ps_hbits@ogs.ny.gov">ogs.sm.ps_hbits@ogs.ny.gov</a>
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<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>
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Legal Business Name of Company Bidding:

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

Street

City	State	County	Zip Code
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Email Address:	Company Web Site:
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If applicable, place an "x" in the appropriate box(es) <i>(check all that apply)</i>			
<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service-Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business

If you are not bidding, place an "x" in the box and return this page only.  
 WE ARE NOT BIDDING AT THIS TIME BECAUSE:

**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 the Solicitation.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Solicitation.
3. The Bidder has read and understands the provisions of the Solicitation, and all appendices, attachments, and exhibits attached thereto, including Appendix A – *Standard Clauses for New York State Contracts* and Appendix B – *General Specifications*.
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS's procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at <https://ogs.ny.gov/acpl>.

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

\_\_\_\_\_  
Print Full Bidder Entity Name

By:

\_\_\_\_\_  
Signature of Person Authorized to  
Legally Bind the Bidder

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Print Title of Signatory

\_\_\_\_\_  
Date

**RETURN THIS PAGE AS PART OF BID**

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Appendix B – *General Specifications* (April 2016)

Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023)

Appendix D – *Contract Modification Procedure*

Appendix E – *Data Processing Requirements*

## **ATTACHMENTS**

Attachment 1 – *Financial Proposal*

Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Encouraging Use of New York State Businesses in Contract Performance*

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## 1. INTRODUCTION

### 1.1 Overview

This Solicitation is a Request for Proposals (hereinafter “Solicitation” or “RFP”) issued by the New York State (NYS) Office of General Services (OGS), Procurement Services for Hourly Based Information Technology Services (HBITS) as specified herein for all Authorized Users eligible to make purchases under the Contracts resulting from this Solicitation.

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

This Solicitation and the resulting Centralized Contracts shall outline the procedures and methods used by Authorized Users, OGS, and Contractors to provide Authorized Users with a method for procuring Hourly Based Information Technology Services. A breakdown of responsibilities between the Authorized User, the OGS HBITS Team, and the Contractors is explained in Section 7, Task Order Terms and Conditions.

This Solicitation shall result in new Centralized Contracts to replace the current Centralized Contracts under Award Number 23158. The Centralized Contracts shall be awarded for up to five (5) years with a two (2) year extension option. The Centralized Contracts shall be awarded statewide using not-to-exceed (NTE) rates.

This RFP shall be awarded based on Best Value. Award will be made to the forty-five (45) highest-scoring Bidders.

The state encourages Minority- and Woman-Owned Business Enterprise (MWBE), Small Business Enterprise (SBE), and Service-Disabled Veteran-Owned Business (SDVOB) participation in any Contract resulting from this Solicitation either as a Contractor or Subcontractor. Please see Sections 6.21 and 6.22 for additional information.

### 1.2 Scope

Under this Contract, Authorized Users will issue competitive Task Orders; review submissions from Contractors; and perform a preliminary Candidate technical evaluation, interview Candidates, perform a post interview and cost evaluation, and hire Hourly Based Information Technology Services (HBITS) staff based on their Position requirements.

There are IT Services expressly excluded from the scope of the resulting Contracts. In many instances, such services are available for purchase under other OGS Centralized Contracts. Excluded services include:

- Deliverable-based IT Services
- Project-based IT Services
- Web hosting
- Installation work which is considered Public Works
  - Historically, the New York State Bureau of Public Works has maintained that installation, maintenance and repair of equipment attached to any wall, ceiling or floor or affixed by hard wiring or plumbing is public work. In contrast, installation of a piece of equipment which is portable, or a “plug-in” free-standing unit would not be considered public work. This Solicitation does not authorize installation where the equipment becomes a permanent part of the building structure or is otherwise incorporated into the fabric of the building (i.e. installation on a wall, ceiling or floor in a fixed location, or affixed by hard-wiring or plumbing). See Appendix B – General Specifications (April 2016), *Clause 7 Prevailing Wage Rates - Public Works and Building Services Contracts*. For questions about whether a proposed work constitutes public work, please contact the New York State Department of Labor’s Bureau of Public Work District Office in a specific area. A listing of district offices and contact information is available at: <https://www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtml>.

### 1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$150 million annually. The historical dollar value listed in this Solicitation is only an estimate. 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. OGS reserves the right to adjust the contract value based on spend. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B *Estimated/Specific Quantity Contracts and Participation in Centralized Contracts*.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this Solicitation.

### 1.4 Key Events/Dates

Event	Date	Time
Solicitation Release	January <del>20</del> 30, 2026	N/A
Closing Date for First Round of Bidder Questions	February 5, 2026	5:00 PM ET
Registration Deadline for Pre-Bid Conference	March 12, 2026	5:00 PM ET
Pre-Bid Conference	March 19, 2026	TBD
OGS Procurement Services' Responses to First Round of Bidder Questions	March 31, 2026	N/A
Closing Date for Second Round of Bidder Questions	April 10, 2026	5:00 PM ET
OGS Procurement Services' Responses to Second Round of Bidder Questions	April 29, 2026 (tentative)	N/A
Bid Opening / Due Date for Bids	May 20, 2026	1:30 PM ET
Contract Approval Date / Award Publish Date	Upon OSC Approval	N/A

### 1.5 Pre-Bid Conference

A Pre-Bid Conference will be held at the time and date indicated in Key Events/Dates. Attendance at the Pre-Bid Conference is not mandatory, but it is recommended that all Bidders attend the Pre-Bid Conference. A Bidder shall register for the Pre-Bid Conference by sending an email to [OGS.sm.PS\\_HBITS@ogs.ny.gov](mailto:OGS.sm.PS_HBITS@ogs.ny.gov) on or before the "Pre-Bid Conference registration due" date indicated in Key Events/Dates. The email should indicate the Bidder's legal business name and the name and title of Pre-Bid Conference attendees.

The Pre-Bid Conference will be held via webinar. Webinar information will be provided to registered attendees prior to the Pre-Bid Conference. If technological issues arise during the Pre-Bid Conference, participants shall immediately email or call the agency contact. If the technological issues are attributable to the State and cannot be immediately resolved, the Pre-Bid Conference will be re-scheduled.

The purpose of the Pre-Bid Conference is to review Bid submission procedures and to gather Bidder questions related to the Solicitation. Questions will be permitted and may be answered verbally at the Pre-Bid Conference. However, answers may be deferred and included in the written and official OGS response to Bidder questions, which will include answers to all submitted questions, and will be posted on the OGS website in accordance with the Bidder Questions section. Answers given at the Pre-Bid Conference are unofficial and not binding.

## 1.6 NYS Contract Reporter

Bidders must register with the New York State Contract Reporter (“NYSCR”) at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the “Find Contracts” page to register for your free account, create an Opportunity Profile, and select Category/Classifications matching your business interests. Select “Turn on e-Alert notifications” to receive an email notification when a Solicitation is issued matching your selected Category/Classifications, and to receive email updates regarding selected ads. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must view the ad and then select “Notify me if this ad updates” on the right-hand side of the ad. Bidders also have the option to bookmark ads for future reference by selecting “Bookmark this ad” when viewing an ad..

**If you do not opt-in to receive e-Alert notifications and select “Notify me if this ad updates” on a particular ad, you will not receive e-mail notifications regarding updates for the ad. This includes e-mail notifications regarding the posting of the question and answer document and updated Solicitation documents.**

## 1.7 Bidder Questions

All questions regarding this Solicitation should be submitted using Attachment 14 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to [OGS.sm.PS\\_HBITS@ogs.ny.gov](mailto:OGS.sm.PS_HBITS@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. OGS reserves the right, but is not required to, issue responses to late inquiries.

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. Any updates to Solicitation documents will also be posted to the OGS website. Notification of these postings will be included in the NYS Contract Reporter ad for the Solicitation (see 1.6 *NYS Contract Reporter*). Be advised that submission of responses that do not reflect and take into account updated information may result in your Bid being deemed non-responsive to the Solicitation and rejected from consideration.

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

## 1.8 NYS Comptroller Approval

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

## 1.9 Summary Of Policy and Prohibitions On Procurement Lobbying

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

## 1.10 Definitions

Capitalized terms used in this Solicitation and the resultant Contract(s) shall be defined in accordance with Appendix B *Definitions*, or as below.

**“Active Contractor”** shall mean a Contractor who is eligible to receive all new Form 1s posted by the OGS HBITS Team for a particular Contract year.

**“Administrative Fee”** shall refer to the quarterly fee payable to the State in the amount of three-quarters (3/4) of one (1) percent (0.75%) for all sales (including sales to both Executive and Non-Executive Agencies) under this Contract. Costs associated with travel or any other authorized expenses that are billed to the State are excluded from the Administrative Fee.

**“Annual Contractor Evaluation”** or **“Annual Evaluation”** shall mean the evaluation of Contractors on the performance of their contractual duties done by the OGS HBITS Team on an annual basis.

**“Best Value”** shall mean the basis for awarding a Contract for services to the Bidder which best optimizes quality, cost and efficiency among Responsive and Responsible Bidders. See State Finance Law § 163(1)(j).

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

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

**“Candidate”** shall mean a person proposed by a Contractor in response to a request from an Authorized User, prior to selection by an Authorized User.

**“Contractor”** shall mean the holder of the Contract and the entity that is wholly and solely responsible for the performance of the services provided under the Contract from both its own employees, subcontractors, and independent contractors.

**“EEO”** shall mean Equal Employment Opportunity.

**“Engagement”** shall mean the period of time that a Selected Candidate works for an Authorized User.

**“EST”** shall mean prevailing Eastern Standard Time.

**“Executive Agency”** or **“Executive Agencies”** shall mean all state departments, offices or institutions but, for the purposes of this RFP, excludes the State University of New York, NYS Office of the State Comptroller, New York State Education Department, New York State Teachers Retirement System, New York State Office of the Attorney General, the City University of New York, and the New York State Insurance Fund. Furthermore, such term shall not include the legislature and the judiciary. For the sake of clarity, the term “Executive Agency” does not include any public benefit corporation, public authority, school district, or local government entity.

**“Government”** or **“Governmental Entity”** shall mean an entity at the federal, state, county, city, or provincial level.

**“HBITS”** shall mean Hourly Based Information Technology Services.

**“Hourly Bill Rate”** shall mean the hourly rate that the Contractor will receive for services provided to the Authorized User by the Selected Candidate.

**“Inactive Contractor”** shall mean a Contractor who is not eligible to receive any new Form 1s posted by the OGS HBITS Team for a particular Contract year.

**“Job Title”** shall mean the Job Titles set forth in this RFP and resulting Contract. A listing of each Job Title and corresponding description is included in Attachment 7 - *Job Titles, Skill Levels, and Regions*.

**“Mandatory Qualifications”** shall mean the Job Title and corresponding description along with the Skill Level and corresponding number of months of required experience that the Authorized User selects for their requested Position(s).

**“May”** denotes the permissive in a Contract clause or specification. Also see “Will.”

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

**“Must”** denotes the imperative in a Contract clause or specification. Also see “Shall.”

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

**“Non-Executive Agency”** shall mean, for the purposes of this RFP, the State University of New York, NYS Office of the State Comptroller, New York State Education Department, New York State Teachers Retirement System, New York State Office of the Attorney General, the City University of New York, and the New York State Insurance Fund. Furthermore, such term shall include the legislature, the judiciary and any public benefit corporation, public authority, school districts, or local Government Entity.

**“NTE”** shall mean not to exceed the price listed on the published Contract price list. Contractor cannot quote or sell a Service for more than the NTE Price.

**“NYS Holidays”** shall refer 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 Vendor ID”** shall refer to 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.

**“OGS HBITS Team”** shall mean Office of General Services Hourly Based Information Technology Services Team.

**“OGS Procurement Services”** shall mean a business unit of OGS responsible for establishing Centralized Contracts.

**“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 State Agencies, political subdivisions and public benefit corporations (including most public authorities).

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

**“Quarterly Sales Report”** shall mean a Report that shall be submitted on a quarterly basis that includes sales to both Executive and Non-Executive Authorized Users as well as SBE, MWBE, and SDVOB subcontracting usage.

**“Request for Proposals (RFP)”** shall mean this Solicitation.

**“Requested Qualifications”** shall mean the additional qualifications the Authorized User defines for their requested Position(s).

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

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

**“Selected Candidate”** shall mean the Candidate that has been selected by an Authorized User to perform work.

**“Shall”** denotes the imperative in a Contract clause or specification. Also see “Must.”

**“Skill Level”** shall mean the Skill Levels set forth in this RFP and resulting Contract. A listing of each Skill Level and corresponding number of months of required experience is included in Attachment 7 - *Job Titles, Skill Levels, and Regions*.

**“Subcontractor”** shall mean any entity providing services to the Contractor under a Contract.

**“Training”** shall mean in-person, on-line, or other educational tools.

**“Will”** denotes the permissive in a Contract clause or specification. Also see “May.”

### **1.11 Appendices and Attachments**

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

Appendix A – *Standard Clauses for New York State Contracts* (June 2023)

Appendix B – *General Specifications* (April 2016)

Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023)

Appendix D – *Contract Modification Procedure*

Appendix E – *Data Processing Requirements*

Attachment 1 – *Financial Proposal*

Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Encouraging Use of New York State Businesses in Contract Performance*

Attachment 4 – *Insurance Requirements*

Attachment 5 – *HBITS Contract (How to Use)*

Attachment 6 – *HBITS Contract (Forms)*

Attachment 7 – *Job Titles, Skill Levels, and Regions*

Attachment 8 – *Mandatory Minimum Qualifications*

Attachment 9 – *Bidder Information Questionnaire*

Attachment 10 – *Subcontractor Information Sheet*

Attachment 11 – *Technical Proposal Submission*

Attachment 12 – *Bidder Submission Checklist*

Attachment 13 – *Report of Contract Usage*

Attachment 14 – *Bidder Questions Form*

Attachment 15 – *Certification Under Executive Order No. 16*

### **1.12 Conflict of Terms**

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

1. Appendix A – *Standard Clauses for New York State Contracts* (June 2023);
2. Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023);

3. The Solicitation;
4. Appendix B – *General Specifications (April 2016)*;
5. All other appendices and attachments to the Solicitation.

## **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 OGS Procurement Services that it can perform the work required. OGS 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.

If Bidder is relying on operations of a parent company, subsidiary, predecessor entity, or other entity for purposes of satisfying any of the Mandatory Minimum Qualifications, Bidder is required to provide a full explanation describing such relationship and how it satisfies the requirement(s). OGS Procurement Services will determine whether such other entity experience satisfies the requirement(s) and reserves the right to ask for additional information or require a Contract performance guarantee and/or other assurances from such other entity(ies) or the Bidder.

Bidders must meet the following Mandatory Minimum Qualifications of this RFP in order to be evaluated for award. **Failure to meet any one (1) of these Mandatory Minimum Qualifications shall result in disqualification of the Bidder's proposal for non-responsiveness.** Instructions for responding to all Mandatory Minimum Qualifications can be found in Section 4, Bid Submission.

### **2.1 Continuous Operation**

Bidder must have been in continuous operation for at least three (3) years from the RFP release date (as stated in Section 1.4 *Key Events/Dates*) supplying hourly based IT staff placements as covered by the scope of this Solicitation.

### **2.2 IT Staff Placements**

Bidder must have provided at least six (6) IT staff placements to Governmental Entities within the United States in any combination of the six (6) highest-demand New York State Job Titles (defined in Attachment 7 – *Job Titles, Skill Levels, and Regions*) listed below (or deemed to be equivalent at OGS Procurement Service's sole discretion) – through direct placements as the Contract holder, through indirect placements as the Subcontractor, or through the combination of both – within the last three (3) years (December 22, 2022 – December 21, 2025):

- IT Specialist
- Software Architect
- Software Developer
- Systems Developer
- Project Manager
- Business Analyst

Bidder shall only utilize one (1) IT staff at one (1) placement to satisfy this requirement. If Bidder utilizes one (1) IT staff individual at multiple placements, it shall only be counted once towards meeting the requirement.

### **2.3 Verifiable Staff Placement Sales**

Bidder must demonstrate a minimum of at least \$700,000 in verifiable sales for providing IT staff placements within the scope of this Solicitation to Governmental Entities within the United States as the Contract holder

(direct), the Subcontractor (indirect), or through the combination of both (direct or indirect) within the last three (3) years (December 22, 2022 – December 21, 2025).

### **3. SPECIFICATIONS**

Refer to Attachment 7 - *Job Titles, Skill Levels, and Regions* for specifications on required HBITS roles. Attachment 7 includes descriptions of each role and the experience required for each skill level within a role.

### **4. BID SUBMISSION**

#### **4.1 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.

#### **4.2 NYS Vendor File Registration**

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

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

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form ([http://www.osc.state.ny.us/vendors/forms/ac3237s\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf)) and submit the form to OGS in advance of Bid submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if an authorized reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

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

#### **4.3 Format of Bid Submission**

- A. The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be handled in accordance with Appendix B *Late Bids*. Any Bid pricing or portions thereof submitted on USB flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder. Situations susceptible to Disqualification may include:
  1. E-mail or facsimile Bid submissions are not acceptable, and
  2. Absent Price Pages (Attachment 1 – *Financial Proposal*) are not acceptable.
- B. It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up location. Only completed files (in the specified format) should be saved to a USB flash drive for submittal.

- C. Any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.
- D. Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation may be considered non-responsive and may be rejected.
- E. Failure to submit a bid submission per the below instructions may result in delay of bid submission review and may result in the Bidder being found non-responsive. An official authorized to contractually bind the Bidder must sign, where applicable, the documents from Sections 4.4, 4.5, and 4.6 below.

