



Request For Proposals (Revised July 3, 2018)

BIDS MAY BE SENT TO THE ABOVE ADDRESS ONLY
(E-Mail or Facsimile Proposal Submissions Are NOT Acceptable)

BID OPENING		TITLE: Group 76000 - Microsoft Reseller	
DATE: July 12, 2018	Classification Code: 43		
TIME: 11:00 AM ET			
REQUEST FOR PROPOSALS NUMBER: 23116		SPECIFICATION REFERENCE: As Incorporated in the RFP	
CONTRACT PERIOD: Five (5) Years			
DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law §139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.			
E-mail address: PS_SW_ITF@ogs.ny.gov			
PRIMARY CONTACTS Jordan Flores Katherine Dias Allison White		SECONDARY CONTACTS Dewan Bristo Sean Hume	
TERTIARY CONTACT Karen Fowler			
The Proposal must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this RFP, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications April 2016), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b). Information may be accessed at: http://www.ogs.ny.gov/acpl/			
Bidder's Federal Tax Identification Number: (Do Not Use Social Security Number)		NYS Vendor Identification Number: (See "New York State Vendor File Registration" clause)	
Legal Business Name of Company Bidding:			
D/B/A - Doing Business As (if applicable):			
Street	City	State	County
		Zip Code	
If applicable, place an "x" in the appropriate box(es) (check all that apply):			
<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> NYS Certified Minority Owned Business	<input type="checkbox"/> NYS Certified Women Owned Business	<input type="checkbox"/> NYS Service Disabled Veteran Owned Business
If you are not bidding, place an "x" in the box and return this page only.			
<input type="checkbox"/> WE ARE UNABLE TO SUBMIT A PROPOSAL AT THIS TIME BECAUSE:			
Bidder's Signature: Title:		Printed or Typed Name: Date:	
Phone:	Extension	Toll Free Phone:	Extension
Fax:	Extension	Toll Free Fax:	Extension
E-mail Address:		Company Website:	

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 120 calendar days from the date of submission to the New York State (“NYS”) Office of General Services (“OGS”), or for such longer period as is set forth in this Request for Proposals (RFP).
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the RFP.
3. The Bidder has read and understands the provisions of the RFP, 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/aboutOgs/regulations/defaultSFL_139j-k.asp.

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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- Attachment 1 – Inquiries and Proposed Deviations Template
- Attachment 2 – Administrative Proposal Forms
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- Attachment 6 – Insurance Requirements
- Attachment 7 – Summary of Contract Usage - PS67650

Section 1 INTRODUCTION.

This Request for Proposals (RFP) is issued by the New York State Office of General Services (OGS), Procurement Services, to select a Reseller for Microsoft Products.

1.1 OVERVIEW.

The State of New York and Microsoft are negotiating a Custom Microsoft Business Agreement (CMBA) which establishes the overall licensing framework and the applicable terms and conditions for Authorized User use and acquisition of Microsoft Product, which is limited to software and Online Services. Microsoft, however, does not sell directly to government customers under the Program Agreements incorporated in the CMBA, but rather sells exclusively through its authorized Reseller network. Therefore, OGS will utilize this Microsoft Reseller RFP to establish the Microsoft Reseller for order fulfillment of those Microsoft Products determined by the State to be in scope under the Contract resulting from this RFP. The State reserves the right, in its sole discretion, at any time and from time to time, without formal amendment during the term of the Contract resulting from this RFP, to expand or limit the Products sold under such Contract. The requirements of Appendix B apply to the resulting Contract between the awarded Microsoft Reseller and OGS for order fulfillment, but not to the functionality or use of the Microsoft licenses or Online Services provided for in the CMBA.

This RFP incorporates and will be subject to the terms and conditions of the CMBA (set forth as Appendix D) including all appendices, Program Agreements and any subsequent updates and amendments to the CMBA.

Note: The attached CMBA is a draft which has not yet been executed by Microsoft and OGS and remains subject to change. OGS anticipates at this time that the final, signed version of the CMBA will not be materially different than the attached draft. OGS also anticipates that Bidders will be provided with the final, signed version of the CMBA prior to the deadline for Submission of Bid and Bid Opening. In the alternative, before Bid evaluations are finalized by OGS, Bidders will be provided with the final, signed version of the CMBA after the deadline for Submission of Bid and Bid Opening, in which case Bidders will be given the opportunity to revise their bids.

This RFP 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 avoid disqualification. To ensure compliance with Bid requirements and avoid possible disqualification, Bidder must follow the format and instructions in Section 3, Bid Submission Requirements and Section 3.8, RFP Format and Content.

It is the intent of this RFP to establish a single five (5) year Contract to purchase Microsoft Products from one (1) responsive and responsible Bidder certified by Microsoft as both a Licensing Solutions Partner (LSP) and as an Authorized Educational Reseller (AER).

The Contract resulting from this RFP will be a statewide centralized Contract to acquire Microsoft Products determined by OGS to be in Contract scope. Bidder must meet the technical requirements and provide a Cost-Plus/Cost-Minus Percentage for all Program Agreements as specified in RFP Section 3.8.3.3, Spend by Program Agreement. The award will be made to the Bidder that achieves the highest Final Cost Proposal Score and satisfies all Administrative, Technical and other RFP requirements.

References to Authorized Users under this RFP and the resulting Contract encompass and include all entities meeting the definition of “Authorized User” set forth in State Finance Law §163(1)(k).

1.2 IN-SCOPE

Products authorized by OGS for acquisition under this Contract are Microsoft Software and certain Online Services.

1.2.1 Software.

All Products classified by Microsoft as Software are authorized for acquisition under the resulting Contract, except as specifically excluded by OGS. OGS reserves the right in its sole discretion to add or remove Products from the scope of the Contract at any time during the term of the Contract, upon notice to the Contractor. Training services offered free of charge in relation to Software Products are allowed.

1.2.2 Online Services.

Online Services authorized for acquisition under the resulting Contract are Office 365, Azure, Intune and Dynamic CRM. The only Online Service authorized for acquisition under the resulting Contract for use with Criminal Justice Information Services (“CJIS”) data is Office 365. All other Online Services are **not** authorized for acquisition. OGS reserves the right in its sole discretion to add or remove Products from the scope of the Contract at any time during the term of the Contract, upon notice to the Contractor.

1.3 OUT-OF-SCOPE.

The following are expressly excluded from the scope of this RFP and the resulting Contract:

- Any items considered out of scope for the CMBA, as indicated in the Out-of-Scope Work and Products section included in CMBA Section 1.7.
- Paid training services.