#### **4.4 Administrative and Technical Proposal**

Bidder must submit a completed Administrative and Technical Proposal with its bid submission. Failure to complete and submit the Administrative and Technical Proposal in its entirety may result in disqualification of a Bidder's Proposal for non-responsiveness. The Administrative and Technical Proposal shall include the following:

##### **A. New York State Required Certifications**

Bidder shall complete, sign, and submit Attachment 2 – *NYS Required Certifications* with its bid submission.

##### **B. Encouraging the Use of New York State Businesses in Contract Performance**

Bidder shall complete and submit Attachment 3 – *Encouraging Use of New York State Businesses in Contract Performance* with its bid submission.

##### **C. Insurance**

Bidder shall produce at its sole cost and expense and provide with its bid submission all proof of required insurance as detailed in Attachment 4 – *Insurance Requirements*.

##### **D. Bidder Questions and Agreements**

Bidder shall complete, sign, and submit Attachment 9 – *Bidder Information Questionnaire* with its bid submission.

Answering “No” to any of the statements in the Bidder Agreements will delay the evaluation of the bid submission and may result in the rejection of the bid.

##### **E. Subcontractor Information**

Bidder shall complete and submit Attachment 10 – *Subcontractor Information Sheet* with its bid submission.

If Bidder will not use Subcontractors during their HBITS Contract, Bidder must complete Rows 4 and 6 – 11 of Attachment 10.

If Bidder will use Subcontractors during their HBITS Contract, Bidder must complete Attachment 10 in its entirety.

##### **F. Bidder Submission Checklist**

Bidder shall complete and submit Attachment 12 – *Bidder Submission Checklist* with its bid submission.

## G. Certification Under Executive Order No. 16

Bidder shall complete, sign, and submit Attachment 15 – *Certification Under Executive Order No. 16* with its bid submission.

## H. EEO 100 (Equal Employment Opportunity Staffing Plan)

Pursuant to Section 6.21 of this Solicitation, a Bidder shall complete EEO 100 (Equal Employment Opportunity Staffing Plan) in its entirety, sign, and submit it with its bid submission.

For the purposes of a response to this Solicitation, the EEO 100 shall be completed in full unless otherwise specified below:

1. Under Solicitation Number, enter the Solicitation Number “23311”.
2. Under Reporting Entity, check the “Contractor” box.
3. Under Report includes Contractor’s, check the “Contractor’s work force to be utilized on this contract” box.
4. In the table requesting the total number of employees for each classification, a Bidder must identify all staff that will be utilized specifically for the resulting HBITS Contracts, if known. At a minimum, a Bidder must account for the following:
  - a) All management level staff that will oversee the Bidder’s execution of the Contract.
  - b) All recruiting staff that the Bidder will use to identify Candidates for Authorized Users.
  - c) All staff responsible for identifying and maintaining the Bidder’s subcontracting network.
  - d) All staff responsible for accounts payable and receivable.
  - e) All Contract Administrators.
  - f) All clerical staff that will assist the individuals above.

## I. Mandatory Minimum Qualifications

### 1. Continuous Operation

Bidder shall complete and submit Attachment 8 – *Mandatory Minimum Qualifications (Continuous Operation Tab)*.

### 2. IT Staff Placements

Bidder shall complete and submit Attachment 8 – *Mandatory Minimum Qualifications (IT Staff Tab)*, which summarizes the placement type (direct or indirect), qualifying Governmental Entity within the United States, qualifying invoice date, qualifying invoice number, and qualifying Job Title.

Bidder shall only utilize one (1) IT staff at one (1) placement to satisfy this requirement. If Bidder utilizes one (1) IT staff individual at multiple placements, it shall only be counted once towards meeting the requirement.

Each qualifying invoice detailing and highlighting the actual Job Title is required for verification purposes and must be included in the Bidder Submission with Attachment 8 – *Mandatory Minimum Qualifications (IT Staff Tab)*. Each qualifying invoice must contain or be accompanied by all the following information:

- Placement Type (Direct or Indirect)
- Job Title\*
- Invoice Number
- Invoice Date (Note: Must be within (December 22, 2022 – December 21, 2025)
- Governmental Entity Name within the United States\*\*

If any of the required information is not included on the qualifying invoice, Bidder may print or legibly write the information on the qualifying invoice.

\*If the Job Title on the invoice does not exactly match the Job Titles listed above, the Bidder must include the Job Title listed above in the "Job Title" Column and the Job Title appearing on the invoice along with a detailed explanation as to how this Job Title equates to the above Job Titles in the "Invoice Job Title & Explanation" Column in order for OGS Procurement Services to make a determination as to whether the Job Title is deemed equivalent.

\*\*If the Governmental Entity within the United States is not named on the invoice, the Bidder MUST provide the Contract-holder Company Name and Contact Information, as well as the Governmental Entity Name and Contact information.

For the purposes of electronic submission, all qualifying invoices must be saved in a separate folder labeled "IT Staff Invoices" and within this folder the qualifying invoice file names must be labeled as the invoice number or as a range of invoice numbers and must be saved as searchable PDFs.

For purposes of demonstrating IT Staff Placements, if the Bidder was the direct service provider or contract holder and the services were provided directly from the Bidder to the Governmental Entity (without the use of any subcontractors), the qualifying invoices must be from the Bidder to the Governmental Entity. Similarly, if the Bidder was the service provider or contract holder but the services were provided indirectly to the Governmental Entity (through the use of one or more subcontractors), the qualifying invoices must be from the Bidder to the Governmental Entity. If the Bidder acted as a subcontractor in providing the services, the qualifying invoices must be from the Bidder to the service provider or contract holder of the Governmental Entity. Sales made and invoiced independently by a Bidder's subcontractor with no involvement by the Bidder are not eligible for purposes of demonstrating the Bidder's IT Staff Placements.

All required information contained in the above documentation must be free of restrictions on confidentiality or claims of confidentiality. OGS Procurement Services shall not enter into a Non-Disclosure Agreement (NDA) for Bidders who assert that information contained in the above IT Staff documentation is confidential.

### 3. Verifiable Staff Placement Sales

Bidder shall complete and submit Attachment 8 – *Mandatory Minimum Qualifications (Verifiable Sales Tab)*, which summarizes the placement type (direct or indirect), qualifying Governmental Entity, qualifying invoice date, qualifying invoice number and invoice total.

The qualifying invoice total shall only include pricing for the actual IT Staff Placement services sold. The qualifying invoice total shall not include pricing for travel, meals, or other extraneous expenses. Each qualifying invoice detailing and highlighting the actual IT Staff Placement services sold is required for verification purposes and must be included in the Bidder Submission with Attachment 8 – *Mandatory Minimum Qualifications (Verifiable Sales Tab)*. Each qualifying invoice must contain or be accompanied by all the following information:

- Placement Type (Direct or Indirect)
- Job Title within Scope
- Invoice Date (Note: Must be within (December 22, 2022 – December 21, 2025))
- Invoice Number
- Invoice Total
- Governmental Entity Name within the United States\*

If any of the required information is not included on the qualifying invoice, Bidder may print or legibly write the information on the qualifying invoice.

\*If the Governmental Entity within the United States is not named on the invoice, the Bidder MUST provide the Contract-holder Company Name and Contact Information, as well as the Governmental Entity Name and Contact information. Any Governmental Entity is acceptable, however, if awarded a Contract, Bidder should be able to provide on-site staff where required by the Authorized User.

For the purposes of electronic submission, all qualifying invoices must be saved in a separate folder labeled "Verifiable Sales Invoices" and within this folder the qualifying invoice file names must be labeled as the invoice number or as a range of invoice numbers and must be saved as searchable PDFs.

For purposes of demonstrating IT Staff Placements, if the Bidder was the direct service provider or contract holder and the services were provided directly from the Bidder to the Governmental Entity (without the use of any subcontractors), the qualifying invoices must be from the Bidder to the Governmental Entity. Similarly, if the Bidder was the service provider or contract holder but the services were provided indirectly to the Governmental Entity (through the use of one or more subcontractors), the qualifying invoices must be from the Bidder to the Governmental Entity. If the Bidder acted as a subcontractor in providing the services, the qualifying invoices must be from the Bidder to the service provider or contract holder of the Governmental Entity. Sales made and invoiced independently by a Bidder's subcontractor with no involvement by the Bidder are not eligible for purposes of demonstrating the Bidder's IT Staff Placements.

All required information contained in verifiable sales documentation must be free of restrictions on confidentiality or claims of confidentiality. OGS Procurement Services shall not enter into a Non-Disclosure Agreement (NDA) for Bidders who assert that information contained in the above verifiable sales documentation is confidential.

## J. Technical Proposal

The Technical Proposal consists of a Project Management Plan.

Bidder must submit a Project Management Plan, as specified in Attachment 11 – *Technical Proposal Submission*, with its Bidder Submission, and follow the approach described therein during the contract period. The Project Management Plan must address, at a minimum:

- Project management
- Communications management
- Risk management
- Quality standards
- Resource management
- ITS policy compliance
- Cost and invoice controls
- Role-based certifications

Specific project management requirements can be found in Attachment 11 – *Technical Proposal Submission*.

Failure to submit the Project Management Plan in its entirety and according to the instructions laid out in Attachment 11 – *Technical Proposal Submission* may result in disqualification of a Bidder's Proposal for non-responsiveness.

## 4.5 Financial Proposal

Bidder must submit a completed Attachment 1 – *Financial Proposal* with its bid submission. Failure to complete and submit Attachment 1 – *Financial Proposal* in its entirety may result in disqualification of a Bidder's Proposal for non-responsiveness. This Solicitation requires not-to-exceed (NTE) rates rather than fixed rates.

Bidder shall provide their proposed rates for each labor role in Attachment 1 – *Financial Proposal*. Bidder shall enter a single NTE Hourly Bill Rate (rounded to two (2) decimal places) for each and every Job Title, at four (4) distinct Skill Levels. A NTE Hourly Bill Rate of zero or a range will result in the submission being found as non-responsive. Failure to bid all Job Titles and Skill Levels will result in a finding of non-responsiveness. Attachment 7 contains the current list of Job Titles and Skill Levels.

#### 4.6 Content

A. A complete Bid consists of submission of the following documents (unless noted otherwise). 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 electronic signature that has been generated by software (e.g., DocuSign or Adobe Acrobat Sign) for documents that are not designed to allow for or require an electronic signature. See also Attachment 12 – *Bidder Submission Checklist*.

		Bid Document	Required File Format (Submit on USB)	Original also Required (Submit paper original)
Administrative and Technical Proposal	1	Page 1 of the Solicitation	PDF	X
	2	Page 2 of the Solicitation – <i>Bidder Certification and Affirmation</i> , with signature	PDF	X
	3	Appendix C – <i>Federal Funding Agency Mandatory Terms and Conditions</i> , with Section 10 completed (page 6)	PDF	X
	4	Attachment 2 – <i>NYS Required Certifications</i> , with signature	PDF	X
	5	Attachment 3 – <i>Encouraging Use of New York State Businesses in Contract Performance</i>	PDF	
	6	Proof of Compliance with Attachment 4 – <i>Insurance Requirements</i> a. ACORD Certificate of Liability Insurance (PDF) b. Workers’ Compensation Coverage (PDF) c. Disability Benefits Coverage (PDF)	PDF	
	7	Attachment 9 – <i>Bidder Information Questionnaire</i> a. General Questions b. Bidder Agreements c. FOIL Redaction	Excel	X
	8	Attachment 10 – <i>Subcontractor Information Sheet</i>	Excel	
	9	Attachment 12 – <i>Bidder Submission Checklist</i>	Excel	
	10	Attachment 13 – <i>Report of Contract Usage</i>	Not required to be submitted with the bid	
	11	Attachment 14 – <i>Bidder Questions Form</i>	Submitted during Questions Period	
	12	Attachment 15 – <i>Certification Under Executive Order 16</i> , with signature	PDF	X
	13	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	X
	14	SDVOB 100, <i>SDVOB Utilization Plan</i> , with signature (see <a href="https://ogs.ny.gov/veterans/division-service-disabled-veterans-business-development-compliance-and-reporting">https://ogs.ny.gov/veterans/division-service-disabled-veterans-business-development-compliance-and-reporting</a> )	PDF	X
	15	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.ny.gov/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire">https://www.osc.ny.gov/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire</a> )	PDF	
	16	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	X

		<b>Bid Document</b>	<b>Required File Format (Submit on USB)</b>	<b>Original also Required (Submit paper original)</b>
	<b>17</b>	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>18</b>	Published "Bid Solicitation Updates 1", with signature	PDF	<b>X</b>
	<b>18a</b>	Published "Bid Solicitation Update 2", with signature		
	<b>19</b>	Attachment 8 – <i>Mandatory Minimum Qualifications</i> (Excel) a. Qualifying IT Staff Invoices (Searchable PDFs) b. Qualifying Verifiable Sales Invoices (Searchable PDFs)	Excel/PDF	
	<b>20</b>	As laid out in Attachment 11 – <i>Technical Proposal Submission</i> : a. Project Management Plan	Word/PDF	
<b>Financial Proposal</b>	<b>21</b>	Attachment 1 – <i>Financial Proposal</i> (must be included with the Bid at the Bid Opening / Due date for Bids)	Excel	

B. Documents should be submitted as an electronic copy and in the format specified in the list above for each document (e.g., PDF, Excel), following the instructions provided in this section. Electronic copies of documents must be submitted on four (4) USB flash drives total (two with Administrative and Technical documents, two with the Financial Proposal), with each USB flash drive clearly labeled containing a complete set of the submitted documents, completed in their entirety, signed (where applicable), notarized (where applicable), and scanned (where applicable). For bid identification purposes, include a printed copy of page 1 of the Solicitation with the four (4) USB flash drives in the Bid envelope or package (see 4.8 Bid Envelopes and Packages, below).

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

**1. Administrative and Technical Proposal**

Each component shall be included in its own folder and labelled accordingly. Each electronic file submission shall be externally labeled "*Bidder Name (if applicable), #23311, HBITS Administrative/Technical Proposal*".

All qualifying invoices as described in Section 4.4 must be saved in separate folders labeled "IT Staff Invoices" and "Verifiable Sales Invoices" and within those folders the qualifying invoice file names must be the invoice number or a range of invoice numbers. All qualifying invoices referenced must be saved as searchable PDFs.

**No financial information shall be included** with the Administrative and Technical Proposal Submission.

**2. Financial Proposal**

Bidder is reminded that **no Administrative or Technical Proposal information shall be included** with the Financial Proposal Submission.

Each electronic file submission shall be externally labeled "*Bidder Name (if applicable), #23311, HBITS Financial Proposal*".

- 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 copies and original versions (if applicable), of all submitted bid documents until a determination of award is made. If an award is made to Bidder, the bid documents shall be retained by the Bidder for a period of six (6) years after the term of the contract has ended. Document retention for pre- and post-award includes both copies of electronic documents, and original paper documents with required original signatures that have been scanned and submitted electronically. Bidder shall submit such retained documents to OGS upon request.

#### **4.7 Bid Pricing Submittal**

A Bidder shall submit Attachment 1 – *Financial Proposal* in accordance with Section 4.6 *Content* and the instructions worksheet within Attachment 1 – *Financial Proposal*. Failure to enter all required information on Attachment 1 – *Financial Proposal* may render the Bid non-responsive and result in the rejection of the Bid.

The Attachment 1 – *Financial Proposal* submitted by the successful Bidder shall be incorporated into the resultant Contract and the Bidder shall be required to provide the awarded services at the prices quoted in its Bid. See also Section 6.6 *Price Structure* for terms and conditions for pricing for the Contract.

- A. Bidder shall enter a single NTE Hourly Bill Rate (rounded to two (2) decimal places) for each and every Job Title, at four (4) distinct Skill Levels. Failure to bid all Job Titles and Skill Levels will result in a finding of non-responsiveness.
- B. A NTE Hourly Bill Rate of zero or a range will result in the submission being found as non-responsive.
- C. Bid pricing submitted in a format other than Attachment 1 – *Financial Proposal* shall render the Bid non-responsive and result in rejection of the Bid. Also, Bidder shall not attempt to alter or modify Attachment 1 – *Financial Proposal* from the original format (e.g. hide or unhide cell(s)/column(s)/row(s)/worksheet(s), or modify formulas in Attachment 1 – *Financial Proposal*). Only those cells provided for entering a Bidder’s response on Attachment 1 – *Financial Proposal* are to be accessed by the Bidder. Any attempt to alter or modify Attachment 1 – *Financial Proposal* beyond what is allowed may result in the Bid being deemed non-responsive and rejected.
- D. In accordance with Appendix B *Pricing*, the NYS prices shall be net, including transportation, customs, tariffs, delivery and other charges fully prepaid by the resultant Contractor to the destination indicated in the Solicitation or Authorized User Purchase Order.
- E. For all dollar amounts that a Bidder may enter, a Bidder may enter up to two (2) decimal places.
- F. Additional instructions for submitting Bid pricing are included in the “Instructions” worksheet in Attachment 1 – *Financial Proposal*. A Bidder is responsible for reviewing the completed Attachment 1 – *Financial Proposal* prior to Bid submittal to ensure compliance with the Solicitation requirements and that all necessary fields have been populated correctly.
- G. The following supporting documentation for Bid pricing must be submitted in accordance with Section 2.3 – *Verifiable Staff Placement Sales* Section 4.6 – *Content*.
  - 1. Bidder must demonstrate a minimum of at least \$700,000 in verifiable sales for providing IT staff placements within the scope of this Solicitation to Governmental Entities within the United States as the

Contract holder (direct), the Subcontractor (indirect), or through the combination of both (direct or indirect) within the last three (3) years (December 22, 2022 – December 21, 2025). Instructions on the format of submission can be found in Section 4.4.J.3 – *Verifiable Staff Placement Sales*.