1.4 QUESTIONS/DESIGNATED CONTACTS.

All questions concerning this RFP will be addressed to the following OGS designated contacts:

Primary Contacts	Secondary Contacts	Tertiary Contact
Jordan Flores Katherine Dias Allison White	Dewan Bristo Sean Hume	Karen Fowler
E-Mail Address: PS_SW_ITF@ogs.ny.gov		

For MWBE Questions Only		For SDVOB Questions Only
Email Address: MWBE@ogs.ny.gov		Email Address: VeteransDevelopment@ogs.ny.gov
Anuola Surgick Phone: (518) 486-9284	Tryphina Ramsey Phone: (518) 486-9284	Anthony Tomaselli Phone No. (518) 474-2015

For INSURANCE Questions Only	
Email Address: ogs.sm.insrev@ogs.ny.gov	
Leighann Brown	Phone No. (518) 457-6595

1.5 KEY EVENTS/DATES.

EVENT	DATE	TIME
RFP Issued	May 25, 2018	
Closing Date for Inquiries	June 6, 2018	7:00 PM ET
Anticipated Posting of Responses to Inquiries	June 15, 2018	
Submission of Bid and Bid Opening	July 12, 2018	11:00 AM ET
Tentative Awardee Notification (Target Date)	July 16, 2018	
Contract Start	August 1, 2018	

1.6 NEW YORK STATE CONTRACT REPORTER.

Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications about this RFP. Navigate to the “I want to find contracts to Bid on” page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must choose the option “send me notification updates on this,” located in the lower right hand corner of the particular ad. Submission of responses to the solicitation that do not account for updated information may result in your bid/offer being deemed non-responsive.

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

1.7 INQUIRIES, PROPOSED BID DEVIATIONS AND EXTRANEIOUS TERMS.

All questions must be submitted in writing using Attachment 1, Inquiries and Proposed Deviations Template, citing the applicable RFP document name and document section. The completed Attachment 1, Inquiries and Proposed Deviations Template must be emailed to: PS_SW_ITF@ogs.ny.gov by the “Closing Date for Inquiries” indicated in Section 1.5, Key Events/Dates.

Bidders should note that all clarifications or proposed deviations, including those relating to the terms and conditions of the Contract, are to be resolved prior to the submission of a Bid through the inquiries process. Responses 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 released through the New York State Contract Reporter and posted on the Office of General Services website (Online Bid Calendar page at: <https://nyspro.ogs.ny.gov/content/finding-Bid-opportunities>). Only those answers provided by OGS in the official written response to questions posted on the OGS website shall be binding.

Bidders are advised that OGS will not entertain exceptions or deviations to Appendix A, Standard Clauses for New York State Contracts. OGS will also not entertain exceptions or deviations to the

Solicitation or Appendix B, General Specifications that are of a material and substantial nature. Material deviations (including additional, inconsistent, conflicting or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid. Any extraneous terms submitted with the Bid shall not be considered part of the Bid or resulting OGS Centralized Contract, and shall be disregarded.

1.8 RFP ORDER OF PRECEDENCE.

In the event there are conflicts among the documents comprising this RFP, conflicts shall be resolved in the following order of precedence:

1. Appendix A, Standard Clauses for New York State Contracts (January 2014);
2. The RFP narrative (this document), as may be subsequently amended and Attachment 6, Insurance Requirements;
3. Appendix B, General Specifications (April 2016);
4. Appendix D, Custom Microsoft Business Agreement (CMBA); and
5. All other appendices and attachments.

1.9 MICROSOFT PRODUCT HISTORIC SPEND

Based on sales reports for the calendar year 2017 (January - December), provided by the current Contractor, the estimated total dollar value of sales of Microsoft Products under Contract PS67650 during that period was approximately \$102.1 million statewide (see section 3.8.3.3, Chart 1, below for a further breakdown by Program Agreement). Those dollar values are believed to be substantially accurate, but are not guaranteed.

The resulting Contractor must furnish all quantities or dollar values actually ordered regardless of historical sales volumes. The actual value of the Contract resulting from this RFP is indeterminate and will depend upon the pricing of the award and the actual demand of Authorized Users. See "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" in Appendix B, General Specifications.

In addition to the dollar figure listed above, there was additional spend on Microsoft Products by Authorized Users, using contract vehicles other than Contract PS67650. The future spend by these Authorized Users may transfer over to the Contract resulting from this RFP, however this is not guaranteed.

1.10 ESTIMATED SPEND AND QUANTITIES.

The Contract resulting from this RFP will be an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. Numerous factors could cause the actual volume of Product purchased under the Contract resulting from this RFP to vary substantially from any estimates in this RFP. Such factors include, but are not limited to the following:

- There is no guarantee of volume to be purchased;
- There is no guarantee that demand will continue in any manner consistent with previous purchases.

1.11 DEFINITIONS.

In addition to the listing of defined terms listed in Appendix B, OGS has provided the following definitions that fall within the scope of this RFP:

TERM	DEFINITION
Affiliate Registration Form	Shall have the same definition as found in CMBA Section titled “Definitions”
Best Value	The basis for awarding a Contract for services to the Bidder which best optimizes quality, cost and efficiency among Responsive and Responsible Proposers. See State Finance Law § 163(1)(j).
Business Day	Monday through Friday, excluding NYS Holidays, between the hours of 7:30 AM and 5:00 PM ET.
Cost-Plus Percentage	Shall mean the percentage markup added to Net Reseller Cost.
Cost-Minus Percentage	Shall mean the percentage markdown subtracted from Net Reseller Cost
Custom Microsoft Business Agreement (CMBA)	The agreement executed between the State of New York and Microsoft (including all Appendices, Program Agreements and associated updates and amendments) to establish the overall licensing framework and the applicable terms and conditions for New York State’s acquisition and use of Microsoft Product. The OGS Contract number for the CMBA is PS67984.
Data Categorization	The process of risk assessment of data.
Enrollment	Shall have the same definition as found in CMBA Section titled “Definitions”
ET	Eastern Time
Governmental Entity	An entity at the federal, state, county, city or provincial level
May	Denotes the permissive in a contract clause or specification. Also see Should.
Microsoft	The business entity that has entered into the Custom Microsoft Business Agreement with the State of New York
Must	Denotes the imperative in a contract clause or specification. Also see Shall.
Net Reseller Cost	Shall have the same definition as found in CMBA Section titled “Definitions”
NYS Holidays	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. Link to NYS Department of Civil Service's Website: https://www.cs.ny.gov/attendance_leave/index.cfm .
NYS Vendor ID	The ten-character identifier issued by New York State when a vendor is registered on the Vendor File.
Procurement Services	A division of the New York State Office of General Services which issues centralized, statewide Contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such Contracts.
Online Services	Shall have the same definition as found in CMBA Section titled “Definitions”
Product	Shall have the same definition as found in CMBA Section titled “Definitions”
Product Terms	Shall have the same definition as found in CMBA Section titled “Definitions”
Program Agreements	The following documents attached in Appendix C to the CMBA: 1. Enterprise Agreement Program Agreement

TERM	DEFINITION
	2. Select Plus License Program Agreement (State and Local Government) 3. Academic Select Plus Program Agreement 4. Campus and School Agreement Program Agreement
Reference Price	Shall have the same definition as found in the CMBA Section titled "Definitions"
Request for Proposal (RFP)	This document, as the same may be amended during the procurement process, and its attachments and appendices
Reseller	Shall have the same definition as found in the CMBA Section titled "Definitions"
Shall	Denotes the imperative in a contract clause or specification. Also see Must.
Should	Denotes the permissive in a contract clause or specification. Also see May
Vendor	An enterprise that sells goods or services.

Section 2 BIDDER QUALIFICATIONS.

Bidder is advised that the requirements listed below are included to ensure that only qualified and reliable entities perform the work of the Contract. A Bidder shall have the burden of demonstrating to OGS’s satisfaction that it can perform the work.