#### **4.8 Bid Envelopes and Packages**

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

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation number 23311
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

All Bids must also include a PRINTED copy of page 1 of the Solicitation, completed with the Bidder's information. This printed copy of page 1 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. Bidder shall have no claim against OGS Procurement Services arising from such opening and such opening shall not affect the validity of the bid submission or the Solicitation. Bidder assumes all risk of late delivery associated with the Bidder Submission not being identified, packaged or labeled in accordance with the foregoing requirements.

E-mail or facsimile bid submissions are not acceptable.

#### **4.9 Bid Delivery**

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

State of New York Executive Department  
Office of General Services  
Procurement Services  
Corning Tower - 38th Floor Reception Desk  
Empire State Plaza  
Albany, NY 12242  
Attn: Bid Enclosed – Solicitation 23311

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

#### **4.10 Important Building Access Procedures**

To access the Corning Tower, all visitors must check in by presenting photo identification at the Corning Tower Information Desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services Receptionist at (518) 474-6262 or Customer Services (518) 474-6717 at least 24 hours prior to the visit. If no answer, leave a detailed phone message including the following information: reason for visit and/or delivering a bid, solicitation number, date and estimated time of delivery or visit, first and last name of visitor, and visitor's cell phone number. Visitor may email [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.

#### **4.11 Bid Deviations**

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

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

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

#### **4.12 Bid Opening Results**

Due to the large volume of submissions anticipated in response to this Solicitation, there will be no public observation of the submission opening process.

OGS Procurement Services posts Bid information on the OGS Procurement Services website. The Bid Opening Results webpage makes available the list of Bidders that responded to the Solicitation. Such information is anticipated to be available online within two (2) Business Days after the Bid opening.

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

#### **4.13 Proposal Security**

The content of each bidder's proposal will be held in strict confidence during the bid evaluation process, and details of a proposal will not be revealed, except as may be required under the Freedom of Information Law or other State Law.

#### **4.14 Bid Liability**

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

#### **4.15 Firm Offer**

Bids must remain an effective offer, firm and irrevocable, for at least 270 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 270 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

#### **4.16 NYS Reserved Rights**

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

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;

- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the dates in the *Key Events/Dates* section, or in other Solicitation sections (if applicable), with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award, Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- 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 State be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, region, or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, or lots;
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing;
- W. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation;
- X. Request additional documentation from the Bidder, including reports on financial stability from independent financial rating services.

#### **4.17 Incorporation**

Portions of a successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. OGS may require that the document be executed with an electronic signature that has been generated by software (e.g., DocuSign or Adobe Acrobat Sign). The 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.

## **5. METHOD OF AWARD**

### **5.1 Method of Award**

Awards shall be made on the basis of a Best Value evaluation to responsive and responsible Bidders. A best value award optimizes quality, cost, and efficiency among responsive and responsible Bidders and is consistent with the best interests of the State of New York.

The State shall award Contracts to the responsive and responsible Bidders that obtain the forty-five (45) highest scores. All 45 Awarded Contractors will be designated as Active Contractors during year one (1) of the Contract. At the end of year one (1), and at the end of all Contract years, and any renewal years, the Contractors will be evaluated to determine their designation as either an Active or Inactive Contractor for the upcoming Contract year. The Annual Contractor Evaluation and the Active/Inactive concepts are further explained in Section 7.10.

Pursuant to Article XI of the New York State Finance Law, New York State evaluates bids for services in an objective, comprehensive manner designed to benefit both the State and participating Bidders. Through this process, the State identifies Contractors who will best meet its needs and will be the most cost effective. All proposals will be evaluated uniformly and consistently, ensuring that each Bidder has an equal opportunity to be considered.

During the evaluation process, OGS Procurement Services may require clarifying information from a Bidder. If specific sections of the written proposal require clarification, OGS Procurement Services will contact the Bidders and request clarifying information. The Bidder must respond by the deadline provided by OGS Procurement Services.

### **5.2 Proposal Weighting**

The Technical and Financial Scores shall be based on the Bidder's response to the Technical Proposal and the Bidder's response to the Financial Proposal, bearing the weight assigned below:

- Technical Score = 70% of Final Score (Up to 70 Points Can Be Awarded)
  - \*\*Quantitative Factor = 5% of Technical Score (3.5 Points Can Be Awarded) (See example below)
- Financial Score = 30% of Final Score (Up to 30 Points Can Be Awarded)

\*\*Quantitative Factor Example: Where the total evaluation criteria are worth 100 points, weighted 70% Technical and 30% Financial, any Bidder who is an MWBE, SBE, or SDVOB will be awarded 3.5 out of 100 points, representing 5% of the 70% Technical Score. If no responsive Bidder is an MWBE, SBE, or SDVOB, then no Quantitative Factor points will be awarded.

### **5.3 Proposal Evaluation Teams**

The Technical Proposals and the Financial Proposals shall be evaluated separately and independently by two (2) Evaluation Teams. The Financial Proposal Evaluation Team will consist of staff who are not members of the Technical Proposal Evaluation Team.

The Scores resulting from each Evaluation Team shall not be shared until such time as both Evaluation Teams have completed their evaluations. Only then will the Evaluation Scores be combined to obtain a Final Score.

### **5.4 Administrative Proposal Screening**

After the bid opening, Administrative Proposals will be reviewed for completeness and conformance with the requirements in Section 4. The Administrative Proposals must be provided in the prescribed format(s). Proposals that do not follow the prescribed format(s) may be eliminated from consideration. All responses to this Section will be subject to verification for accuracy.

Proposals that do not meet the Administrative Proposal requirements as set forth in this Solicitation may be deemed non-responsive and given no further consideration. Proposals meeting the requirements of the Administrative Proposal Screening shall proceed to the Mandatory Minimum Qualifications Review.

### **5.5 Mandatory Minimum Qualifications Review**

Bidders who meet the Administrative Proposal Screening will have their Mandatory Minimum Qualifications reviewed for completeness and conformance with the requirements in Sections 2 and 4. The Mandatory Minimum Qualifications Review will be based on the Bidder's response provided in Attachment 8 – *Mandatory Minimum Qualifications*, which must be provided in the prescribed format. Proposals that do not follow the prescribed format may be eliminated from consideration. All responses to this Section will be subject to verification for accuracy.

Proposals that do not meet the Mandatory Minimum Qualifications Review as set forth in this Solicitation shall be deemed non-responsive and given no further consideration. Proposals meeting the Mandatory Minimum Qualifications Review shall proceed to the Technical Proposal Evaluation.

### **5.6 Technical Proposal Evaluation (70 Points)**

Bidders whose Administrative Proposal is deemed responsive and who meet the Mandatory Minimum Qualifications will have their Technical Proposal evaluated for completeness and conformance with the requirements in Section 4.

The Technical Proposal evaluation will be based on the Bidder's Project Management Plan (Up to 66.5 Points. The remaining 3.5 points can only be acquired by meeting the Quantitative Factor outlined in Section 5.2).

All Technical Proposal documentation must be provided in the prescribed format. Proposals that do not follow the prescribed format may be eliminated from consideration. All responses to this Section will be subject to verification for accuracy.

Cost information must not be included in the Technical Proposal documents. If cost information is included in the Technical Proposal, the bid may be deemed non-responsive and given no further consideration.

The Technical Score will be based on the criteria provided in Section 4.4 and Attachment 11 and on the Quantitative Factor described in Section 5.2. The criteria will be weighted as deemed appropriate by the Technical Evaluation Team prior to the bid opening. All scoring for the criteria provided in Section 4.4 and Attachment 11 and the Quantitative Factor described in Section 5.2 will total a maximum of 70 possible points. The Quantitative Factor will represent 5% of the Technical Score, or 3.5 points. For example, Bidders who are an MWBE, SBE, or SDVOB will be awarded 3.5 out of 100 points, representing 5% of the 70% Technical Score. If no responsive Bidder is an MWBE, SBE, or SDVOB, then no Quantitative Factor points will be awarded.

If a Technical Proposal is found to be non-responsive, that proposal will not receive a Technical Score and the Bidder will be disqualified from consideration for this procurement. Each Technical Proposal that is found to be responsive will receive a Technical Score.

If awarded, OGS Procurement Services will require all Contractors to meet or improve upon the best practices outlined within the Technical Proposal document throughout the term of the Contract. OGS Procurement Services reserves the right to request any documentation from any Contractor at any time throughout the term of the Contract to verify ongoing compliance.

### **5.7 Financial Proposal Evaluation (30 Points)**

Bidders whose Technical Proposal is deemed responsive will have their Financial Proposal evaluated for completeness and conformance with the requirements in Section 4.5. The Financial Proposal Evaluation will be based on the Bidder's responses provided in Attachment 1 – *Financial Proposal*, which must be provided in the prescribed format. Proposals that do not follow the prescribed format may be eliminated from consideration. All responses to this Section will be subject to verification for accuracy.

For purposes of the Financial Evaluation, all Financial Proposals will be labeled anonymously as “Bidder 1,” “Bidder 2”, etc. by a separate and independent OGS Procurement Services staff member, before such Financial Proposals are provided to the Financial Proposal Evaluation team.

The following steps shall be based upon the Bidder’s proposed NTE Hourly Bill Rates (rounded to two (2) decimal places, as listed in Attachment 1 – *Financial Proposal* of Bidder’s Proposal).

The Financial Score shall be based on two components: 1) each Bidder’s average NTE Hourly Bill Rate of high utilization job title and skill level combinations and 2) each Bidder’s average NTE Hourly Bill Rate of the remaining job title and skill level combinations. The component that consists of the job title and skill level combinations that have historically been utilized more frequently will be weighted three (3) times as heavily as the component that consists of those job title and skill level combinations that have not been utilized as frequently.

The high utilization job title and skill level combinations will be determined by OGS Procurement Services prior to bid opening and applied equally to all Bidders.

The Financial Score shall be based on a maximum of 30 points. For each component, maximum points shall be allocated to the Bidder with the lowest average NTE Hourly Bill Rate. All other responsive Bidders shall receive a proportionate score based on the relation of their average NTE Hourly Bill Rate to the lowest average NTE Hourly Bill Rate. The following formula includes both Financial Score components:

$$= (30)(.75) \times \frac{\text{Lowest Bidder's Average NTE Rate of High Utilization Titles}}{\text{Bidder's Average NTE Rate of High Utilization Titles}}$$

**+**

$$= (30)(.25) \times \frac{\text{Lowest Bidder's Average NTE Rate of Remaining Titles}}{\text{Bidder's Average NTE Rate of Remaining Titles}}$$

All points awarded for each component (rounded to two (2) decimal places) will be totaled to determine each Bidder’s Financial Score. This method does not guarantee that any one (1) Bidder will receive a total of 30 points.

OGS Procurement Services reserves the right to exclude any unbalanced, unrealistic, or inordinately low or high bids from the following calculations if, in the judgment of OGS Procurement Services, the bid would skew the results.

## 5.8 Final Score

The Technical Score and the Financial Score will be added together to determine the Bidder’s Final Score. The forty-five (45) highest-scoring Bidders will receive a Tentative Award.

## 5.9 Procurement Guidelines for Authorized Users

The following procurement guidelines for Authorized Users shall be published on the OGS website for the resultant Contract Award as a stand-alone document separate from the Contract.

- A. NTE Pricing Schedules that include each Job Title and Skill Level as well as each Contractor’s Attachment 10 – *Subcontractor Information Sheet* will be posted on the OGS website so that Authorized Users can find Contract pricing information and Contractor and Subcontractor contact information.
- B. When utilizing the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should also hold the Contractor accountable for compliance with Contract terms, conditions, specifications, and other

requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:

- A statement of need and associated requirements;
- Obtaining all necessary prior approvals;
- A summary of the Contract alternatives considered for the purchase, if any; and
- The reasons supporting the resulting purchase (e.g., show that the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

- C. All State agencies, political subdivisions, and public benefit corporations (which include most public authorities) having their own purchasing agency are required to purchase approved products and services from Preferred Sources in accordance with §§ 162 and 163 of the New York State Finance Law. Before proceeding with their purchase, such Authorized Users shall check the list of Preferred Source Program offerings for Products that meet the form, function, and utility required. These Authorized Users are reminded that they must comply with State Finance Law § 162, which requires that they afford first priority to the commodities and services of Preferred Source suppliers, which include the Division of Correctional Industries (Corcraft), the NYS Preferred Source Program for People who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities or services meet the form, function, and utility of the Authorized User, and the price offered by Corcraft does not exceed a reasonable fair market price, and the price offered by NYSPSP and NYSID is within 15% of prevailing market prices. If a Preferred Source offering does not meet an Authorized User's form, function, and utility, or the Preferred Source price is more than fair market price or more than 15% above prevailing market prices, then the Authorized User may use this Contract.
- D. Prior to making a purchase, any **State Agency Authorized Users** whose systems are managed or administered by New York State Office of Information Technology (ITS), must contact their Deputy Commissioner for Technology to determine if an ITS owned or managed service is available for use. Agencies are reminded of the requirement for an approved Plan to Procure in accordance with the ITS Plan to Procure Policy, available via <https://its.ny.gov/system/files/documents/2023/07/nys-p08-001-plan-to-procure.pdf>, with exceptions to technology standards granted in limited circumstances.
- E. The Contracts resulting from this Solicitation will be Centralized Contracts issued under a multiple award structure. Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State. Authorized Users are required to obtain three (3) quotes when multiple Contractors offer Products that are identical to the Product being sought (e.g., multiple Contractors offer a Product that has an identical manufacturer's model code). Authorized Users are strongly encouraged to seek a minimum of three (3) quotes, where possible, when multiple Contractors offer Product(s) that are similar in nature to the Product being sought (e.g., multiple Contractors offer a Product that is a similar size, style and/or material). Authorized Users are also encouraged to seek better than Contract pricing for all items, especially when purchasing in volume, as Contractors may not automatically offer volume discounts.
- F. Authorized Users shall issue Purchase Orders, in accordance with the terms set forth in Appendix B *Purchase Orders*, directly to the Contractor or the Contractor's Authorized Reseller (if applicable), and specify any shipping/delivery requirements, including inside delivery and/or installation. Inside delivery and installation terms must be agreed upon at time of order and prior to delivery. All orders should clearly note the OGS Contract Name and Award Number, Contract Number, and Contractor Name. Authorized users should follow up with Contractor if they do not receive order acknowledgement within five (5) days.
- G. Contractor documents which contain additional terms or conditions must receive pre-approval by the Authorized User, in accordance with Appendix B Section 26 – *Modification of Contract Terms*.
- H. Upon Authorized User acceptance of Products itemized on the Purchase Order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for

payment. Contractor shall provide itemized invoicing for all Products. See also Section 6.8 *Invoicing and Payment*.

## **5.10 Notification of Award**

Tentative Contract award(s) shall consist of written notice to that effect by OGS to selected Bidder(s), and each such Bidder 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.

## **5.11 Debriefing**

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

# **6. CONTRACT TERMS AND CONDITIONS**

## **6.1 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 upon the date of OSC approval of the final executed documents, and the Contract term shall end five (5) years from the date of OSC approval.

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date. At the State's option, the Contract may be extended for two (2) 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 six (6) months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the six (6)-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

## **6.2 Short-term Extension**

This section shall apply in addition to any rights set forth in Appendix B *Contract Term – Extension*. In the event that OGS determines that a short term extension is in the best interest 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 three (3) months 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 six (6) months in lieu of three (3) months. However, unless otherwise noted in the extension notification or agreement, this extension automatically terminates should a replacement Contract be issued in the interim.

### 6.3 Contract Survival

Engagements (Form 1 Task Orders) that are sent to Contractors for response prior to the expiration of the resulting Contract shall survive the expiration date based upon the Engagement length stated on the Form 1 only if the Selected Candidate's actual start date occurs no later than 60 calendar days beyond the Contract expiration date. All Engagements without a start date within this parameter noted above shall be null and void.

### 6.4 Price

The following terms and conditions shall apply to pricing offered under the Contract. For Bid pricing, see Section 4.7 *Bid Pricing Submittal*.

In the resulting Contract, NTE Hourly Bill Rates will be set for each Contractor using the pricing collected in the Contractor's Attachment 1 – *Financial Proposal*. This will result in NTE Pricing Schedules that will be posted to the OGS HBITS Website.

The NTE Hourly Bill Rates proposed in Attachment 1 – *Financial Proposal* for each Job Title and Skill Level and as set forth in the resulting Contracts shall be deemed EXCLUSIVE of travel, meals, and lodging. See Section 7.10 for information regarding travel, meals, and lodging terms.