OGS retains the right to request any additional information pertaining to the Bidder's ability, qualifications, and procedures used to accomplish all work under the resultant Contract as OGS deems necessary to ensure safe and satisfactory work.

2.1 MICROSOFT CERTIFICATION.

Bids shall be accepted only from Bidders certified by Microsoft as both a Licensing Solutions Partner (LSP) and as an Authorized Educational Reseller (AER). A Bidder must be authorized by Microsoft to provide the entire Microsoft Product line available in the CMBA. Contract award will also be conditioned on current certification as required above.

2.2 FINANCIAL STABILITY.

Bids should only be submitted from Bidders who have the financial stability to service the Contract that will result from this solicitation. The Bidder must be financially stable and able to substantiate its financial statements. If requested by OGS, Bidder must provide current financial statements within five (5) business days of request. The State reserves the right to request additional documentation from the Bidder and to request reports on financial stability from independent financial rating services at the expense of the Bidder. The State reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this RFP or the resulting Contract.

2.3 SALES VOLUME.

If requested, Bidder must document its ability to service a Contract with sales volume similar to the scope of this Bid (see Section 3.8.3.3, Spend by Program Agreement, Chart 1, Program Agreements, for historic spend). Proof of sales history may be requested and must be provided within five (5) business days of request or such other period specified by Procurement Services. Proof of sales history may be presented as invoices issued within the past three (3) years that show the name of the ordering entity, Bidder name, product ordered and invoice amount.

2.4 INSURANCE.

Bidder is to procure at its sole cost and expense, and provide with its Bid, all proof of required insurance as detailed in Attachment 6, Insurance Requirements, and maintain in force at all times during the term of the resulting Contract, policies of insurance pursuant to the requirements outlined.

Section 3 BID SUBMISSION REQUIREMENTS.

3.1 RESPONSIVENESS.

To be considered responsive, a Bidder must submit a complete Bid that satisfies and addresses all requirements stated in this RFP. Except as otherwise provided in the RFP, failure to meet any of the requirements set forth in this RFP in whole or in part may result in a rejection of the Bid as non-responsive.

3.2 INCORPORATION.

Portions of the successful Bidder's Bid and of this RFP shall be incorporated into a final Contract, in the form of a separate document executed by Contractor and OGS.

3.3 BID REQUIREMENTS.

3.3.1 Bid Format - General.

1. Bidder's Bid shall be organized in three (3) separate parts: Administrative Proposal, Technical Proposal, and Cost Proposal (collectively referred to herein as "Submissions"). Each part will be evaluated separately. Each part shall indicate content and be labeled, as applicable: ADMINISTRATIVE, TECHNICAL or COST PROPOSAL.
2. Bidder shall not include any pricing information in the Bidder's Administrative Proposal or Technical Proposal in either the hard copy or the electronic submission. Inclusion of such information in the Administrative or Technical Proposals may result in the Bid's disqualification.
3. The Cost Proposal must not contain any material that is applicable to the Administrative Proposal or the Technical Proposal in either the hard copy or the electronic submission. Inclusion of such information in the Cost Proposal may result in the Bid's disqualification.
4. In the event that there are any inconsistencies between the electronic Submissions versus the hard copy Submissions, or between multiple hard copy Submissions for each of the three (3) parts of the Bid, the electronic Submissions will be deemed controlling by OGS when reviewing and evaluating the Bid.
5. Bid Amendments: Bidder may submit amendments to its Bid prior to the Bid Submission Deadline as described in Section 1.5, Key Events/Dates. Any amended pages submitted by a Bidder to be incorporated into the Bid shall show the date of the revision and indicate the portion of each page being changed.
6. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

3.3.2 Submission of Hard Copy Submissions.

1. Bidder shall submit a total of two (2) separately bound and labeled original hard copies (completed and signed in ink (where applicable)) of each Administrative, Technical and Cost Proposal.
2. The official name of the Bidder’s organization as well as name and number of the RFP (RFP # 23116) should appear on the outside front cover of each copy of the Bidder's Administrative, Technical and Cost Proposal.
3. Each original hard copy should be marked “ORIGINAL” on the cover page, and be numbered sequentially, i.e. Original #1 and Original #2.

3.3.3 Submission of Electronic Submissions.

1. Electronic media should be included on Microsoft Windows formatted USB flash drives. USB flash drives should not be password protected or require the installation of software in order to read files.
2. A Bidder shall submit two (2) electronic versions of the completed Administrative, Technical and Cost Proposals using a separate USB flash drive for each proposal (there should be six (6) USB flash drives in total).
3. Each USB flash drive should be externally labeled with the Name of Bidder, RFP # 23116 and the contents of the media (i.e., Administrative, Technical or Cost Proposal).
4. It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up. Only completed files (in the specified format) should be saved to a USB flash drive.

3.3.4 Submission Checklist

To ensure that a Bid is submitted to Procurement Services in the correct format (hard copy), electronic copy (excel format) and/or electronic copy (.pdf file), a Bidder should submit documents as outlined in the Bid Checklist below. Procurement Services requests submission of electronic files in the same order and naming convention as the Submission Checklist.

Administrative Proposal - Required Documents:

#	Document	RFP Document/Location of Requirement	Hard Copy	Electronic Copy (Excel)	Electronic Copy (.pdf File)
1.	RFP Cover Page - Vendor Signature Page	Page 1 of RFP document	X(Ink Signature)		X (Signed and Scanned)
2.	Acknowledgement Page	Page 2 of RFP Document	X(Notarized in ink)		X (Notarized and Scanned)

#	Document	RFP Document/Location of Requirement	Hard Copy	Electronic Copy (Excel)	Electronic Copy (.pdf File)
3.	Bidder Certification and Affirmation	Page 3 of RFP Document	X(Ink Signature)		X (Signed and Scanned)
4.	ST-220-CA	RFP Section 6.12, Tax Law §5-A.	X (Signed and Notarized in ink)		X(Signed, notarized and Scanned)
5.	EEO-100 Form	RFP Section 6.21.III.B, Form EEO 100 - Staffing Plan	X (Ink Signature)		X (Signed and Scanned)
6.	Proof of Compliance with Attachment 6, Insurance Requirements	Attachment 6, Insurance Requirements	X		X
7.	NYS Vendor Responsibility Questionnaire For-Profit Business Entity*	RFP Section 6.11 New York State Vendor Responsibility Questionnaire For-Profit Business Entity	X (Signed and Notarized in ink)		X (Signed, Notarized and Scanned)
8.	2a - Bidder Information	Attachment 2, tab 2a	X	X	
9.	2b - General Questions	Attachment 2, tab 2b	X	X	
10.	2c - Affirmative Statements	Attachment 2, tab 2c	X	X	
11.	2d - NYS Required Certifications	Attachment 2, tab 2d	X		X(Signed and Scanned)
12.	2e - Encouraging Use of NYS Businesses	Attachment 2, tab 2e	X	X	
13.	2f - Use of SDVOB	Attachment 2, tab 2f	X	X	
14.	2g - Reseller Information	Attachment 2, tab 2g	X	X	
15.	2h - FOIL Redaction	Attachment 2, tab 2h	X	X	
16.	2i - Bidder Checklist	Attachment 2, tab 2i	X	X	

*a paper NYS Vendor Responsibility Questionnaire For-Profit Business Entity is only required if Bidder chooses not to certify a questionnaire via the New York State Office of the State Comptroller VendRep System.