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

1. Any applicable minimum wage, living wage, or prevailing wage, and potential increases thereto, including the Office of Foreign Labor Certification (OFLC) prevailing wage rates for foreign workers.
2. Profit and overhead, which may include the following costs:
  - a. Site access (travel to and from the work site)
  - b. Workers' compensation
  - c. Disability benefits
  - d. Federal and State payroll or employment taxes or fees, including FUTA, SUTA, and FICA
  - e. All insurance, including, but not limited to:
    - i. Commercial general liability
    - ii. Business automobile liability
    - iii. Crime liability, etc.
  - f. Any federal, state, local law, regulation, ordinance, etc. regarding:
    - i. Paid family leave
    - ii. Paid sick leave
    - iii. Vacation
    - iv. Paid holidays
  - g. All other expenses including, but not limited to:
    - i. Training
    - ii. Use of MWBEs and SDVOBs
    - iii. Federal, state or local fees
    - iv. Background checks as provided for in Section 7.7.C
  - h. Any back-office management costs for Contractors and for their Subcontractors, including, but not limited to:
    - i. Management of payroll
    - ii. Management of personnel record/files
    - iii. Creation and/or maintenance of a billing system that shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users.
    - iv. Record keeping and reporting
  - i. Ensuring Subcontractors proposed to be used by the Contractor on an Authorized User's site comply with Authorized User's various requirements

Rates quoted in response to a task order shall at all times be equal to or less than the Contractor's awarded Not-To-Exceed Bill Rates. Contractors are encouraged and expected to provide lower than their Not-To-Exceed Bill Rates in response to the task orders issued by the Authorized Users during the Contract term. All Contractor's

pricelists will be posted on the OGS Procurement Services website, without exception.

## 6.5 CPI Price Update

Prior to each annual anniversary date of the Bid Opening, the Contractor may request a NTE Hourly Bill Rate price adjustment (increase or decrease) based upon fluctuations in the National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series ID: CUUR0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. To view the Series Report, enter the Series ID at <https://data.bls.gov/series-report>, click "Next," and then "Retrieve Data."

Price adjustments using the CPI involve changing the base price by the percent change in the level of the CPI for the current year compared to the previous year. This is calculated by first determining the index point change between the two (2) readings, and then the percent change. The price adjustment shall be calculated as follows: Take the CPI value for the third month prior to the current Bid Opening anniversary date and subtract the CPI value for the third month prior to the previous Bid Opening anniversary date. The difference is then divided by the previous period CPI value and this result is then multiplied by 100 to equal the percent change which is the price adjustment value. This percentage change (increase or decrease) shall be applied to the next Contract year, upon release of a Contract Addendum from OGS Procurement Services.

The following example illustrates the computation of percent change for a hypothetical April 2027 Bid Opening calculation:

CPI for current period (January 2027)	330.000
Less CPI for previous period (January 2027)	325.000
Equals index point change	5.000
Divided by previous period CPI	325.000
Equals (result of 5.00/325.000 rounded to nearest thousandth)	0.015
Result multiplied by 100	.015 x 100
<b>Equals percent change/ price adjustment value</b>	<b>1.5</b>

The Contractor is solely responsible for notifying the OGS HBITS Team via email of CPI rate change request. The Contractor shall submit this notification no earlier than 90 calendar days and no later than the first day of the month prior to the start date of the Contract year. The Contractor shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease to the OGS HBITS Team. The subject line of the email request must contain "Request for CPI Adjustment". In the event of a CPI rate increase, should the Contractor fail to make a request and submit supporting documentation to the OGS HBITS Team within the timeframe noted above, the Contractor shall be deemed to have waived its right to any increase in rate for that year. However, the State shall not be barred from making the appropriate adjustment in the case of a decrease in rate as determined in accordance with the above methodology. Under no circumstance may Contractor claim a cumulative increase for waived years.

Under no circumstance will a CPI adjustment be granted to an existing placement. CPI adjustments shall only apply to NTE Hourly Bill Rates for new Engagements posted to the Contractors after the effective date of the change which occurs upon OGS Procurement Services approval.

## 6.6 Price Structure

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

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

## **6.7 Minimum Order**

The State shall not be held liable under the resulting Contract for any minimum utilization of the Contractor's Candidates.

## **6.8 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 (1) invoice, monthly in arrears, for all services rendered during the month. Bi-weekly or weekly billing for services rendered is not allowed. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Hourly Bill Rate
- Total hours worked, supported by timesheets with original signatures, which will include the daily hours worked by the respective individual(s) attached to invoices as backup
- Unit of Measure
- Dates of Service (if applicable)
- Location where services were performed
- Name of the Selected Candidate
- Services performed during the month

The Authorized User will be obligated to review and validate all invoices submitted by the Contractor.

Payment of purchases made by Authorized Users under this Contract shall be the sole responsibility of Authorized Users, and Contractors shall bill Authorized Users directly.

Timeliness of payment and any interest to be paid to Contractors is governed by Appendix B – General Specifications (April 2016), *Clause 47 Prompt Payment*.

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>.

The State shall not be liable for the payment of any taxes under the resulting Contract however designated, levied, or imposed. See Appendix B – General Specifications (April 2016), *Section 8* for additional information.

## **6.9 Contract Administrative Fee**

The awarded Contractor(s) are required to pay OGS, directly or through an agent, an Administrative Fee in the amount of three-quarters (3/4) of one (1) percent (0.75%) of all sales generated from this Contract, or any resulting agreement. Payments will be due quarterly in arrears, and shall be calculated based on the date an invoice was provided to the Authorized User (see 6.8 *Invoicing and Payment*), for all invoices issued by the Contractor during the applicable quarter. The due date for each payment will be thirty (30) calendar days following the end of each Contract quarter (Contract quarters are January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31). Accordingly, the due date for each Administrative Fee payment is January 30, April 30, July 30, and October 30, for each quarter or portion of a quarter during the term of the Contract. Submission details including address and format will be provided no less than one (1) month prior to the due date for the first payment. OGS reserves the right to partner with a third party to manage Contract Usage Reports (see Section 6.20 *Report of Contract Usage*) and collection and reconciliation of the Administrative Fee.

The Administrative Fee shall not be imposed by the Contractor on Authorized Users. The pricing offered under the Contract will be considered by OGS to be inclusive of the Administrative Fee and all other Contractor costs associated with providing the Products or services, and shall be set forth in the format required on Attachment 1 – *Financial Proposal*. The Administrative Fee shall not be itemized or displayed separately on Attachment 1 – *Financial Proposal*, or on invoices provided to Authorized Users for Contract purchases.

## **6.10 Audits**

At any time during the life of this Contract, OGS Procurement Services reserves the right to suspend this Contract for failure of the Contractor to provide accurate and timely documentation as required by this Contract. This will include, but is not limited to, submission of all reports, proof of insurance, and Consultant Disclosure documents. OGS will activate this right for the failure of the Contractor to make timely and accurate payment of the quarterly Administrative Fee. This suspension will impact the Annual Contractor Evaluation.

At any time during the life of this Contract, OGS reserves the right, directly or through a designated agent, to audit the accuracy and timeliness of all payments and supporting documentation between Contractors, Subcontractors, and Selected Candidates, the accuracy of the Contract Usage Reports (see Section 6.20 *Report of Contract Usage*), and the accuracy of Administrative Fees (see Section 6.9 *Contract Administrative Fee*). Audits shall be conducted during regular business hours, upon not less than fifteen (15) Business Days prior written notice. Administrative Fees will be due immediately for any errors or omissions disclosed by any such audit. If, as a result of any such audit, Administrative Fees are determined to have been underpaid by more than five percent (5%) for the period audited, Contractor shall pay the costs of such audit or three (3) times the discrepancy, whichever is higher. In addition, OGS reserves the right, directly or through an agent, to review Contract Usage Reports and other such documentation for accuracy of all required reporting documents for both NYS Authorized Users and other parties using this Contract or resulting agreement. As a result of such review, if inaccuracies of more than 5% are found in any of the reporting documents, Contractors shall pay the cost of such audit or three (3) times the discrepancy, whichever is higher. Failure to make such payments or repeated errors on subsequent audits may result in the scheduling of a responsibility meeting in relation to this Contract and may lead to termination of this Agreement.

## **6.11 Services Warranty**

Authorized Users shall have the right to interview Candidates, either in-person, by telephone, or via Webcasting, to determine their qualifications. The qualifications must reflect the position of the specific Job Title requested. An Authorized User reserves the right to reject Candidates if the Authorized User determines that the Candidate is not qualified based on the referenced Job Title and other mandatory requirements. Authorized Users have the right to request a replacement Candidate if the original Selected Candidate is deficient in the performance of an assignment (see Section 7.9 for details on Selected Candidate Replacement).

To ensure all services conform to Contract specifications, the Contractor must implement quality control procedures and a quality assurance plan.

Contractor must warrant that the services acquired under this Contract will be provided in a professional manner in accordance with industry standards. The Authorized User must notify Contractor of any services warranty deficiencies within ninety (90) calendar days from performance of the services that gave rise to the warranty claim.

## **6.12 Subcontractors**

### **A. Responsibility for Performance/Reporting**

All Contracts between the Contractor and its Subcontractors must be by bona fide written Contracts that mandate compliance with the terms and conditions of the resulting HBITS Contract. Contractors shall be fully liable for their respective Subcontractors' performance and compliance with all Contract terms and conditions. Contractor must include in all Subcontracts related to the Contract, in such a manner that they will be binding upon each Subcontractor with respect to work performed relating to the Contract, provisions specifying that:

- Work performed by the Subcontractor must be in accordance with the terms and conditions of this Contract including, but not limited to, Appendix A - Standard Clauses for New York State Contracts (June 2023);
- Nothing contained in such Subcontract shall impair the rights of the Authorized User or the State;
- Nothing contained in such Subcontract shall create any contractual relationship between any Subcontractor and Authorized User or the State;
- Subcontractor must maintain and protect against any unauthorized disclosure of records with respect to work performed under the Subcontract in the same manner as required of the Contractor;
- The State and/or Authorized User must have the same authority to audit the records of all Subcontractors as it does those of the Contractor; and
- Subcontractor must cooperate with any investigation, audit, or other inquiry related to the Contract or the resulting Contract or any litigation relating thereto.

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

Services provided by a Subcontractor must be reported by the Contractor in the required quarterly sales reports. In addition to inclusion of Subcontractor volume in the Contractor's sales reporting obligation to the State, at the request of an Authorized User, the Subcontractor shall provide the Authorized User with reports of the individual Authorized User's Contract activity with the Subcontractor.

Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Subcontractor's participation.

### **B. Conditions of Subcontractor Participation**

Contractors may only utilize one (1) tier of subcontracting to fulfill task orders on the HBITS Contract. The awarded Contractor may use one Subcontractor to fulfill a Task Order; the awarded Subcontractor is not permitted to then use an additional Subcontractor, etc.

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

Subcontractors must be approved in advance of a Task Order release date by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Subcontractors and their

participation under this Contract by job title, geographic region, size/sales volume, technical training, or other criteria ("qualifying criteria"), provided that:

1. such qualifying criteria are uniformly applied to all potential Subcontractors based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. those qualifying criteria met by the Subcontractor must be identified in Subcontractor designations in Attachment 10 – *Subcontractor Information Sheet* at the time that Subcontractor approval is requested; and,
4. Immediate advance notice is provided to OGS in the event that a change in Subcontractor's status occurs during the Contract term.

When Subcontractors are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 10 – *Subcontractor Information Sheet*. Any requested changes to Contractor's list of Subcontractors must be made *prior to* a Task Order release date. Failure to submit a timely request will render the Subcontractor ineligible to be considered for the Task Order.

A Contractor serving as a Contractor under this procurement is prohibited from also serving as a Subcontractor to another Contractor under this Procurement.

### **6.13 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/NYS Holidays.

Bidder shall provide a minimum of one (1) 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 9 – *Bidder Information Questionnaire*. Contractor must notify OGS within five (5) Business Days if its 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.

#### **A. Contract Administrator**

Contractors must provide a dedicated Contract Administrator to support the updating and management of the resulting Contract on a timely basis. The Contract Administrator shall act as the primary point of contact for Authorized Users and the OGS HBITS Team. The Contract Administrator must understand the terms and conditions of this RFP and the resulting Contract. The State seeks a person at the Contractor's management level to meet the needs of this position; therefore, this position must not be staffed by the Contractor's clerical personnel.

Contractors must identify a secondary point of contact if the Contract Administrator is unavailable. This position may be staffed by whomever the Contractor determines can provide the best service to the State. However, the individual assigned shall not act as the Contract Administrator.

This information must be maintained and up to date at all times during the term of the resulting Contract.

#### **B. Webcasting**

Contractors must have access to Webcasting technology, such as Webex or Microsoft Teams, for the duration of this Contract. This service must be provided to the State and Authorized Users free of charge. Authorized Users

may have security restrictions which preclude them from installing certain kinds of applications, software, and/or hardware.

OGS Procurement Services expects this technology may be utilized for Contractor meetings with OGS Procurement Services and Authorized Users. In addition, prospective Candidates offered by the Contractor may be expected to interview with the Authorized User via this technology. An Authorized User reserves the right to conduct Candidate interviews via the Contractor's Webcasting technology.

Candidates will be required to have a government issued photo ID (the form of the photo ID is at the discretion of the reviewing Authorized User) available for viewing at the call. Falsification or use of another person's documentation at this time for this purpose may constitute fraud on the part of the individual Candidate, the Subcontractor and/or the offering Contractors.

### **C. Billing Contact**

Contractors must provide Billing Contact information to support the issuance and management of invoices throughout the term of the resulting Contract.

### **D. Emergency Contact**

Contractors must provide Emergency Contact information to be used in the event of an emergency occurring after normal business hours or on weekends and holidays throughout the term of the resulting Contract.

## **6.14 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/state-agencies/gfo/chapter-iii/iii1-statewide-financial-system-sfs-overview>.

## **6.15 Accessibility of Web-Based Information and Applications Policy**

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities. The following language is incorporated into any Contract resulting from this Solicitation:

Any network-based information and applications development, or programming, including, but not limited to, websites delivered to or by the State pursuant to this contract or procurement, will comply with Section 130-d of the State Technology Law, as amended, Executive Law Section 170-f, as amended, and be consistent with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Information Communication Technology, as such policy may be amended, modified or superseded (the "Accessibility Policy"). The Accessibility Policy requires that State Entity Information Communication Technology shall be accessible to all users, including those with disabilities as determined by accessibility compliance testing. Such accessibility compliance testing will be conducted by OGS or a third-party at the direction of OGS, and any report on the results of such testing must be satisfactory to OGS.

## **6.16 Americans with Disabilities Act (ADA)**

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidder is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any

other physical disabilities. Although it is not mandatory for Bidder to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

### **6.17 N.Y. State Finance Law § 139-I**

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

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

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

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

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

### **6.18 Consultant Disclosure**

State Finance Law requires:

1. that the Office of the State Comptroller (OSC) include in the Consulting Services Report it compiles annually on contracts issued by state agencies for consulting services during the previous fiscal year, certain additional information on employees providing services under such contracts;
2. that contractors annually report certain employment information to the contracting agency, the Department of Civil Service (DCS) and OSC; and,
3. that OSC include such employment information in the Procurement Stewardship Act Report it compiles annually.

*Process and Document Preparation:*

#### **STATE CONTRACTORS EMPLOYMENT INFORMATION**

State contractors are required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked, and the amount paid to the contractor by the State as compensation for work performed by these employees. This includes information on any persons working under any subcontracts with the state contractor.

#### **CONTRACTS FOR CONSULTING SERVICE**

The definition of contracts for consulting services includes any contract entered into by a state agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

## REPORT REQUIREMENTS

State Finance Law requires that OSC report to the Legislature on contracts for consulting services that were issued by state agencies during the previous fiscal year. OSC is required to include in the Consulting Services Report the employment information described above.

To enable compliance with the law, state agencies must include the New York State Consultant Services Contractor's Planned Employment form ([AC 3271-S](#)) in the procurement record submitted to OSC for new consultant contracts. The completed form must include information for all employees providing service under the contract, whether employed by the contractor or a subcontractor. Please note that the form captures the necessary planned employment information prospectively from the start date of the contract through the end of the contract term.

In order to provide notice to potential contractors that the contractor selected may be required to complete the form, state agencies may incorporate the Form A into new solicitations for consulting services.

It is important to note that regardless of a contract's payment methodology (for example, deliverable based payment or lump sum payments), an agency must structure the procurement/contract to be able to ascertain and report the required data.

Submission of a completed Form A is required for OSC approval of new contracts for consulting services, except in extraordinary circumstances as determined at the sole discretion of OSC.

## ANNUAL REPORT REQUIREMENTS

State agencies must require state contractors to report annually on the employment information described above, including work performed by subcontractors. The annual employment reports are to be submitted by the Contractor to the contracting agency, to OSC and to DCS. OSC must include the employment information in the Procurement Stewardship Act Report. State Finance Law § 163 (subd 14) requires that OSC annually report to the State Procurement Council, the Governor and the Legislature on active and planned employment under consultant contracts subject to OSC approval.

State Consultant Services Contractor's Annual Employment Report ([AC 3272-S](#)) is to be used to report the information. Please note that, in contrast to the information to be included on Form A, which is a one-time report of planned employment data for the entire term of a consulting contract on a projected basis, Form B is required to be submitted each year the contract is in effect and is intended to capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st - March 31st).

To enable compliance with the law, state agencies must incorporate the annual reporting requirement and the Form B template into new solicitations for consulting services to provide notice to potential contractors that the contractor selected will be required to submit the form annually. Furthermore, incorporation of the requirement for Form B to be submitted annually by the contractor is a requirement for OSC approval of new contracts for consulting services, including those contracts resulting from mini-bids, except in extraordinary circumstances as determined in the sole discretion of OSC. Since the annual reporting requirement is contained in Appendix A - Standard Clauses for All New York State Contracts as of November 2010, compliance with this requirement may be satisfied by incorporating the latest version of Appendix A into the contract.

The State Consultant Services Contractor's Annual Employment Reports will be due no later than May 15th of each year.

## SUMMARY

RFPs and other solicitations for consulting services should include notice of these reporting requirements. The procurement record for new contracts for consulting services received by OSC for approval must include, upon submission of the contract for approval, a completed Form A. New contracts for consulting services, including

those contracts resulting from mini-bids, must include a requirement that Form B be submitted annually by the contractor to the contracting agency (Authorized User), DCS and OSC.

## COMPLETING THE FORMS

Form A and Form B should be completed for contracts for consulting services in accordance with the following:

- **Scope of Contract (Form B only):** a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- **Employment Category:** the specific occupation(s), as listed in the O\*NET occupational classification system, which best describe the employees providing services under the contract.  
(Note: Access the O\*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at <https://www.onetonline.org/> to find a list of occupations).
- **Number of Employees:** the total number of employees in the employment category employed to provide services under the contract during the report period, including part-time employees and employees of subcontractors.
- **Number of hours (to be) worked:** for Form A, the total number of hours to be worked, and for Form B, the total number of hours worked during the report period by the employees in the employment category.
- **Amount Payable under the Contract:** the total amount paid or payable by the State to the state contractor under the contract, for work by the employees in the employment category, and for services provided during the report period.

To facilitate annual reporting by contractors, it is recommended that the contracting entity make available to the Contractor a version of Form B with the Agency Name, Business Unit, and Department ID fields completed.

- **Reports may be submitted to OSC by either method listed below:**

By email (preferred method):

Please send a signed, scanned copy to [csmost@osc.ny.gov](mailto:csmost@osc.ny.gov) <mailto:CDMOST@osc.ny.gov> with "Consultant Disclosure Form B" in the subject line;

or

By mail:

NYS Office of the State Comptroller  
Bureau of Contracts  
110 State Street, 11th Floor  
Albany, NY 12236  
Attn: Consultant Reporting

- **Reports may be submitted to DCS by either method listed below:**

By email (preferred method):

Please send a signed, scanned copy to [SubmitformB@cs.ny.gov](mailto:SubmitformB@cs.ny.gov) with "Consultant Disclosure Form B" in the subject line;

or

By mail:

NYS Department of Civil Service  
Alfred E. Smith Office Building  
Albany, NY 12239  
Attn: Executive Office

- **Reports may be submitted to the Authorized User in a form and manner as prescribed by the Authorized User.**

*Proof (email confirmation is sufficient proof; do not forward copies of the Forms) that these reports were submitted to the above parties must be sent to the OGS HBITS Team (Required for the Annual Contractor Evaluation) by email to [hbits.contractors@ogs.ny.gov](mailto:hbits.contractors@ogs.ny.gov) with "Consultant Disclosure Form B" in the subject line.*

## **6.19 Insurance**

Contractors must hold at their sole cost and expense all required insurance as detailed in Attachment 4 – *Insurance Requirements*. During the term of the resulting Contract, Contractors must maintain in force at all times policies of insurance pursuant to the requirements outlined.

## **6.20 Report of Contract Usage**

Contractor shall submit Attachment 13 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized subcontractors, if any, no later than ten (10) 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.

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

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the 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 13 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

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 13 – *Report of Contract Usage*.

If the OGS HBITS Team extends the Contract beyond its initial five-year term, this Contract may be terminated if the reports required to be filed under this Section show that the Contractor has no sales to any Authorized User under the Contract for the prior five (5) years. Termination of the Contract under this Section is in addition to Appendix B *Termination*, and shall take effect upon written notification to the Contractor. The Contract may also be terminated for failure to file the reports required under this Section.

## **6.21 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 Office of Business Diversity conducted a comprehensive search and determined that, while the Contract may offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor, this Solicitation was written with a reduced threshold of the mandatory minimum qualifications to better allow MWBE vendors to compete as Prime vendors. The Solicitation also includes a Quantitative Factor in the Technical Evaluation (see Section 5.2) for MWBE vendors. Awarded Contractors are, 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.

### **6.22 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 ("SDVOB"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

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

#### I. Contract Goals

- A. OGS hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/Veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the OGS Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

#### II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids,

and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.

- C. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. OGS may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

### III. Request For Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at OGS for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to [OGS.sm.PS\\_HBITS@ogs.ny.gov](mailto:OGS.sm.PS_HBITS@ogs.ny.gov).

#### IV. Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. Copies of solicitations to SDVOBs and any responses thereto.
2. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
3. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified SDVOBs whom OGS determined were capable of fulfilling the SDVOB goals set in the Contract.
4. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
5. Other information deemed relevant to the waiver request.

#### V. Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available at <https://ogs.ny.gov/veterans/> and should be completed by the Contractor and submitted to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: [OGS.sm.PS\\_HBITS@ogs.ny.gov](mailto:OGS.sm.PS_HBITS@ogs.ny.gov).

#### VI. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

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

### **6.23 Diesel Emission Reduction Act**

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

The Law may be applicable to vehicles used by Contractors "on behalf of" State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

### **6.24 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 Solicitation, 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.

## **6.25 Overlapping Contract Services**

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

## **6.26 Preferred Source Products**

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source Program 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 (1) or more Preferred Source Program suppliers. An Authorized User must determine if a particular Product is an approved Preferred Source Product and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

## **6.27 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 <https://www.osc.ny.gov/state-vendors> or to enroll, go directly to the VendRep System online at <https://www.osc.ny.gov/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire>.

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 <https://www.osc.ny.gov/online-services/get-help> Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at <https://www.osc.ny.gov/state-vendors/vendrep/vendor-responsibility-forms>.

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

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

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

The Commissioner of OGS, in 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.

## **6.28 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 (4) 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 (4) 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 non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

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

## **6.29 "OGS or Less" Guidelines**

Purchases of the Products included in the Solicitation and resulting Contract are subject to the "OGS or Less" provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two (2) Business Days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

### **6.30 Non-State Agencies Participation in Centralized Contracts**

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

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<https://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.

### **6.31 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.

### **6.32 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.

### **6.33 Centralized Contract Modifications**

- A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
- B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
- C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
- D. All modifications proposed by Contractor shall be processed in accordance with Appendix D – *Contract Modification Procedure*. The Contractor shall submit all requests in the form and format contained in Appendix D – *Contract Modification Procedure*. The form contained within Appendix D is subject to change at the sole discretion of OGS.

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

### **6.34 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.

### **6.35 Traffic Infractions**

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

### **6.36 Contract Documents; Electronic Format**

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS, which may include a requirement for an electronic signature that has been generated by software (e.g., DocuSign or Adobe Acrobat Sign). Contractor is responsible for retaining all copies and originals (if applicable) of documents submitted to OGS for the term of the contract and any extensions thereof, and for a period of six (6) years after the term of the Contract has ended. This requirement includes both electronic documents, and original paper documents with required original signatures that have been scanned and submitted electronically. Contractor shall submit such retained documents to OGS upon request. If Contractor seeks to assign the Contract during the term, Contractor shall provide all documents relating to the bid and Contract that it has retained to the successor Contractor (transferee/assignee) upon OGS consent to the assignment.

### **6.37 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.

### **6.38 Technology and Security Requirements**

#### **A. Executive Order 117 and State Technology Law**

As of January 28, 2002, Governor Pataki enacted Executive Order 117 establishing the position of Chief Information Officer of the State of New York, afterwards known as the CIO. State Technology Law (STL) 102 creates the Office of Information Technology Services (ITS) and STL 103.10 codifies the authority of ITS to establish statewide technology policies, including but not limited to preferred technology standards and security, including statewide policies, standards, programs, and services relating to the security of state government networks.

Any Authorized User defined as a "State Agency" in State Technology Law 101 or "State Government" under Executive Order 117 or any Authorized User that uses or accesses any information technology resource for which the State has administrative responsibility, including systems managed or hosted by third parties on behalf of the State, are subject to NYS policies and standards promulgated by the Office of Information Technology Services (ITS) - <https://its.ny.gov/policies>.

#### **B. Security, Confidentiality, and Privacy Policies and Laws**

The Contractor shall comply with all applicable Federal, State, and Authorized User policies regarding compliance with various security, confidentiality, and privacy laws, rules, regulations, and policies as set forth in this RFP and in each Task Order and agreed to by the Authorized User and Contractor. At minimum,

Contractor will comply with a NIST-aligned framework that will assure appropriate measures are in place to protect the confidentiality, integrity, and availability of data.

As part of such compliance, Contractor shall execute written confidentiality or non-disclosure agreements as requested by the State or an Authorized User.

### **6.39 Work in the United States**

All work done by Selected Candidates under the resulting Contract must be performed within the contiguous United States.

### **6.40 Use of New York State Branding**

Contractors shall only use NYS-branded elements, such as the state seal, logos, banners, and other items that represent the State with approval from the State.

### **6.41 Non-Compete Agreements**

To help achieve the objectives of promoting competition, maximizing options for Authorized Users, and encouraging mobility and opportunities for Candidates, each Bidder shall agree that if awarded a Contract, any Candidate proposed by the Bidder under the resulting Contract shall be free to work unrestricted for the Contractor or Subcontractor (as applicable) and any such Candidate shall not be subject to any non-compete agreements or restrictive covenants for any work performed under the resulting Contract. The Contractor further agrees that, to the extent a Candidate may be restricted by a pre-existing non-compete agreement or restrictive covenant, the Contractor or Subcontractor (as applicable) agrees not to enforce any such restrictions for purposes of work performed under any contract resulting from this Solicitation.

The Contractor shall be responsible for verifying, prior to proposing a Candidate, that such Candidate is not subject to any work restrictions as described herein, regardless of whether any restriction rights are held by the Contractor or any other party, including Subcontractors.

The provisions of this section shall apply regardless of whether the proposed Candidate is working as an employee or independent contractor, and regardless of whether the proposed Candidate is working directly for the Contractor or through a Subcontractor. This shall be a material term of the resulting Contract.

## **7. TASK ORDER TERMS AND CONDITIONS**

The terms and conditions set forth in this solicitation are expressly incorporated in, and applicable to all Engagements under the resulting Contract. The following sections are not intended to limit or otherwise restrict the terms and conditions set forth herein.

### **7.1 Authorized User Identifies Need for Position**

When a need for an Hourly Based IT Position is identified, Authorized Users are required to obtain the necessary internal/control Agency approvals prior to initiating the HBITS Process. They must then identify the Job Title and Skill Level of the Position utilizing Attachment 7.

#### **A. Agency Pre-Approval Requirements**

The Authorized User is responsible for obtaining the necessary approvals prior to initiating the HBITS Process.

- Internal Agency (Management) Approval
- New York State Office for Technology "Plan to Procure" (PTP) Approval (if applicable)
- New York State Division for the Budget (if applicable)

## 7.2 Initiating Task Order Requests

### A. Form 1: Task Order Request Form

The Authorized User will initiate the process of obtaining an hourly-based IT Position(s) by completing a Form 1: Task Order Request Form (Form 1). This document shall be considered the document of record and may not be altered in any way.

### B. Task Order Request Submission

New Task Order Requests shall be submitted via email to the appropriate OGS HBITS Email Address as indicated below. The Subject Line of the email should annotate "New HBITS Request". Multiple Task Order Requests must not be submitted in the same email.

Executive Agencies [ogs.sm.hbits.stateagencies@ogs.ny.gov](mailto:ogs.sm.hbits.stateagencies@ogs.ny.gov)

Nonexecutive Agencies [ogs.sm.hbits.nonexecutiveagencies@ogs.ny.gov](mailto:ogs.sm.hbits.nonexecutiveagencies@ogs.ny.gov)

The Form 1 must be completed in its entirety and labelled "FORM 1". See Attachment 6 – *HBITS Contract (Forms)*. The following documents must be submitted to the OGS HBITS Team when requesting a new Task Order:

#### 1. Form 1

The Form 1 must be completed in its entirety in a Microsoft Excel document labelled "FORM 1". The Form 1 document and detailed instructions for its completion will be located on the OGS Website.

#### 2. Form 1A Agency Contact Information

The Agency Contact Information chart must be completed in its entirety in a Microsoft Word document labelled "Form 1A CONTACT INFORMATION". This document will be located on the OGS Website.

### C. Position Requirements

#### 1. Number of Positions

A maximum of five (5) Positions are allowed per Task Order Request. Only one Job Title/Skill Level combination is allowed per Task Order.

#### 2. Number of Responses

The Authorized User may request a maximum of two (2) responses to be submitted per Active Contractor, per Position requested.

#### 3. Engagement Duration and Extension

The initial term of Engagements under the Contract shall be a minimum of 2 months and a maximum of 36 months in length. Engagements begin on the first working day of a successful placement (Onboarding Date) and end after the number of months of the Engagement as stated on the Form 1.

Authorized Users may extend an individual engagement by submitting a Task Order Modification Request (Form 5) to the OGS HBITS team. Under no circumstances shall the duration (initial term plus any extension) of an Engagement exceed 60 months.

Authorized Users are required to submit the request for engagement extension 30 days prior to the original end date. Authorized Users are required to obtain the necessary internal/control Agency approvals for any extension.

If a Contractor or Candidate is unwilling to extend an engagement, then the Authorized User must adhere to the original end date.

#### **4. Mandatory Qualification**

##### **a. Job Title**

The Job Title and corresponding description represents the Mandatory Qualification for a Position and may not be changed or modified. The Job Titles and corresponding descriptions are listed in Attachment 7 – *Job Titles, Skill Levels, Regions*.

##### **b. Skill Level**

The Skill Level and corresponding number of months' required experience represents the minimum experience required to pass the Mandatory Qualification review. The Skill Levels are defined in Attachment 7 – *Job Titles, Skill Levels, Regions*.

##### **c. Requested Qualifications**

The Authorized User will define additional qualifications for the requested Position(s). The experience required shall be indicated in number of months.

##### **d. Geographic Region**

There are three (3) home base geographic regions defined. The geographic regions are defined in Attachment 7 – *Job Titles, Skill Levels, Regions*. Regions are purely informational and will be included in the Task Order.

##### **e. Hourly Bill Rates**

The rates proposed on Attachment 1 – Financial Proposal shall become the Contractor's Not-to-Exceed Bill Rates and posted to the OGS Website. Contractors will propose a competitive Bill Rate when submitting a Form 2: Candidate Response Form in response to a Task Order. When a Candidate is selected, the actual Bill Rate will be the rate that the successful Contractor originally proposed in its Form 2 submission.

### **7.3 Task Order Number Assignment**

Upon receipt of a new Task Order Request from an Authorized User, the OGS HBITS Team will assign a unique HBITS Task Order Number as outlined below. The OGS HBITS Team will send a Confirmation to the original request, updating the Subject Line to include the assigned Task Order Number.

An Authorized User shall make no modifications to the initial Task Order Request email or any of its Attachments until a Task Order Number has been assigned and the Confirmation received.

#### **A. Task Order Numbering**

Upon receipt of new Task Order Requests, a unique identifying number will be assigned by the OGS HBITS Team. The Task Order Number will begin with "HBITS", followed by the two (2) digit "Contract Year", followed by a five (5) digit sequential number beginning with "1XXXX" (so as to distinguish the Task Orders under this Award 23311 from any prior Award).

"HBITS- XX <Contract Year> - 1XXXX <Sequential Number>

HBITS-01-10000, HBITS-01-10001, etc.

## **7.4 Task Order Review**

The OGS HBITS Team will review the Form 1 to validate the data fields, to ensure compliance with Contract terms and conditions and to finalize the Form 1.

### **A. Suggested Edits**

During the Form 1 review, the OGS HBITS Team may make suggested edits to the Form 1. An email will be sent to the Authorized User with an edited document attached. The Authorized User shall only use the edited document when making the suggested edits. An Authorized User may choose not to accept the suggested edits, however, this determination should be made in accordance with the Authorized User's own internal policies and procedures.

Once an Authorized User has completed making their edits, all comments and/or tracked changes must be removed, the file renamed per the instructions provided in the email, and the final Form 1 returned to the OGS HBITS Team.

### **B. Finalize Task Order**

Once the OGS HBITS Team has determined that the Form 1 complies with the Contract terms and conditions, the Form 1 will be finalized by the OGS HBITS Team.

### **C. Task Order Cancellation**

See Section 7.9 below.

### **D. Posting Requirements**

The OGS HBITS Team will distribute to all Active Contractors a finalized Form 1, a Sample Form 2 for use in submitting a Candidate for the Position(s), and the due date and time for the responses. The information on the Sample Form 2 is populated by the OGS HBITS Team using key information found on the Form 1. The Sample Form 2 is provided for convenience only, and if there are any discrepancies between the Form 1 and the Sample Form 2, the Form 1 is the prevailing information that must be used. Authorized Users will be notified by the OGS HBITS Team of the due date and time for submissions.