Technical Proposal - Required Documents:

#	Document	RFP Document/Location of Requirement	Hard Copy	Unlocked Electronic Copy (Excel/Word)	Electronic Copy (.pdf File)
17.	How to Use the Microsoft Reseller Contract and Frequently Asked Questions (Draft)	RFP Section 3.8.2.1, How to Use - Draft Document and Attachment 4, "How to Use the Microsoft Reseller Contract and Frequently Asked Questions".	X	X	
18.	Implementation/ Transition Plan	RFP Section 3.8.2.2, Implementation/Transition Plan and Attachment 3, Technical Proposal Forms	X	X	
19.	Issue Escalation Plan	RFP Section 3.8.2.3, Issue Escalation Plan and Attachment 3, Technical Proposal Forms	X	X	
20.	Contract Administrator Resume	RFP Section 3.8.2.4, Contract Administrator Resume	X		X

Cost Proposal - Required Documents:

#	Document	RFP Document/Location of Requirement	Hard Copy	Unlocked Electronic Copy (Excel)	Electronic Copy (.pdf File)
21.	Category Discount tab	Attachment 5, Cost Proposal Forms	X	X	
22.	Program Agreement price list tabs (4)	Attachment 5, Cost Proposal Forms		X	
23.	Bidder's GSA Price List*	Attachment 2, Administrative Proposal Forms, tab 2b			X
24.	Bidder's VA Price List*	Attachment 2, Administrative Proposal Forms, tab 2b			X

* a GSA and/or VA price list is only required if Bidder holds a GSA and/or a VA contract and Bidder will offer New York State pricing equal to or better than Bidder's GSA and/or VA pricing.

3.4 BID ENVELOPES AND PACKAGES.

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

1. **BID ENCLOSED** (preferably bold, large print, all capital letters)
2. Bid number (RFP# 23116)
3. Bid Opening Date and Time (July 3, 2018 11:00 AM ET)
4. The number of packages (i.e., 1 of 2; 2 of 2)

In the event that a Bidder fails to provide such information on the envelope or shipping material, OGS reserves the right to open the shipping package or envelope to determine the proper RFP number and the date and time of Bid opening. Bidder shall have no claim against OGS arising from such opening and such opening shall not affect the validity of the Bid or the RFP.

Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the forgoing requirements.

3.5 BID DELIVERY.

Bids shall be delivered to the following address on or before 11:00 a.m. ET, of the Bid opening date as stated in Section 1.5, 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

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

3.6 IMPORTANT BUILDING ACCESS PROCEDURES.

To access the Corning Tower, all visitors must check in by presenting photo identification at the information desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services receptionist at (518) 474-6262 at least 24 hours prior to the visit. Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services receptionist. The receptionist will register the visitor at that time but delays may occur. Building access procedures may change or be modified at any time. **Note:** Bids not received by Procurement Services by the time and date specified will be considered late.

3.7 BID VALIDITY.

Bids must remain open and valid for at least 120 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 a firm and effective offer for at least a two (2) year period from the Bid due date, unless Bidder withdraws its Bid subsequent to the 120 calendar day period. Bidders are encouraged to keep their bids open due to the provisions in Section 7.13, Replacement Contractor.

3.8 RFP FORMAT AND CONTENT.

3.8.1 Administrative Proposal Requirements.

This section sets forth the Administrative Proposal requirements of the RFP.

3.8.1.1 Attachment 2, Administrative Proposal Forms.

Attachment 2, Administrative Proposal Forms contains nine (9) forms and an Introduction tab. Instructions related to the completion of each form are included at the top of each tab for the Bidder's reference.

The forms, included in Attachment 2, Administrative Proposal Forms, that must be completed and returned with the Bid, are as follows:

- Bidder Information (tab 2a - Bidder Information);
- General Questions (tab 2b - General Questions);
- Affirmative Statements (tab 2c - Affirmative Statements);
- NYS Required Certifications (tab 2d - NYS Required Certifications);
- Encouraging Use of NYS Businesses in Contract Performance (tab 2e-Encouraging NYS Business);
- Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance (tab 2f-Use of SDVOBE);
- Reseller Information (tab 2g-Reseller Information); and
- FOIL Redaction Request (tab 2h-FOIL Redaction).

One (1) additional form, included in Attachment 2, Administrative Proposal Forms, is intended for the use by the Bidder in submitting a complete Bid in response to this RFP. The following form should be completed and submitted with the Bid:

- Bid Submittal Checklist (tab 2i - Submittal Checklist).

3.8.2 Technical Proposal Requirements.

This section sets forth the Technical Proposal requirements of the RFP. OGS requires the following components:

3.8.2.1 How to Use the Microsoft Reseller Contract and Frequently Asked Questions.

Bidder shall review Attachment 4, How to Use the Microsoft Reseller Contract and Frequently Asked Questions, which is the existing How to Use document provided for use by Authorized Users of Award 23047. As part of the Bid, Bidder shall propose any updates or revisions needed to reflect the terms and conditions of the CMBA attached to this RFP as Appendix D and the Bidder's business processes, consistent with this RFP. As a separate, unlocked Microsoft Word document, Bidder is permitted to include, with the Bid, any additional sections or topics desired to provide Authorized Users with helpful information to assist in their use of the resultant Contract. OGS will require the awarded Bidder to modify the "How to Use" document, as needed, prior to Contract award or during the duration of the resulting Contract. OGS reserves the right to use the answers provided in this Attachment by Bidder in whole or in part as a tool to inform Authorized Users in the resulting Contract.

3.8.2.2 Implementation/Transition Plan.

Bidder shall provide an Implementation Plan that details the Bidder's strategy for managing the Contract resulting from this RFP. Space has been provided in Attachment 3, Technical Proposal Forms for entry of the plan and additional information may be provided in a separate, unlocked Microsoft Word document. The plan must cover how, if awarded the resulting Contract, the Bidder will assist OGS, Authorized Users and Microsoft with any required transition of Enrollments and Affiliate Registration Forms from the incumbent Contractor under the current OGS Microsoft Reseller contract for Software and Online Services (Contract No. PS67650), or Enrollments and Affiliate Registration Forms under any separate contract for Microsoft Software and Online Services, to the Contractor awarded as a result of this RFP. For the purposes of this plan, Bidder is to assume that it is not the incumbent Contractor under the current OGS Microsoft Reseller contract for Software and Online Services (Contract No. PS67650).

Implementation plan details are to include, at a minimum, the following:

- Bidder's proposed process for onboarding Authorized User Enrollments/Affiliate Registration Forms under Contract PS67650 and any other separate contract;
- Bidder's tracking process to assist Authorized Users in ensuring there are no unintended lapses in Software and Online Service coverage;
- Risk mitigation processes and procedures; and
- Communications plan for Authorized Users.

The Transition Plan must provide information on the Bidder's strategy for transitioning enrollments/registrations to a potential new vendor either before the scheduled end of the resulting Contract term or at the end of any resulting Contract term. Space has been provided in Attachment 3, Technical Proposal Forms for entry of the plan and additional information may be provided in a separate, unlocked Microsoft Word document. Transition plan details are to include, at a minimum, the following:

- Transition of Authorized User information from the existing Contractor to a new Contractor upon expiration or termination of the resulting Contract.