## **7.5 Candidate Submission**

### **A. Form 2: Candidate Response Form**

The Form 2 shall be used by Active Contractors to submit Candidates for requested Positions. In addition to the information from the Form 1, the information to be provided on this form by the Active Contractors includes, but may not be limited to the following:

- Contractor Name and contact information
- Candidate Phone #
- Candidate E-mail
- Candidate Eligibility to Work in US
- E-Verification Confirmation case result is "Employment Authorized"
- Pre-Interview Date
- Anticipated Candidate absences
- Proposed Candidate availability for interview dates
- Verification that the Candidate is not subject to any non-compete agreements, or that the Contractor agrees that any non-compete agreements will not be enforced against the Candidate for purposes of this Contract
- Previous Work History Verification
- Background Check
- Educational Credential(s) Verification
- Candidate Employment Status

- Subcontractor Name (if applicable)
- Proposed Hourly Bill Rate (not to exceed the Contractor's NTE rates posted on the OGS Website)
- Detailed Description of how the proposed Candidate meets the Mandatory Qualification, including name of employers, start and end dates of each employment, references, and list job duties for the experience listed on the Form 2, explaining how it relates to the position requirement
- Detailed Description of how the proposed Candidate meets each of the Requested Qualifications, including name of employers, start and end dates of each employment, references, and list job duties for the experience listed on the Form 2, explaining how it relates to the position requirement
- Valid References (Name, Company, Phone #, Email)
- Verification that the Candidate meets the additional requirements stated on the Form 1
- Contractor Certification

## **B. Candidate Response Requirements**

Active Contractors must validate all the following requirements at the time of submission of the Candidate to the Authorized User. The Active Contractor will be responsible for the truthfulness and accuracy of each proposed Candidate's work history, resume, technical skills, certifications, educational credentials, references and all other information presented to the OGS HBITS Team for review. Failure to present truthful and accurate information will result in the rejection of the Candidate and/or the completion of an Authorized User Issue Form (Form 6) as described in Section 7.10 and may result in a referral to the State Inspector General, the Attorney General, or other law enforcement agency. Furthermore, OGS reserves the right to suspend any or all activities under this Contract, at any time, if information calls into question the responsibility of Contractor as described in Section 6.28 of the Contract. Failure to comply may result in a finding of non-responsibility, termination pursuant to Section 43 of Appendix B, remedies for breach pursuant to Section 48 of Appendix B, and/or enforcement proceedings as allowed by the Contract and applicable law.

### **1. Eligibility to Work**

Contractors must validate that the proposed Candidate is eligible to work in the US.

- a. The Contractor certifies that it will maintain for each employed Candidate a properly completed Form I-9 as required by law and shall include in related subcontracts a requirement that sub-contractors performing work or services pursuant to the Contract will maintain for each employed Candidate a properly completed Form I-9 as required by law.
- b. Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees hired by the Contractor during the Contract term. Also, Contractor shall include in related subcontracts a requirement that sub-contractors performing work or providing services pursuant to the Contract utilize the E-Verify system to verify employment of all new employees hired by the sub-contractor during the Contract term.
- c. The Contractor or sub-contractor shall verify the employment eligibility and work authorization status of each employed Candidate assigned under this Contract on an ongoing basis throughout the duration of the applicable Task Order. If an employed Candidate's authorization to work in the United States is scheduled to expire during the term of the Engagement, the Contractor or sub-contractor shall:
  - i. initiate reverification prior to expiration; and
  - ii. use best efforts to provide sixty (60) calendar days' written notice to the State and applicable Authorized User if a Candidate will not be able to complete the term of a Task Order for any reason. Information regarding employment eligibility and work authorization status should not be shared with an Authorized User or included in such notice.
- d. For Candidates assigned under this Contract that are independent contractors of Contractor or a sub-contractor, the Contractor or sub-contractor shall:

- i. collect a signed attestation from the independent contractor Candidate that such individual is authorized and eligible to work in the United States; and
  - ii. provide a signed attestation to OGS and the Authorized User that the Contractor or sub-contractor has no knowledge that the independent contractor Candidate is not authorized or eligible to work in the United States.
- e. Upon request, the Contractor or sub-contractor shall provide the Authorized User with written certification of compliance with this clause. Contractor shall not transmit copies of Form I-9 or any personal identification documents for any Candidate.
- f. Failure to maintain such compliance may constitute a material breach of the Contract or finding of non-responsibility and may subject Contractor to suspension, termination, disqualification from further participation in the HBITS contract or other remedies.

Authorized User shall not include requirements in the Task Order that the Candidate be a US citizen or have a particular legal status or that the Contractor identify whether the Candidate is a US citizen or has a particular legal status unless the Authorized User has determined that it has a valid legal basis for such restriction and has documented such basis in its procurement record.

The Authorized User shall not request, collect, or retain any Governmental identification such as Green Card, Visa, or Passport numbers. The Authorized User may request a form of identification to confirm a Candidate's identity prior to building entry for interview or when reporting to work after being selected for a Task Order when such requirement is generally applicable to employees and independent contractors.

OGS reserves the right to amend this provision to adhere to the requirements of State and Federal law.

## **2. Pre-Interview**

Active Contractors must interview each proposed Candidate and verify their qualifications prior to presenting a Candidate. This pre-interview must be held between the date the Task Order was posted to the Active Contractors and the due date for responses. Form 2s that do not include a verifiable date that falls between these dates will be rejected and not considered during the preliminary review performed by the OGS HBITS Team. The Active Contractor will be notified accordingly.

## **3. Candidate Employment Status**

Active Contractors must identify if the proposed Candidate will be a Direct Employee of the Contractor, an Independent Contractor, or a Subcontractor(s) Employee. If the Candidate is a Subcontractor(s) Employee, the Contractor must provide the approved Subcontractor name.

The Employment Status must be identified. Form 2s that do not indicate the Candidate Employment Status and the Subcontractor information (if applicable) will be rejected and not considered during the preliminary review performed by the OGS HBITS Team. The Active Contractor will be notified accordingly.

## **4. Anticipated Absences**

Active Contractors must identify any dates that the proposed Candidate will be unavailable during the duration of the Engagement, including absences relating to work Visas.

## **5. Contractor Certification**

By submitting a Candidate, Active Contractors are certifying that they have verified the previous employment of the Candidate by calling prior employers to verify dates of employment and documenting

such information. Contractors must verify as many years of employment as necessary to validate the relevant experience and skill level.

## **C. Candidate Submission**

### **1. Due Date and Time**

For a Candidate to be considered, Active Contractors must submit the Form 2 to the OGS Contractors Mailbox ([ogs.sm.hbits.contractors@ogs.ny.gov](mailto:ogs.sm.hbits.contractors@ogs.ny.gov)) in a manner determined by the OGS HBITS Team. The OGS HBITS Team will accept the Form 2 by 5:00 PM EST on the seventh Business Day after the Form 1 is posted to the Contractors for response (exclusive of the day of transmission to the Contractors).

Form 2s received after the due date and time will be rejected and not considered during the preliminary review performed by the OGS HBITS Team. The Active Contractor will be notified accordingly.

When submitting a Form 2, Active Contractors are required to submit the Candidate's resume and any supplemental documentation as listed in the Requested Qualifications of the Form 1 and Sample Form 2. If the Active Contractor did not attach a resume or valid identification with their Form 2 submission, upon request of the OGS HBITS Team, the Active Contractor must provide this documentation by Close of Business (5:00 PM EST) on the day of request, otherwise the Form 2 submission will be rejected as incomplete. If the Active Contractor did not attach supplemental documentation with their Form 2 submission, upon request from the Authorized User, the Active Contractor must provide this information within two (2) Business Days, otherwise the candidate may be withdrawn from consideration by the Authorized User.

### **2. Duplicate Submissions**

In the event where two (2) or more Active Contractors submit the same Candidate for the same Position, the Candidate shall only be considered by the Active Contractor with the lowest Hourly Bill Rate for the Position. The Candidate will be released from consideration for the Active Contractors with the higher Hourly Bill Rate for the Position and those Active Contractors will be notified accordingly. Under no circumstance will those disqualified Active Contractors be permitted to resubmit a new Candidate.

The OGS HBITS Team reserves the right to reach out to the Active Contractor with the lowest Hourly Bill Rate for written proof that a Candidate gave the Active Contractor or Subcontractor permission to submit their name for the Position. Failure to provide adequate proof of permission to submit may result in the release of the Candidate submitted by the Active Contractor with the lowest Hourly Bill Rate and consideration will be given to the Candidate submitted by the Active Contractor with the next lowest Hourly Bill Rate.

### **3. Additional Submission Requirements**

Active Contractors shall not submit the same Candidate for another HBITS Position until such Candidate is released from consideration by the OGS HBITS Team. However, if after five (5) Business Days the Active Contractor has not been notified that the Candidate has been selected for an interview, the Candidate will be deemed released and the Active Contractor may resume submitting the Candidate for other HBITS Positions. Candidates who have been selected for an interview shall not be deemed released until a selection has been made. If an Active Contractor submits a Candidate who does not meet the conditions above, the Candidate will be rejected and not considered during the preliminary review performed by the OGS HBITS Team. The Active Contractor will be notified accordingly.

Active Contractors shall not submit a Candidate who is already placed on an existing Task Order with the same Job Title and Skill Level unless the current Engagement is set to expire within sixty (60) calendar days; or the Selected Candidate in the existing Position gives a minimum of thirty (30) calendar days' notice to the existing Authorized User. In the case of the latter, the onboarding date may not occur before the thirty (30) calendar days is up. However, an Active Contractor may submit a Candidate who is already placed on an existing Task Order if the Job Title and Skill Level of the new Position represent a higher Hourly Bill Rate than the existing Task Order. If an Active Contractor submits a Candidate who does not

meet the conditions above, the Candidate will be rejected and not considered during the preliminary review performed by the OGS HBITS Team. The Active Contractor will be notified accordingly.

Active Contractors shall only submit the number of Candidates allowed as specified in the Form 1. If the number of submissions exceeds the allowable amount, the additional Candidates will be rejected and not considered during the preliminary review performed by the OGS HBITS Team. The Active Contractor will be notified accordingly.

#### **D. Preliminary Form 2 Completeness Check**

Once the Candidate responses have been received, the OGS HBITS Team will perform a preliminary Form 2 completeness check to determine the Candidates who are deemed eligible to continue to the Authorized User evaluation process. The OGS HBITS Team's preliminary completeness check shall consist of the following:

- Verifying the Contractor's response was received before the due date/time
- Verifying the number of Contractor responses was not exceeded
- Identifying duplicate candidate submissions
- Form 2 completeness

The OGS HBITS Team must make this determination and forward the eligible Candidates to the Authorized User within three (3) Business Days. Each criterion is described below:

##### **1. Eligible Candidates**

Candidates who meet all the preliminary Candidate review requirements will be considered eligible and forwarded to the Authorized Users for consideration. The OGS HBITS Team will notify the Active Contractors of their Candidates' status.

##### **2. Mandatory Qualification**

Active Contractors shall provide a detailed description of how the proposed Candidate meets the Mandatory Qualification and how the proposed Candidate gained the experience. This description should not include a cut and paste of the defined Mandatory Qualification but should be very specific. This shall include the name(s) of the employer(s), start and end dates of each employment, and any other applicable information. Start and end dates must include, at minimum, the month and year(s) of employment. Candidates who do not adequately describe how the Mandatory Qualification is met will be released by the Authorized User from further consideration and the Active Contractor notified accordingly.

##### **3. Requested Qualifications**

Active Contractors shall provide a detailed description of how the proposed Candidate meets each Requested Qualification and how the proposed Candidate gained the experience. This description should not include a cut and paste of the defined Requested Qualifications but should be very specific. This shall include the name(s) of the employer(s), start and end dates of each employment, and any other applicable information. Start and end dates must include, at minimum, the month and year(s) of employment.

Authorized Users may award partial points if a Candidate is within 3 months of the requested experience. For example, if a Requested Qualification is 84 months' experience with JavaScript, and the Candidate has 81 months' experience, the Candidate may receive 30% of the total points for that qualification. If the Candidate is more than 3 months' away from the required experience, they will receive no points for that qualification. If the Candidate has more than the requested 84 months' experience, they receive the maximum points for that qualification.

Candidates who do not meet the minimum number of months' required experience defined in the Requested Qualification, or who do not adequately describe how the Requested Qualification is met for at least 60% of the total 50 points available will be released from further consideration by the Authorized User and the Active Contractor notified accordingly.

**7.6 Authorized User Candidate Selection Process**

Once the Authorized User receives the Form 2s for the eligible Candidates from the OGS HBITS Team, the Authorized User must complete the following. The below chart summarizes this process:

Who	Action	Business Days	Forms
Authorized User	Performs Technical Evaluation using Candidate Form 2s, resumes, and other required documents as listed on Form 2, and assigns a Requested Qualifications Score (up to 50 points)	1-5	3A 3A Summary
	Determines Candidates to interview		
	Release Candidates not selected for interview		
	Schedules interviews (minimum based on # of Positions)		
	Conducts interviews to validate initial score of Requested Qualifications and assigns an Interview Score (up to 20 points).	2-5	3B 3B Summary
	Selects Candidate with the highest combined Technical and Cost score.		
	Authorized User Checklist (optional)	10	Onboarding
	Authorized Users must independently verify work experience and education of HBITS candidates and current HBITS employees		
	Form 2A Selected Candidate Certification		
	Works with Contractor to Onboard Selected Candidate		
	Notifies OGS HBITS Team of onboarding details		
	Release all Candidates not selected		
	Retains all Forms for Procurement Record		
Performs all Candidate Placement Requirements and finalizes the onboarding of the Selected Candidate.			

**A. Technical Evaluation**

Upon receipt of the eligible Candidates from the OGS HBITS Team, the Authorized User will evaluate each Candidate response to determine which Candidates will be interviewed. The Form 2, resume, and other required documents as listed on Form 2 may be used during the technical review. The Authorized Users shall make this determination within five (5) Business Days and provide the Candidates' status (interview requested or to be released) to the Active Contractors. If the Contractor has not been notified within five (5) Business Days of their Candidates' status, the Candidates will be deemed released.

The Authorized User reserves the right to reject all the eligible Candidates provided. The Authorized User will notify the OGS HBITS Team if they wish to cancel, and the OGS HBITS Team will notify the Active Contractors that their Candidate has been released from further consideration by the Authorized User due to cancellation.

**1. Form 3A: Authorized User Technical Evaluation Form**

The Agency must score all Eligible Candidates using Form 3A: Agency Technical Evaluation Form (Form 3A). See Attachment 6 – *HBITS Contract (Forms)*.

Only the Form 2, resume, and other documents listed in the Requested Qualifications Section of Form 2 shall be used for scoring purposes. No other documentation submitted with the Form 2s shall be used for technical evaluations.

The Technical Evaluation is worth a total of 50 Points. Each Requested Qualification shall be assigned a points value of zero, Satisfactory, Meets Qualification or Exceeds Qualification. Comments must be entered on the Form 3A whenever Zero Points or Max Points is assigned. Authorized Users are encouraged to create an evaluation tool to pre-determine what criteria will be used when assigning points values to ensure that all Candidates are evaluated equally. The 3A Comments should reflect the criteria on the Authorized User's evaluation tool.

If the Authorized User declines to consider a Candidate for any reason, it must be documented in detail on the Form 3A Summary. This may include, but is not limited to:

- Previously onboarded Candidate that was terminated for poor performance
- Candidate appears on agency's Staff Exclusion List or similar
- Candidate has committed serious or repeated acts of fraudulent behavior (e.g. misrepresenting qualifications, credentials, or identity)

**2. Form 3A Summary: Authorized User Technical Evaluation Summary**

Once 3As have been completed, the candidates must be summarized on a Form 3A Summary: Authorized User Technical Evaluation Summary (3A Summary). See Attachment 6 – *HBITS Contract (Forms)*.

The Candidates must appear in Total Score ranking order from highest to lowest. The Authorized User will also identify whether the Candidate is being selected for an interview.

When determining which Candidates will be interviewed, the Authorized User must not skip higher scoring Candidates to interview lower scoring Candidates. In addition, if selecting a Candidate for interview that has the same score as other Candidates, all Candidates with that score must be interviewed. The Authorized User must make every effort to interview the top scoring candidates in accordance with the chart below:

Number of Positions requested on Form 1	Minimum number of Candidates to interview
1	3
2	5
3	6
4	8
5	10

If an Authorized User determines that the Candidates provided do not meet their needs, they may choose to cancel the Task Order at this stage by submitting a Form 5 to the OGS HBITS Team.

**B. Interview Evaluation of Qualified Candidates**

The Authorized User shall conduct Candidate interviews to determine the Candidate qualifications. The Authorized User shall work directly with the Active Contractor to schedule and confirm Candidate interviews.

The format (in-person, webcasting, etc) and parameters (skills test, recording, etc) of the Candidate interview are at the discretion of the Authorized User. Authorized Users should consider their internal agency policies when determining the content of the interview.

The Authorized User must attempt to interview ALL Candidates selected for an interview at the 3A scoring stage.

If webcasting technology is used by the Authorized User for interviewing prospective Candidates, the webcasting must be of a quality of audio and video that the Candidate can be clearly identified.

Candidates will be required to have a government issued photo ID (the form of the photo ID is at the discretion of the reviewing Authorized User) available for viewing at the call.

Falsification or use of another person's documentation at this time for this purpose may constitute fraud on the part of the individual Candidate, the Subcontractor and/or the offering Contractors.

Candidates must reply to questions directly without assistance. If ADA requirements apply, notification must be made no less than 3 working days in advance of the interview.

Failure to meet any of these provisions may result in an immediate termination of the interview and/or a Post Technical Evaluation rating of zero.

### 1. Form 3B: Authorized User Interview Evaluation Form

The Authorized User must score all Candidates who are actually interviewed using Form 3B: Authorized User Interview Evaluation Form (Form 3B). See Attachment 6 – *HBITS Contract (Forms)*.

Other documentation received by the Authorized User (i.e. educational credentials, background checks, certifications, etc.) upon request from the Contractors may be used at this stage.

The Interview Evaluation is worth a total of 20 points. The criteria for the Interview Evaluation are located directly on the 3B Form. During the interview, the points values assigned to the Requested Qualifications in the Technical Evaluation (50 points maximum) should be validated by the Authorized User and modified accordingly. Comments must be entered on the Form 3B whenever Zero Points or Max Points is assigned. The Requested Qualifications Score plus the Interview Score shall be added together to obtain the Total Technical Score for the Candidate.

Candidates who are not actually interviewed will receive a Total Technical Score of zero. Completion of a Form 3B is not required for these Candidates, however, in lieu of a 3B, the reason for the zero score should be documented in the Authorized User's procurement record. An interview may not have been conducted for one of the following reasons:

- Contractor/Candidate was not responsive to interview request (Not Responsive)
- Candidate no longer available (Not Available)
- Candidate declined to interview (Declined Interview)
- Candidate did not attend scheduled interview (No Show)

### 2. 3B Summary: Authorized User Interview Evaluation Summary

Once all interviews have been conducted, the Candidates must be summarized on a Form 3B Summary: Authorized User Interview Evaluation Summary (3B Summary). See Attachment 6 – *HBITS Contract (Forms)*.

All Candidates must appear in Total Technical Score ranking order from highest to lowest. All Candidates who were interviewed must be included by entering "No" in the Candidate Selected Column. All Candidates scoring a zero due to no interview being conducted must be included by entering a "No - <Enter Reason from above shown in parentheses>" in the Candidate Selected Column.

If an Authorized User determines that the Candidates Selected for Interview are unable to meet their needs, they may choose to take one of the following actions:

- Cancel the Task Order entirely via Form 5; or
- Reach out to Candidates who were previously released as Not Selected for an Interview. If this method is chosen, the Authorized User must reach out to those Candidates in total score ranking order from highest to lowest and revise the 3A Summary.

### 3. Cost Methodology

The application of the Cost Methodology will be based upon the Hourly Bill Rate of the Position and the number of Positions sought. The OGS HBITS Team will take the total number of responses received and subtract out the number of responses rejected and the number of duplicate submissions.

The Authorized User will complete a technical evaluation of the remaining responses as outlined below. The number of Candidates not passing the Mandatory Qualification and the number of Candidates not passing at least 60% of the Requested Qualifications will be withdrawn.

If the number of Candidate Responses that meet the Mandatory and Requested Qualifications is less than the number of Candidates the Authorized User is required to interview for the position (see Chart above), the Task Order must be cancelled.

Candidates that pass the Mandatory Qualifications and at least 60% of the Requested Qualifications will receive a cost score. The lowest proposed Hourly Bill Rate will receive a full 30 points, and the highest proposed Hourly Bill Rate will receive 0 points. The remaining submissions will be awarded points on a linear scale between 0 and 30 reflecting their price in comparison with the lowest and highest priced Candidates.

#### 4. Composite Technical and Financial Score

The Authorized User will combine each Contractor's Technical and Financial scores. The Candidate with the highest combined Technical and Financial score will be identified as the selected Candidate. The Authorized User will identify the highest scoring Candidate as the selected Candidate by entering "Yes" in the Candidate Selected Column of the 3B Summary.

If the Authorized User declines to onboard the Selected Candidate for any reason, it must be documented in detail on the Form 3B Summary. Such occurrences may include, but are not limited to:

- Selected Candidate fails a Background Check
- Governmental Identification documents did not match
- References provided were unsatisfactory or unreachable
- Candidate's work history, education credentials, or other certifications could not be verified

#### C. Candidate Selection

The Authorized User shall select the highest scoring Candidate and provide the Contractor with an Onboarding Notification that contains, at minimum, the following information.

- Task Order Number:
- Authorized User Name: *(Agency responsible for the payment of the Task Order)*
- Contractor Name:
- Candidate Full Name:
- Candidate Start Date: *(Actual Start Date)*
- Length of Engagement: *(From Form 1)*
- Hourly Bill Rate:
- OC Transaction # (if applicable):

The Authorized User shall also provide the onboarding information to the OGS HBITS Team. A revised Onboarding Notification shall be submitted if there are any corrections to the information provided or if the Candidate Start Date has changed.

The proposed Selected Candidate must be able to report to the Engagement within ten (10) Business Days from notice of selection, unless otherwise approved by the Authorized User. The Authorized User (not the OGS HBITS Team) has the final hiring authority of all Candidate placement requests. The Authorized User shall work directly with the Active Contractor to finalize all Candidate onboarding information. The Authorized User shall notify the OGS HBITS Team via email of the onboarding details for their records. Onboarding information can be supplied within the email or by providing a copy of an onboarding letter that was sent to the Contractor.

In the event of a successful placement of a Selected Candidate by an Active Contractor, the Authorized User shall not renegotiate the terms and conditions of the Contract (with the exception of the Hourly Bill Rate) with the Active Contractor or the Candidate.

If the Selected Candidate does not report to the Engagement, the Contractor is not eligible to submit a replacement Candidate.

It is at the Authorized User's discretion whether to provide feedback to unsuccessful Contractors after Candidate Selection.

#### **D. Debriefing**

Authorized Users should conduct any Task Order debriefing request or bid protest in accordance with its agency's procurement policy or ordinary course of business.

### **7.7 Candidate Placement Requirements**

Prior to Candidate placement with an Authorized User, the Active Contractor must comply with the requirements herein for each proposed Candidate. The Active Contractor's agreement to comply with the provisions of this section is a material representation of fact upon which reliance was placed when the OGS HBITS Team conducted their Form 2 completeness check of the Candidate Form 2s and when the Authorized User determined to enter into an Engagement with the Active Contractor.

Active Contractors acknowledge responsibility for ensuring that these provisions are fully complied with by all Subcontractors. The Active Contractor must provide this information in a form and manner requested by OGS.

#### **A. Eligibility to Work**

Active Contractors must ensure that all Candidates are legally authorized to work in the United States.

#### **B. Availability for Interview**

The Authorized User will provide timeframes to the Active Contractor for Candidate interviews. Active Contractors must make all reasonable efforts to accommodate the interview schedule of the Authorized User.

The Authorized User reserves the right to conduct an interview in person, via the Active Contractor's Webcasting technology or other method of interview at their discretion at no cost to the State.

#### **C. Background Check**

Active Contractors must perform an industry standard criminal history background check at Contractor's expense, and all appropriate screening practices must be completed prior to a Candidate's official start date. The Authorized User must request a copy of the background check results from the Contractor and must review the background check results prior to approving the Candidate. Contractor must provide this document within two (2) Business Days of request. Background checks completed more than four months prior to a Candidate's official start date must be updated, at the Contractor's expense, prior to the official start date.

If Active Contractors are unable to determine a Candidate's fitness due to the results of a criminal history/security background check, Active Contractors must forward a description of the results to the Authorized User for review and determination. Such review and determination by the Authorized User must be conducted in accordance with Correction Law Article 23-A. In conducting a criminal history/security background check, the Active Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. If it is later determined that the Active Contractor knowingly rendered a false positive determination of a Candidate's fitness, failed to conduct a criminal history/security background check, or failed to reasonably interpret the results in confirming a Candidate's fitness to perform duties under the terms of the Contract, in addition to any other remedies available to the OGS HBITS Team and the Authorized User, the Authorized User may terminate the Candidate placement for cause.

#### **D. Education Credential Verification**

An Authorized User may request a higher level of degree as a qualification of the placement. For those Candidates who obtain an educational credential from a foreign institution, defined as institutions residing outside the United States, the credential must be verified by a company approved by the New York State Department of Civil Service (<https://www.cs.ny.gov/jobseeker/degrees.cfm>). The Authorized User must request a copy of such verification for their procurement record from the Contractor. Contractor must provide this document within two (2) Business Days of request.

#### **E. Selected Candidate Certification (Form 2A)**

An Authorized User must obtain an executed Form 2A Selected Candidate Certification (See Attachment 6 – *HBITS Contract (Forms)*) prior to Selected Candidate onboarding. The Form 2, resume, and any supplemental documentation submitted by the Contractor for the referenced task order on Form 2A shall be provided to the Selected Candidate for their review prior to signing. The Authorized User must retain this signed document for their procurement record.

#### **F. Authorized User Checklist**

As a best practice, an Authorized User may complete an Authorized User Checklist prior to Selected Candidate onboarding and retain a copy for their procurement record. As a courtesy, OGS has created a sample checklist for Authorized Users that can be used at their discretion. If an Authorized User does not use the sample checklist, they are encouraged to use their own checklist.

### **7.8 Requirements During the Engagement**

The Authorized User must inform the Contractor of the Candidate's direct supervisor and/or the person responsible for signing the Candidate's timecard.

The Authorized User is responsible for the provision of reasonable office space, utilities, janitorial services, security, work-related telephone service and furniture (desks, chairs, worktables) necessary for the Candidate's performance of services. The Authorized User will also provide forms, equipment, including necessary computer hardware and software, and supplies necessary for the Candidate to complete the tasks associated with the Engagement.

The Authorized User must provide all workplace rules to the Candidate. This includes, but is not limited to, the following: Time and attendance policy, timecard submission, building access procedures, request for leave, computer/phone usage guidelines, and other agency policies (such as Drug-free Workplace Policy Statement, Workplace Violence Policy, and smoking policy).

If an Authorized User deems a Candidate unfit to perform the tasks of a Position after the Candidate start date, the Authorized User must notify the Contractor in writing and may result in that Candidate's termination under the engagement.

Any and all Candidate absences, such as vacation days not previously identified during the Task Order Request process, must have the prior approval of the Authorized User.

The Authorized User must indicate the manner in which it requests knowledge transfer to occur from the Candidate to the Authorized User's staff.

The Authorized User must indicate any training that the Candidate must attend.

The Authorized User must indicate to the Candidate, any change in working hours not previously specified during the Task Order Request process.

The Authorized User shall advise the Contractor and Candidate of the means by which time worked must be recorded and the Authorized User retain copies of such records in accordance with its record keeping policies.

The Authorized User shall be responsible for validating the time worked for each Candidate using its internal records.

#### **A. Hourly Bill Rate**

The rates in effect at the time a Form 1 is posted to the Contractors for response are Not-to-Exceed Bill Rates. The Hourly Bill Rates submitted with a Contractor's Form 2 shall not be changed and shall remain in effect for the duration of the evaluation process. After the final composite technical and cost scores have been assigned, the Authorized User reserves the right to negotiate lower pricing for their Selected Candidate. The final negotiated Hourly Bill Rate shall remain the same for the duration of the Engagement.

#### **B. Payment to Selected Candidates**

Contractors are responsible for ensuring that Selected Candidates are paid no later than fifteen (15) Business Days after Contractor receives payment from the Authorized User, whether the Selected Candidate receives payment directly from Contractor or through a Subcontractor. The OGS HBITS Team reserves the right to undertake additional steps as it deems necessary to enforce this requirement. For any instances in which it discovers that Selected Candidates are not being paid within this timeframe, the OGS HBITS Team will complete an Authorized User Issue Form (Form 6), which will be factored into the Annual Contractor Evaluation score.

#### **C. Change in Selected Candidate's Eligibility to Work**

Contractor must ensure that all Selected Candidates are legally authorized to work in the United States throughout the term of the Engagement. If a Contractor fails to properly identify a Selected Candidate's employment status, the Authorized User may terminate the Selected Candidate's placement for cause.

#### **D. Change in Selected Candidate's Fitness to Perform**

Contractor must provide immediate written notice to the Authorized User if at any time during the Engagement, the Active Contractor learns that its determination of a Selected Candidate's fitness to perform the duties under the terms of the Contract was erroneous or has changed by reason of changed circumstances.

#### **E. Selected Candidate's Education Credentials**

Contractor must retain a Selected Candidate's proof of degree equivalency for the term of the Engagement.

#### **F. Requirements for Federally Funded Placements**

As a condition of placements made with Authorized Users using Federal funds, a Contractor must agree to all terms and conditions contained in this section. Authorized Users must be obligated to identify its use of Federal funds in the Requisition Form.

Upon request by the Authorized User, the Contractor agrees to provide a written document stating compliance with Federal Executive Order 11246, the Copeland "Anti-Kickback Act" (18 USC 874), Section 508 of the Federal Clean Air Act, Section 306 of the Federal Clean Water Act. This document must also certify that neither the Contractor nor its principals are debarred or suspended from Federal financial assistance programs and activities and to complete and return in pursuit of such certification any appropriate form required by the Authorized User (see Federal Executive Order 12549 and 7 CFR Part 3017).

The Contractor agrees to comply with the provisions of Section 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub.L.100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). By accepting this Engagement, the Contractor certifies that it will provide a Drug Free Workplace by implementing the provisions at 29 CFR 94, pertaining to the Drug Free Workplace. In accordance with these provisions, a list of places where performance of work is done in connection with this specific Engagement will take place must be maintained at your office and available for Federal inspection.

Section 1352 of Title 31 of the U.S. Code requires that funds appropriated to a Federal agency be subject to a requirement that any Federal Contractor or grantee (such as the State) must be required to certify that no Federal funds will be used to lobby or influence a Federal officer or a Member of Congress. The State's certification in general provides that the language of this certification must be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and Contracts under grants, loans and cooperative agreements) and that all sub-clients must certify and disclose accordingly. The certification also requires the

completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report.

The Contractor understands and agrees to the Federal requirements for certification and disclosure. Upon request by the Authorized User, the Contractor agrees to provide such certification.

The Contractor, its officers, agents and employees and Subcontractors, must treat all information, with particular emphasis on information relating to Public Assistance or Medical Assistance clients and providers of services or benefits, which is obtained by it through its performance under this Contract, as confidential information to the extent required by the laws of the State and of the United States and any regulations promulgated there under.

## 1. Rights to Information

The Contractor agrees that the Federal granting agency must be granted a royalty-free, non-exclusive and irrevocable license to produce, publish or otherwise use such documents and software and to authorize others to do so for government purposes to the extent that the services which resulted in the production of such documents and software are Federally funded. The grant excludes the proprietary products, Documentation, materials and information (and derivative works thereto) of Contractor or any Subcontractors.

Except for personal information relating to clients and providers which must be kept confidential pursuant to requirements of State or Federal laws, and information relating to the business and finances of the State or the Contractor, confidential information disclosed by one (1) party to the other continues to be subject to this Contract for five (5) years following termination of this Contract. No obligation of confidentiality applies to:

1. Information the Contractor already possesses without an obligation of confidentiality.
2. Information the Contractor develops independently from publicly available data.
3. Information the Contractor receives without obligation of confidentiality from a third party.
4. Information that is, or becomes, publicly available without breach of this Agreement.

The Contractor agrees that the United States Government must be deemed an entity authorized to conduct an examination in accordance with the provisions set forth in Appendix A - Standard Clauses for New York State Contracts (June 2023), Clause 10 Records.

The responsible Federal governmental agency authorized by law, reserve the right to inspect, review, investigate or audit all parts of any services provided herein by the Contractor's or any Subcontractors' facilities engaged by the prime Contractor in performing services in this Contract. In such capacity, the Authorized User or its representative(s) must have access to facilities, records, reports, personnel and other appropriate aspects of services furnished by the Contractor, in accordance with the requirements of the State Public Officers Law except for proprietary information for which the disclosure of which would cause substantial injury to the competitive position of the Contractor's enterprise.

To the extent permitted by law, the Contractor must promptly notify the Authorized User of any request by anyone for access to any records maintained pursuant to this Contract. Access by Federal or State bank regulatory agents, or Contractors regular outside auditors to Contractor's financial records, pursuant to regularly scheduled or routine audits or inspection of Contractor, must not require notification to the Authorized User provided that rights of confidentiality or proprietary interests are preserved.

Should the State determine that Federal funds are unavailable, the Authorized User may terminate all or any part of the Engagement immediately upon notice to the Contractor. Such notification will be in written format. The Authorized User must be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as the Contractor receives notice of termination in writing from the Authorized User.

Nothing in this Contract must be interpreted to limit such rights as the Authorized User and the Federal Government must reserve to conform to all applicable Federal regulations, including 45 CFR Part 74, 45 CFR 95.617, 7 CFR Part 277 and 7 CFR Part 3016, and such rights are hereby reserved.

The Contractor must comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

The Contractor and its Selected Candidates must comply with the Authorized User's policies regarding compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

## **2. Department of Labor Specific Terms & Conditions**

The New York State Department of Labor has certain stipulations for federally funded Contracts that must be made pursuant to regulations and laws imposed by the United States Department of Labor. As a condition of placements made at the Department of Labor, a Contractor must agree to all terms and conditions contained in this section.

If the funding for the Engagements undertaken by the New York State Department of Labor pursuant to the HBITS Contracts is provided by the United States Department of Labor, the following certifications are required:

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION- LOWER TIER COVERED TRANSACTIONS**

1. The Contractor certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the Contractor is unable to certify to any of the statement in this certification, such prospective participant must attach an explanation to this proposal.
3. The Contractor must pass the requirements of 1. and 2. above, to each person or entity with whom the Contractor enters into a subcontract at the next lower tier.

### **NONDISCRIMINATION & EQUAL OPPORTUNITY ASSURANCE**

As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the Contractor assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

1. Section 188 of the Workforce Investment Act of 1998 (WIA) which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age disability, political affiliation, or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I - financially assisted program or activity;
2. Title VI of the Civil Rights Act of 1964, as amended which prohibits discrimination on the basis of race, color, and national origin;
3. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities; and
4. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age. The Contractor also assures that it will comply with 29 CFR Part 37 and all other regulations implementing the laws listed above. This assurance applies to the Contractor's operation of the WIA Title I - financially assisted program or activity, and to all agreements the Contractor makes to carry out the WIA Title I-financially assisted program or activity.