- Bidder's willingness to waive any notice periods in required Microsoft Change of Channel Partner forms (or successor forms).

As a condition of final Contract award, OGS may require the tentative awardee to modify the "Implementation/Transition Plan" document(s) submitted with its Bid, as needed, to adhere to the terms and conditions of the resulting Contract or Microsoft's processes or as otherwise determined by OGS. OGS may also require Contractor to modify this plan at any time during the term of the resulting Contract. The Implementation/Transition Plan as approved by OGS at the time of Contract award shall become a part of the resulting Contract and Contractor must adhere to such plan during the term of the resulting Contract.

3.8.2.3 Issue Escalation Plan.

Bidder must submit an Issue Escalation Plan. Space has been provided in Attachment 3, Technical Proposal Forms for entry of the plan and additional information may be provided in a separate, unlocked Microsoft Word document. In a narrative, describe how the Bidder will manage the Contract to ensure uninterrupted, high quality performance and overall Contract effectiveness.

The plan must:

- Detail action(s) to be taken to investigate any issues reported by OGS or an Authorized User;
- Describe the process used to monitor and investigate any issues identified by the Bidder, and to notify OGS or an Authorized User of any such issues identified by the Bidder;
- Describe how the Bidder will ensure an issue is addressed and resolved in a timely manner, and Contract terms and conditions, as well as any terms and conditions unique to an Authorized User agreement, are met;
- Include a depiction of the chain of command for purposes of escalation, including at each level of the chain, a named contact, specifying the contact's title, role, phone number and email address.

As a condition of final Contract award, OGS may require the tentative awardee to modify the "Issue Escalation Plan" document(s) submitted with its Bid, as needed, to adhere to the terms and conditions of the resulting Contract or Microsoft's processes or as otherwise determined by OGS. OGS may also require Contractor to modify this plan at any time during the term of the resulting Contract.

The Issue Escalation Plan as approved by OGS at the time of Contract award shall become a part of the resulting Contract and Contractor must adhere to such plan during the term of the resulting Contract.

3.8.2.4 Contract Administrator Resume.

Bidder must submit the resume of the individual who will serve as the Contract administrator to demonstrate that the Contract administrator possesses the required skills and experience specified in Section 7.5, Contract Administrator of this RFP.

3.8.3 Cost Proposal Requirements.

This section sets forth the Cost Proposal requirements of the RFP.

Please see Attachment 5, Cost Proposal Forms for instructions on completing the Cost Proposal Forms. Bidder shall complete all yellow highlighted cells in the Attachment, and return the completed Attachment 5, Cost Proposal Form with its Bid.

3.8.3.1 Cost-Plus Percentage or Cost-Minus Percentage:

In the Category Discount tab in Attachment 5, Cost Proposal Forms, Bidder must quote the Cost-Plus Percentage or Cost-Minus Percentage that will be added to or subtracted from the Net Reseller Cost for each Program Agreement. The Cost-Plus Percentage or Cost-Minus Percentage applied to the Net Reseller Cost will be the final (net) price to the State of New York for each Contract SKU. Bidder shall not bid multiple Cost-Plus Percentages or Cost-Minus Percentages within a single Microsoft Program Agreement. **The final Cost-Plus Percentage or Cost-Minus Percentage shall be all-inclusive and shall cover all shipping, handling, insurance, associated delivery charges, and all other costs. No additional charges may be billed to an Authorized User including, but not limited to, processing or other fees for NYS Procurement Card purchases.**

Cost-Plus Percentages or Cost-Minus Percentages quoted by the Bidder are to be firm for the entire period of the resulting Contract; however, price decreases or discount increases by the Contractor will be permitted at any time. Discount reduction by the Contractor shall not be allowed and is specifically excluded from the terms and conditions of this RFP and the resulting Contract.

3.8.3.2 Program Agreement Price Lists

Bidders shall complete as part of the Cost Proposal, all four (4) Program Agreement sections listed in the OGS price list using the Attachment 5, Cost Proposal Forms tabs. Bidder shall obtain from Microsoft the Microsoft commercial price list and the Microsoft governmental price list. Bidder may use the June 2018 price files for the purposes of this Bid. Bidder shall complete all required fields of the Attachment 5, Cost Proposal Forms price list tabs, using the Product information included in the Microsoft price lists. The Net NYS Price for each Contract SKU shall be calculated by applying the applicable Program Agreement Cost-Plus Percentage or Cost-Minus Percentage to the Net Reseller Cost set by Microsoft.

Bidder must include all of the following tabs of Attachment 5, Cost Proposal Forms, completing all required information, with their submission packet to meet the requirements of this section:

- Category Discount
- Enterprise Agreement Program Agreement
- Select Plus License Program Agreement (SLG)
- Academic Select Plus Agreement
- Campus and School Agreement

The successful Bidder's Cost Proposal shall be used to create the resulting Contract NYS Price List. OGS reserves the right to modify or exclude any of the Products listed on the Bid submission price list from the final NYS Price List.

3.8.3.3 Spend by Program Agreement.

To assist Bidders with establishing Cost-Plus and/or Cost-Minus Percentages, Chart 1, which lists price level and historic spend information, is being provided for the Program Agreements that are applicable as of the time of Bid.

Chart 1 – Program Agreements

MICROSOFT PROGRAM AGREEMENTS	MICROSOFT PRICE LEVEL	ESTIMATED TOTAL DOLLAR VALUE OF SALES AS REPORTED BY THE CURRENT CONTRACTOR FOR CALENDAR YEAR 2017 (JANUARY - DECEMBER)
1. Enterprise Agreement Program Agreement	Level D	\$64,104,503.25
2. Select Plus License Program Agreement (State and Local)	Level D	\$9,018,699.72
3. Campus and School Agreement Program Agreement	Level A,B,C,D (varies by organization counts)	\$2,445,905.28
4. Academic Select Plus License Program Agreement	Level A	\$26,572,993.82

3.8.3.4 Best Pricing.

If substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, shall be reduced to the lower price.

3.8.3.5 Net Reseller Cost Verification.

Upon request from OGS, Contractor will disclose the price it pays to Microsoft for Products sold under the Contract.

Section 4 METHOD OF AWARD/EVALUATION.

4.1 STATE EVALUATION PHILOSOPHY.

New York State evaluates Bids for Products and services in an objective, comprehensive manner designed to benefit both the State and participating Bidders. Through this process the State identifies Bidders who will best meet its needs and will be the most cost effective. All Bids will be evaluated uniformly and consistently, ensuring that each Bidder has an equal opportunity to be considered. The evaluation process will be conducted as described in this section.

4.2 METHOD OF AWARD OF CONTRACT.

It is the State’s intent to award one (1) Contract to the responsive and responsible Bidder based on best value to the State. For the purposes of this RFP, best value shall be equated to the Bid having the highest Final Cost Proposal Score and satisfying all Administrative, Technical and other RFP requirements.