## **7.9 Selected Candidate Replacements/Cancellations**

Circumstances may arise that necessitate either the extension of a Selected Candidate, replacement of a Selected Candidate, or cancellation of a Position.

### **A. Form 5: Candidate Modification Request**

Authorized Users shall submit a completed Candidate Modification Request (Form 5) to extend an existing Candidate (not to exceed a 60-month total engagement length), replace an existing Candidate, or to cancel the Position(s) from a Task Order.

See Attachment 6 – *HBITS Contract (Forms)*.

When providing a replacement Candidate, Contractor must respond in the format of the original Form 2 Candidate Submission Requirements. Any replacement Candidate must meet the Mandatory Qualification and meet at least 60% of the Requested Qualifications. Replacement Candidates are subject to all Candidate Placement Requirements.

The Contractor expressly acknowledges that if the Contractor or the Selected Candidate does not fulfill the obligations of the Contract, costs to the Authorized User to replace the Selected Candidate's services will result and establishing the precise value of such costs would be difficult and time consuming. Therefore, the Authorized User has the right to request up to two (2) working weeks (80 hours) of work from the replacement Selected Candidate at no cost to the Authorized User during a transition/ramp-up period. The Authorized User may waive this right in whole or in part if it is determined that the need to replace the Selected Candidate was beyond the Control of the Contractor.

Contractors are reminded that an Authorized User reserves the right to cancel a Task Order for convenience upon at least thirty (30) calendar days' written notice to Contractor without penalty or other early termination charge. However, Authorized User has the right to terminate the Task Order for cause or stop work immediately for unsatisfactory work without such notice. If the Task Order is cancelled pursuant to this section, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of cancellation.

#### **B. Rapid Replacement (Under 1 Month)**

In the event it becomes necessary for a Contractor to replace a Selected Candidate prior to the completion of one-month (160 hours) of work on a particular Engagement, the Contractor must provide the Authorized User with five (5) Business Days prior written notification describing the circumstances of the need for replacement. The Contractor must identify a comparable replacement Candidate for the Authorized User within ten (10) Business Days. The Authorized User reserves the right to do one (1) of the following:

- Allow the originally selected Contractor to provide a replacement Candidate if the replacement is necessitated by Selected Candidate termination (by the Contractor), sickness, or other similar material change in the employment circumstance of the Selected Candidate. Contractor acknowledges that the failure to provide a Selected Candidate for the duration of the Engagement constitutes a breach of Contract and that the Authorized User has the right to request up to two (2) working weeks (80 hours) of work from the replacement Selected Candidate, at no cost to the Authorized User, during a transition/ramp-up period. The Authorized User may waive this right in whole or in part if it is determined that the need to replace the Selected Candidate was beyond the control of the Contractor.
- Award the Engagement to the next highest scoring Candidate (if available) based on the initial group of Form 2 submissions.
- Terminate the Engagement with the Contractor.

#### **C. Steady Replacement (1 Month and Over)**

In the event it becomes necessary for a Contractor to replace a Selected Candidate during the term of the Engagement after one-month (160 hours) of work, due to Selected Candidate termination, sickness, or other similar material change in the employment circumstance of the Selected Candidate, the Contractor must provide the Authorized User with twenty (20) Business Days' prior written notification describing the circumstances of the need for replacement. The Contractor must also identify a comparable replacement Candidate for the Authorized User within ten (10) Business Days. The Authorized User has the right to request up to two (2) working weeks (80 hours) of work from the replacement Selected Candidate, at no cost to the Authorized User, during a transition/ramp-up period. The Authorized User may waive this right in whole or in part if it is determined that the need to replace the Selected Candidate was beyond the control of the Contractor.

The Authorized User reserves the right to terminate the Engagement with the Contractor and not seek a replacement Selected Candidate.

**7.10 Additional Contractor Requirements**

Contractors will have frequent interaction with both Authorized Users and the OGS HBITS Team, who will assist in administering the Contract. This Section outlines the key responsibilities and requirements that the Contractor must fulfill during the length of the Contract.

**A. Administration**

Contractor shall provide up to date contact information throughout the term of the Contract and must electronically notify the OGS HBITS Team as changes are necessitated. Upon notification, the OGS HBITS Team will update and post to the OGS Website.

**B. Administrative Fee**

Contractor shall pay an Administrative Fee to the State in the amount of 0.75% for all sales under this Contract for Hourly-Based IT Services. This includes sales to both Executive and Non-Executive Authorized Users. Costs associated with travel or any other authorized expenses that are billed to the State are excluded from the Administrative Fee. These payments will be in accordance with the following schedule:

Payment Number	Period for Each Calendar Year	Administrative Fee Due Date
1	January 1 to March 31	May 15 <sup>th</sup>
2	April 1 to June 30	August 15 <sup>th</sup>
3	July 1 to September 30	November 15 <sup>th</sup>
4	October 1 to December 31	February 15 <sup>th</sup>

Failure to remit payment in accordance with the above listed schedule shall affect the Contractor's Annual Evaluation score. Repeated failure to remit the Administrative Fee may result in OGS terminating the Contract for cause. OGS shall communicate details of remittance payments upon award of Contracts, including form of acceptable payment and to where the payments must be remitted.

The State reserves the right to verify fee payments and to take any action(s) necessary to enforce its rights under the Contract including, but not limited to, the review of Contractor's financial records pertaining to sales under their Contract or to suspend further sales under the Contract.

**C. Quarterly Sales Report**

The Contractor shall submit a Sales Report each quarter that includes sales to both Executive and Non-Executive Authorized Users. This Report is due to the OGS HBITS Team in accordance with the following schedule and must be submitted electronically using Attachment 13 – *Report of Contract Usage*.

Period	Due Date
January 1 – March 31	May 15 <sup>th</sup>
April 1 – June 30	August 15 <sup>th</sup>
July 1 – September 30	November 15 <sup>th</sup>
October 1 – December 31	February 15 <sup>th</sup>

For any sales involving a Subcontractor, the Contractor shall both identify and verify if the Subcontractor is a NYS Certified MBE, WBE, MWBE, SDVOB or if the Subcontractor meets the definition of a NYS SBE.

This report 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.

#### **D. Meetings with the OGS HBITS Team**

The OGS HBITS Team reserves the right, at its discretion, to hold meetings in person or via webcasting with an individual Contractor, or all Contractors. These meetings may be used to discuss procedural changes, performance issues, Annual Evaluation results and/or any other reason deemed necessary by the OGS HBITS Team. At minimum, the designated Contract Administrator must be in attendance, or an alternate attendee as agreed upon by the OGS HBITS Team. The format of such meetings will be determined by the OGS HBITS Team and communicated to Contractors prior to the meeting.

#### **E. Authorized User Feedback**

Authorized Users will submit feedback to the OGS HBITS Team throughout the term of the Contract. This feedback will be used as part of the Annual Contractor Evaluation.

##### **1. Form 4: Selected Candidate Evaluation**

Authorized Users must submit a completed Selected Candidate Evaluation (Form 4) for any Selected Candidate vacating a Position (expired, cancelled, replaced, etc.). See Attachment 6 – *HBITS Contract (Forms)*. This Form shall be submitted to the OGS HBITS Team and recorded for evaluation purposes. These forms will be shared with the Contractors upon their request.

Please note: the OGS HBITS Team does not associate an expiring Task Order with any new Task Order that may be intended to replace it. Even if an incumbent is being hired for the new Task Order, a Form 4 must be submitted to complete the expiring Engagement.

##### **2. Form 6: Authorized User Issue Form**

Authorized Users and the OGS HBITS Team may complete a Form 6 to report any issues relating to the terms and conditions of the Contract. Issues include, but are not limited to, the below:

###### **a. Proposed Candidate Quality**

Contractor shall submit quality Candidates in accordance with the HBITS Process described in this section. If an Authorized User discovers during the interview process that the Candidate qualifications stated on the Form 2 do not match the qualifications described during the interview, the Authorized User may report this issue.

###### **b. Contractor Responsiveness**

Contractor shall be responsive to Authorized Users and the OGS HBITS Team and shall address Authorized User and OGS HBITS Team's concerns within two (2) Business Days or as otherwise specified. The OGS HBITS Team reserves the right to temporarily suspend an Active Contractor from receiving new Form 1's until such time as the concern has been addressed.

###### **c. Candidate Availability**

Contractor shall immediately notify the Authorized User if the availability of a proposed Candidate changes during the Form 2 review and interview process. The Contractor must also ensure that prospective Candidates are available for interview on the agreed upon times.

#### **F. NY State OGS Vendor Feedback System (Procured)**

The New York Review Collection Program is an initiative to gather actionable feedback on supplier performance from Authorized Users. Authorized Users are encouraged to provide reviews on their experience, both positive

and negative, with HBITS Contractors and/or Candidates. The system is located at:  
<https://go.procurated.com/new-york-hbits/>

### **G. Contractor Performance Criteria**

Contractor must maintain an adequate organizational structure and resources sufficient to discharge its contractual responsibilities, including time sheets, billing and personnel issues. Contractor must continue to be able to conduct business in New York State, pay taxes and be financially sound to fulfill obligations of this Contract.

### **H. Terms and Conditions for Travel, Meals and Lodging**

Selected Candidates will not be separately reimbursed for expenses incurred for travel to and from a designated work location (commuting expenses).

During an Engagement, the Selected Candidate may be required to perform services at a location other than the assignment's designated work location (e.g., the designated work location is the Authorized User's main offices in the Corning Tower on the Empire State Plaza, however, the Selected Candidate is required to attend a meeting in New York City). In such cases, with the prior written approval of the Authorized User, the Contractor shall be reimbursed for mileage, lodging and meals to the extent authorized by the NYS Office of the State Comptroller (OSC) as further set forth at: <https://www.osc.ny.gov/state-agencies/travel>

Unless otherwise specified in writing by the Authorized User, a vehicle will not be provided by Authorized User or the State to the Selected Candidate for travel. Therefore, the Contractor will be responsible for ensuring that the Selected Candidate has access to an appropriate vehicle (e.g., personal vehicle or rental vehicle) or common carrier with which to carry out any necessary travel. For the Contractor to obtain reimbursement for the use of a rental vehicle, such use must be justified as the most cost-effective mode of transportation under the circumstances (including consideration of the most effective use of Selected Candidate time). The Contractor must provide evidence of three (3) written or telephone price quotes, and the paid invoice must detail the type of vehicle rented, miles traveled, license plate number, and time of pickup and return.

The Contractor is responsible for keeping adequate records to substantiate any claims for reimbursement, by personnel for travel in performance of the services.

The Authorized User must have prior approval of any travel that occurs during a Selected Candidate Engagement.

### **I. Ownership of Work Product**

Contractor agrees that its Selected Candidates are engaged to perform services and that the Authorized User must have full and complete ownership of all deliverables prepared by such Selected Candidate. At the end of the Engagement, Contractor agrees that the Selected Candidate must provide all deliverables and materials to the Authorized User. Authorized Users may specify the manner and method by which the Candidate must participate in knowledge transfer at the time of the placement or at any time during the Selected Candidate Engagement.

### **J. Annual Contractor Evaluation**

Per the schedule below, Contractors will be evaluated annually by the OGS HBITS Team using Attachment 6 – HBITS Contract (Forms) and other criteria as outlined below on the performance of their contractual duties. By doing so, the State seeks continued performance and quality Candidates from its Contractors for the duration of this Contract. The Contractors will be evaluated for responsiveness, successful onboarding, compliance and general quality. Once a determination has been made, the results will be posted to the OGS HBITS website. OGS reserves the right to forego an annual evaluation at its discretion.

Start of Evaluation Period	End of Evaluation Period	Evaluation and Determination of Active/Inactive Contractors
Contract Start Date	End of Contract Month 11	No later than end of Contract Month 12
Contract Month 12	End of Contract Month 23	No later than end of Contract Month 24
Contract Month 24	End of Contract Month 35	No later than end of Contract Month 36
Contract Month 36	End of Contract Month 47	No later than end of Contract Month 48
Contract Month 48	End of Contract Month 59	No later than end of Contract Month 60

**K. Evaluation Criteria**

The criteria listed below is not in any particular order. All Contractors will be evaluated in the same manner. OGS reserves the right to modify the evaluation criteria prior to the start of an evaluation period upon notice to all Contractors.

1. Part I: Onboarding: Contractor will receive cumulative points for the number of successful Candidate placements during each Contract year.
2. Part II: Compliance Review: Contractor will receive points if all the required insurance documents are on file and current as of the last date of the evaluation period.
3. Part II: (II.) Compliance Review: Contractor will receive points for the timely submission of the following:
  - a. Quarterly Administrative Fee – Points will only be given if all quarterly fees are received/paid on time.
  - b. HBITS Contractor’s Quarterly SDVOB Compliance Report (Form SDVOB 101) – Points will be given only if all quarterly report submissions are received on time per *Section 6.22* of the Contract. (NOTE: Per Policy and Procedure set by OGS OBD Office, HBITS reporting will occur on a quarterly basis, rather than a monthly basis).
  - c. Annual Form B – Points will be given only if proof of this report is submitted on time per *Section 6.18* of the Contract.
  - d. Quarterly Sales Report – Points will be given if all quarterly report submissions are received on time per *Section 6.20* of this document.
  - e. Compliance Review : Contractor will receive points if it is determined by the OGS HBITS Team that the Contractor has engaged in good faith efforts to meet the SDVOB participation goal of 6% per *Section 6.22* of the Contract.
  - f. Compliance Review: Points will be given only if Vendor Responsibility Questionnaire was completed timely (less than five (5) months from the last day of the evaluation period) AND Contractor was found to be responsible per *Section 6.28* of the Contract.
4. Part III: General Quality: Points will be given based upon the number of Form 6s received.
5. Part IV: General Quality: Points will be given based upon the average score of Form 4s received. In the event that a Contractor received no Form 4s during the Evaluation Period, that Contractor’s score will be normalized.

**L. Active vs. Inactive Contractors**

The OGS HBITS Team will maintain a listing of the Active and Inactive Contractors throughout the term of the Contract. There will be a maximum of forty-five (45) Active Contractors for year one (1) of the Contract. For all other Contract years, including any renewal year(s), the number of Active Contractors will be determined based upon the score received on the Contractors' Annual Evaluation. OGS reserves the right to maintain a minimum of 30 Active Contractors each year, which will be determined based upon Contractors' Annual Evaluation score.

### **1. Determination**

All Contractors will be evaluated on their performance at the end of each Contract year. As a result of the Annual Evaluation, starting in year two (2), all Contractors who receive a score of 65 or higher will remain Active for the upcoming year; and all Contractors who receive a score of less than 65 will be Inactive for the upcoming year. However, if less than thirty (30) Active Contractors have a passing score, OGS reserves the right to maintain a minimum of 30 Active Contractors each year by prioritizing the next highest scoring Contractors to determine which Contractors will maintain their Active status in order to meet the minimum of thirty (30) Active Contractors for each contract year.

### **2. Active Contractor**

An Active Contractor is defined as eligible to receive all new Form 1's posted by the OGS HBITS Team for a particular Contract year.

An Active Contractor shall not seek the assistance of or subcontract with any Inactive Contractors.

To remain an Active Contractor, a Contractor's Annual Evaluation score must be 65 or higher; or be deemed Active by OGS to be included in the thirty (30) Contractor minimum.

### **3. Inactive Contractor**

An Inactive Contractor is defined as not eligible to receive any new Form 1's posted by the OGS HBITS Team for a particular Contract year. Responses to a Form 1 from an Active Contractor who was moved to the Inactive list are, however, eligible to be awarded for a Form 1 that was posted prior to the date the Active Contractor was moved to the Inactive list. Any existing Engagements with an Active Contractor that is moved to the Inactive list will survive the Inactive period, unless otherwise terminated by the Authorized User.

An Inactive Contractor shall not assist or subcontract with any Active HBITS Contractors while they are on the Inactive list.

## **7.11 E-Procurement System**

OGS reserves the right to require Contractor participation in a State-provided procurement system at any point in the life of the contract.

## **7.12 Additional Requirements from Authorized Users**

An Authorized User may have distinct requirements that must be met by all individuals employed by or working at the Authorized User. The Candidates will be expected to comply with these requirements as a condition of the placement.

An Authorized User may, at its discretion, request additional background checks to be conducted by the Contractor, at the expense of the Authorized User, including, but not limited to fingerprinting and/or the signing of a confidentiality statement and/or non-disclosure agreement. The Authorized User retains the responsibility to conduct any fingerprint-based background check within its legal authority.

An Authorized User may also conduct its own background check at the expense of the Authorized User.

An Authorized User may require Candidates to provide photo identification, such as a New York State Driver's License, Non-Drivers Identification Card, Passport, etc. in order to receive a State or other applicable Identification Card used for entrance into the Authorized Users building and/or facilities.

An Authorized User reserves the right to reduce the hours upon at least 15 calendar days written notice to Contractor.

Authorized User may require Candidates to attend standard, statewide, or agency-wide mandatory training as required by New York State or the Authorized User. In such cases, the Authorized User is responsible for payment of the Candidate's billable hours for the time spent attending such standard, statewide, or agency-wide mandatory training. The Authorized User shall not be responsible for any billable hours or reimbursement for any costs related to any other types of training, whether job-related or not. In no case shall the Authorized User pay for training to provide Candidates with the skills originally specified by the Authorized User in the Form 1.

Authorized User may allow Candidates to telecommute. Telecommuting is at the discretion of the Authorized User and their internal policies.