4.3 BID SCORING.

The Administrative, Technical, and Cost Proposals of the Bid will be evaluated separately based on the scoring below:

FACTOR	WEIGHT
Administrative	0%
Technical	0%
Cost	100%
Total	100%

4.4 EVALUATION PROCESS.

Proposal evaluations will be separated into three (3) separate components: Administrative Evaluation, Technical Evaluation, and Cost Evaluation.

4.4.1 Administrative Proposal Evaluation.

After the Bid opening, each Bidder’s Administrative Proposal will be screened for completeness and conformance with requirements for Bid submission as specified in Section 3.3, Bid Requirements and Section 3.8.1, Administrative Proposal Requirements. The Administrative Proposal will be evaluated separately from the Cost Proposal evaluation. Bids that do not meet the Administrative Proposal requirements as set forth in this RFP may be deemed nonresponsive and given no further consideration. In the alternative, OGS reserves the right to require the Bidder to submit any missing or incomplete Administrative Proposal information as a condition of award.

4.4.2 Technical Proposal Evaluation.

Each Technical Proposal will be evaluated for completeness and conformance with requirements for Bid submission as specified in Section 3.3, Bid Requirements and Section 3.8.2, Technical Proposal Requirements. Technical Proposal will not receive a score and will be evaluated separately from the Cost Proposal evaluation. Bids that do not meet the Technical Proposal requirements as set forth in this RFP may be deemed nonresponsive and given no further consideration. In the alternative, OGS reserves the right to require the Bidder to submit any missing or incomplete Technical Proposal information as a condition of award.

4.4.3 Cost Proposal Evaluation (100%).

The Cost Proposal evaluation will be evaluated separately from the Technical and Administrative Bid Evaluations. The Cost Proposal evaluation will be based on the Bidder’s completed Attachment 5, Cost Proposal Forms. Each Cost Proposal will be reviewed for responsiveness to the Cost Proposal

requirements set forth in Section 3.3, Bid Requirements and Section 3.8.3, Cost Proposal Requirements. If a Cost Proposal is found to be materially non-responsive, the Bid will not receive a cost score and the Bidder will be disqualified from consideration for this procurement. Each responsive Bid that meets the Cost Proposal requirements will receive a cost score.

4.4.4 Cost Scoring.

Cost Proposals from a Bidder must be presented as directed in Attachment 5, Cost Proposal Forms to enable the evaluation of costs according to the State's prescribed formula.

The Final Cost Proposal Score will be calculated as follows:

$$\text{Final Cost Proposal Score} = \text{Max Points} * (\text{Low Bid} / \text{Bid being Evaluated})$$

4.4.5 Bid Ranking and Selection.

The one (1) responsive and responsible Bid having the highest Final Cost Proposal Score and satisfying all Administrative, Technical and other RFP requirements will be selected for a tentative Contract award.

In the case of tied Bids, please see Appendix B, Clause 17 entitled "Tie Bids."

4.4.6 Notification of Award.

Tentative award of the Contract shall consist of written notice to that effect by OGS to the successful Bidder, who shall thereupon be obligated to execute a formal Contract. Included with the written notice of tentative award will be the price list that was completed by the tentative awardee and submitted in response to this RFP as Attachment 5, Cost Proposal Forms. The successful Bidder will be required to review and update the NYS Price List Product information as needed, including any pricing updates occurring subsequent to the Bid submission. The updated NYS Price List must be returned to OGS for approval within 10 business days of the tentative award. Once approved, the NYS Price List will be incorporated in the Contract. If the NYS Price List is not returned to OGS within the timeframe specified, or is not acceptable to OGS, OGS reserves the right to withdraw the tentative award and proceed to the eligible Bidder with the next highest Final Cost Proposal Score.

If the tentative awardee is not the current reseller of record for NYS, OGS will provide the tentative awardee with paperwork required to establish the reseller of record with Microsoft. Tentative awardee must fully cooperate in the change of Reseller process.

Non-awardees will also be notified that their Bids were not selected for Award.

Section 5 PROCUREMENT AND ADMINISTRATION.

5.1 NEW YORK STATE PROCUREMENT RIGHTS.

New York State reserves the right to:

1. Reject any or all Bids received in response to the RFP;
2. Withdraw the RFP at any time, at OGS's sole discretion;
3. Make an award under the RFP in whole or in part;

4. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the RFP;
5. Seek clarifications and revisions of Bids;
6. Prior to the Bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
7. Prior to the Bid opening, direct Bidders to submit Bid modifications addressing subsequent RFP amendments;
8. Change any of the schedule dates with notification through the NYS Contract Reporter;
9. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
10. Waive any requirements that are not material;
11. Utilize any and all ideas submitted in the Bids received;
12. Negotiate with the Bidder responding to this RFP within the RFP requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bidders' Bids.
13. 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;
14. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or, optionally, in other specified circumstances as detailed in the RFP requirements;
15. Upon discovery of non-material completeness or conformance issues with a Bidder's Proposal, contact the Bidder to attempt to cure the issue prior to completion of the evaluation of the Bidder's Proposal.
16. Unilaterally make revisions, changes and/or updates to any templates, Appendices (excluding Appendices A and B) and/or Attachments to the resulting Contract without processing a formal amendment and/or modification.

5.2 ELECTRONIC BID OPENING RESULTS.

Procurement Services posts Bid information on the OGS Procurement Services web page. The web page makes available information about the list of Bidders that responded to this RFP. The Bid Opening Results Page is available at: <https://nyspro.ogs.ny.gov/nyspro-bid-openings>.

5.3 BIDDER DEBRIEFING.

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

Section 6 GENERAL TERMS AND CONDITIONS

6.1 APPENDIX A.

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this RFP as fully as if set forth at length herein.

6.2 APPENDIX B.

Appendix B, General Specifications, dated April 2016, attached hereto, is hereby expressly made a part of this RFP as fully as if set forth at length herein and shall govern any situations not covered by this RFP or Appendix A.

6.2.1 APPENDIX B MODIFICATIONS.

The following Appendix B clauses are hereby modified for the purposes of this solicitation:

1. Section 22, *Contract Creation/Execution*, is deleted.
2. Subsections c (Product Warranty), f (Workmanship Warranty) and i (Additional Warranties) of Section 54, *Warranties*, are amended to read as follows:
 - c. RESERVED.
 - f. RESERVED.
 - i. No Implied Warranties To the extent permitted by law, these warranties are exclusive and there are no other express or implied warranties or conditions.

3. Subsection c of Section 58, *Limitation of Liability*, is amended to read as follows:

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit or loss of data by the Authorized User, the Contractor, or by others.

4. Subsection i (Restricted Use by Licensee) of Section 60, *Software License Grant*, is amended by adding the following language at the end thereof:

Contractor and Licensee acknowledge that the Microsoft Products under this Contract are subject to the export control laws and regulations of the United States of America and other countries from which Microsoft Products were supplied and in which Microsoft Products are used and agree to abide by those laws and regulations. Licensee acknowledges that Licensee is responsible for obtaining any necessary licenses relating to the export of Microsoft's Products.

5. The first sentence of Section 61, *Product Acceptance*, is deleted and amended to read as follows:

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept Product.

6. Section 64, *Ownership/Title to Project Deliverables*, is deleted and replaced with the following language:

64. OWNERSHIP/TITLE TO PROJECT DELIVERABLES:

The Contractor agrees that no development or customization work can be provided pursuant to this Contract.

6.3 APPENDIX C.

Appendix C, Contract Modification Procedure, is hereby expressly made a part of this RFP as fully as if set forth at length herein.

6.4 APPENDIX D.

Appendix D, Custom Microsoft Business Agreement (CMBA) is hereby expressly made a part of this RFP as fully as if set forth at length herein.

6.5 APPENDIX E.

Appendix E, Report of Contract Sales, is hereby expressly made a part of this RFP as fully as if set forth at length herein.

6.6 APPENDIX F.

Appendix F, Primary Security and Privacy Mandates, is hereby expressly made a part of this RFP as fully as if set forth at length herein.

6.7 APPENDIX G.

Appendix G, Contractor Attestation, is hereby expressly made a part of this RFP as fully as if set forth at length herein.

6.8 APPENDIX H.

Appendix H, Contractor Deficiency Report, is hereby expressly made a part of this RFP as fully as if set forth at length herein.

6.9 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING.

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

6.10 NEW YORK STATE VENDOR FILE REGISTRATION.

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

If the Bidder is already registered in the Vendor File, the Bidder must enter the vendor's ten-digit Vendor ID on the first page of this RFP.

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID number from OGS. Complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) and submit the form to OGS **in advance** of your Bid. Please send this document to the Designated Contact in the solicitation. **OGS will initiate the vendor registration process** for all Bidders. Once the process is initiated, Bidder will receive an e-mail identifying its unique ten-digit 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: http://www.osc.state.ny.us/vendor_management/.

6.11 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY (hereinafter the "Questionnaire")

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 encourages each Bidder to file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the following link at the Office of the State Comptroller (OSC) website: http://osc.state.ny.us/vendrep/info_vrsystem.htm. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

In order to assist the State in determining the responsibility of the 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 or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

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

The Contractor agrees that if it is found by the State that the 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 or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the Contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

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

6.12 TAX LAW §5-A.

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

A Contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Contractor filed the ST-220-TD with DTF. Note: NYS DTF receives the completed Form ST-220-

TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed with the Bid and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. 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. Contractors shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Contractor certification forms and instructions are provided below. Form No. ST-220-TD must be filed with and returned directly to DTF and can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf.

Vendors may call DTF at 518-485-2889 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF website: <http://www.tax.ny.gov>

6.13 POOR PERFORMANCE.

If the Contractor fails to meet the requirements of the Contract, Authorized Users are encouraged to submit a Contractor Deficiency Report as described in Section 7.12, Contractor Non-Compliance with Contract Requirements.

6.14 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS.

New York State political subdivisions and others authorized by New York State law may participate in 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 "Participation in Centralized Contracts" in Appendix B, General Specifications.

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 (<http://www.ogs.state.ny.us/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

6.15 EXTENSION OF USE.

The Contract resulting from this Bid solicitation may **not** be extended to additional States or beyond those entities included in the definition of Authorized User.

6.16 EXTENSION OF USE COMMITMENT.

If awarded the Contract, Bidder agrees to honor all orders from State Agencies, Political Subdivisions and others authorized by law (see “Extension of Use” clause), which are in compliance with the pricing, terms, and conditions set forth in the resulting Contract. Any unilateral limitations/restrictions imposed by the Contractor and/or manufacturer on eligible Authorized Users will be grounds for rejection of the Bid or cancellation of the Contract. If a Contract, or any portion thereof, is canceled for this reason, any additional costs incurred by the eligible purchaser will be borne by the Contractor.

6.17 CONTRACT TERM.

The Contract shall commence upon execution of the Contract by OGS as evidenced by the date accompanying the OGS signature line. The Contract will remain in effect for five (5) years unless it is terminated in accordance with the Contract terms.

6.18 SHORT TERM EXTENSION.

This extension shall apply in addition to any rights set forth in Appendix B, Contract Term - Extension. In the event a replacement Contract has not been issued, any Contract, let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

6.19 CONTRACT AND ORDER OF PRECEDENCE.

The following documents shall be incorporated into the resulting Contract. Other documents may be identified for inclusion during the course of the solicitation process by OGS. OGS reserves the right to add additional appendices or attachments to the resulting Contract. Conflicts among the documents shall be resolved in the following order of precedence:

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Base Agreement (that portion of the document preceding the Parties’ signatures) and Insurance Requirements;
3. Appendix B, General Specifications;
4. Appendix D, Custom Microsoft Business Agreement (CMBA);
5. NYS Price List;
6. How to Use the Microsoft Reseller Contract and Frequently Asked Questions;
7. Issue Escalation Plan;
8. Implementation/Transition Plan;
9. Contractor Information;
10. Appendix C, Contract Modification Procedure;
11. Appendix E, Report of Contract Sales;
12. Appendix F, Primary Security and Privacy Mandates;
13. Contractor Attestation; and
14. Contractor Deficiency Report.

6.20 WARRANTY.

If awarded the Contract, Bidder agrees to warrant that all services performed under the resulting Contract shall be provided in a professional manner in accordance with industry standards. The

Authorized User must notify Contractor of any such warranty deficiencies within ninety (90) calendar days from performance of the service that gave rise to the warranty claim.

The Contractor shall pass through all product warranties, performance guarantees or other warranties set forth in the CMBA.

OGS acknowledges that the Product warranties provided to OGS from Microsoft in the CMBA are the applicable warranties for all orders placed with Contractor hereunder. OGS acknowledges that its remedies for breach of Product warranties are provided through the CMBA.

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. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
2. Separate forms shall be completed by Contractor and all subcontractors.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's

or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

IV. Contract Goals

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

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: <http://www.ogs.ny.gov/MWBE/Forms.asp>

6.22 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

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

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

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

Bidder/Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

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

Section 7 ADDITIONAL TERMS AND CONDITIONS.

7.1 PROGRAM AGREEMENTS, ENROLLMENTS, AFFILIATE REGISTRATION FORMS AND PARTICIPATION AGREEMENTS.

As part of the CMBA between OGS and Microsoft, Custom Program Agreements, Enrollments, Affiliate Registration Forms, Consortia Agreements, Participation Agreements and Participation Forms have been established for use by the Authorized Users of the resulting Contract. Contractor must utilize these custom forms and documents for transactions under the resulting Contract.

7.2 CUSTOM MICROSOFT BUSINESS AGREEMENT AMENDMENT.

OGS reserves the right during the Contract term to negotiate amendments to the CMBA with Microsoft and incorporate an amended CMBA into the resulting Contract with the selected Microsoft Reseller unilaterally, and at any time, upon notice to the Contractor.

7.3 CENTRALIZED CONTRACT MODIFICATIONS.

All modifications proposed by Contractor shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. OGS reserves the right to revise Appendix C, Contract Modification Procedure during the Contract term, and at its sole discretion, without seeking a formal Contract amendment.

7.4 PRICE INCREASES AND DECREASES.

During the term of the Contract, price increases and decreases shall be processed in accordance with Appendix C, Contract Modification Procedure. Contract prices will increase or decrease by the Contractor applying the applicable Program Agreement Cost-Plus Percentage or Cost-Minus Percentage to the new Net Reseller Cost set by Microsoft. Net Reseller Cost decreases must be reflected in any NYS Price List updates. Any change in pricing attributable to a change in Net Reseller Cost are required to be attested to by the Contractor via Appendix G, Contractor Attestation and may only take effect upon OGS approval and posting to the OGS website.

Contractor may submit a request to decrease prices on the NYS Price List at any time during the Contract term. For individual transactions, Contractor may offer more favorable prices than those listed on the NYS Price List at any time.

Cost-Plus Percentages or Cost-Minus Percentages quoted by the Bidder are to be firm for the entire period of the resulting Contract; however, price decreases, Cost-Plus Percentage decreases or Cost-Plus Percentage increases by the Contractor will be permitted at any time. Discount reduction by the Contractor shall not be allowed and is specifically excluded from the terms and conditions of this RFP and the resulting Contract.

7.5 CONTRACT ADMINISTRATOR.

At time of Bid, the Bidder shall designate a dedicated Contract administrator to serve throughout the duration of the resulting Contract term and to support the updating and management of the Contract on a timely basis. Information regarding the Contract administrator shall be set forth in Attachment 2, Administrative Proposal Forms on the Reseller Information tab. The Contract administrator must have a minimum of five (5) years of experience administering contracts. The Contract administrator also must have experience managing large scale accounts.

Contractor must notify OGS within five (5) business days if its Contract administrator changes, and provide an interim contact person until the position is filled. The interim contact person and the replacement Contract administrator must meet the minimum qualifications stated above. OGS reserves the right to reject a replacement Contract administrator proposed by the Contractor. Changes to Contractor contact information, including the designation of a new Contract administrator, shall be submitted electronically via e-mail using Appendix C, Contract Modification Procedure.

7.6 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 is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>

There are no fees required for a Contractor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

7.7 INTERNET ACCESS TO CONTRACT AND PRICING INFORMATION.

Access by Authorized Users to Contract terms and pricing information shall be made available and posted on the OGS website.

7.8 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.

7.9 ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4.

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <https://www.ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been

developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

7.10 PERFORMANCE AND BID BONDS.

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

7.11 CONTRACTOR RESPONSIBILITIES

7.11.1 Reseller of Record.

Contractor shall become the Reseller of record for all Enrollments/Affiliate Registration Forms under the current OGS Reseller Contract(PS67650), except as notified otherwise by OGS. All billings due on or after the effective date of the resulting Contract shall be issued by and paid to the new Contractor. Contractor acknowledges this responsibility and agrees to cooperate fully to facilitate this transition, including executing any OGS-requested waivers of Microsoft Change of Channel Partner Form timeframes.

7.11.2 How to Use and Frequently Asked Questions.

Contractor also agrees to assist OGS in maintaining a "How to Use and Frequently Asked Questions" document for Authorized Users to consult in using the Contract throughout the life of the Contract. Contractor acknowledges the right of OGS to revise or direct that revisions be made to the "How to Use and Frequently Asked Questions" document and Contractor shall fully comply with such directives. Such revisions shall not require a formal amendment to the resulting Contract.

7.11.3 Implementation/Transition Plan.

The Implementation/Transition Plan as approved by OGS at the time of Contract award shall become a part of the resulting Contract and Contractor must adhere to such plan during the term of the resulting Contract.

Contractor acknowledges the right of OGS to require that revisions be made to the "Implementation/Transition Plan" document that are necessary to comply with Microsoft processes, or that are otherwise directed by OGS, during the term of the resulting Contract and Contractor shall fully comply with such directives. Such revisions shall not require a formal amendment to the resulting Contract.

7.11.4 Issue Escalation Plan.

The Issue Escalation Plan as approved by OGS at the time of Contract award shall become a part of the resulting Contract and Contractor must adhere to such plan during the term of the resulting Contract.

Contractor acknowledges the right of OGS to require that revisions be made to the "Issue Escalation Plan" document that are necessary to comply with Microsoft processes, or that are otherwise directed by OGS, during the term of the resulting Contract and Contractor shall fully comply with such directives. Such revisions shall not require a formal amendment to the resulting Contract.

7.11.5 NYS Price List.

Contractor shall use the NYS Price List approved by OGS as the final price list format. The NYS Price List will be created using the price list tabs from the Bidder's Attachment 5, Cost Proposal Forms as may be modified by OGS. At all times during the life of the resulting Contract, each item on the NYS Price list must have a unique Contract SKU (unique identifier) in the "Contract SKU" column of the NYS Price List. The unique Contract SKU shall be created by combining the "Microsoft Model / Part Number" and the "Product Description" fields, as provided by Microsoft. The price listed on the NYS Price List for each Contract SKU shall be a not-to-exceed price. Contractor may offer more favorable pricing to Authorized Users during a transaction.

Contractor shall update the NYS Price List document on a monthly basis, submitting all required documentation by the 10th of each month, using Appendix C, Contract Modification Procedure to reflect updated Net Reseller Cost, Reference Price and Net NYS Price. Net NYS Price for each Contract SKU shall be calculated by applying the applicable Program Agreement Cost-Plus Percentage or Cost-Minus Percentage to the new Net Reseller Cost set by Microsoft. Such updates are required to include not only price increases based on increased Net Reseller Cost, but also price decreases based on decreased Net Reseller Cost. Contractor shall add or remove any Contractor SKUs necessary at this time. Contractor may also submit a request for Contract modification on an as-needed basis for price decreases per Contract SKU, Cost-Plus Percentage decreases or Cost-Minus Percentage increases.

The NYS Price List shall be updated for each required monthly update and each as-needed Contract modification so that it remains current. See Appendix C, Contract Modification Procedure for more information. Any price list update without an accurate and complete NYS Price List or other required documentation shall be rejected. OGS reserves the right to unilaterally modify the NYS Price List or to request an updated NYS Price List from the Contractor at any time.

7.11.6 Expiration of Contract Term/Transition.

No later than 45 calendar days before the end of the resulting Contract term, Contractor shall provide to OGS a list of all unexpired Enrollments/Affiliate Registration Forms executed under the CMBA. Such list shall be in a form acceptable to OGS and shall, at minimum, include the following: Microsoft Enrollment/Affiliate Registration Form number, Authorized User name, Product name, Microsoft part number, Contractor SKU, quantity, and term for each individual Product listed under the Enrollment/Affiliate Registration Form number. OGS reserves the right to request a list of all unexpired Enrollments/Affiliate Registration Forms executed under the CMBA, including prices paid for all orders under each unexpired Enrollment/Affiliate Registration Form, at any time during the resulting Contract term.

If at any time the Contract is canceled, terminated or expires, the Contractor has the affirmative obligation to ensure the expeditious and orderly transition of Contract services and all unexpired Enrollments/Affiliate Registration Forms to any subsequent Contractor. This may include executing any OGS-requested waivers of Microsoft Change of Channel Partner Form timeframes.

7.11.7 Enrollment Pricing.

Except for Online Services designated in the Product Terms as being exempt from fixed pricing, pricing quoted to Authorized Users for each Product ordered under an Enrollment (Enterprise Enrollment, Enterprise Subscription Enrollment, Enterprise Server and Cloud Enrollment or Enrollment for Education Solutions) shall be fixed throughout the applicable initial or renewal Enrollment term (i.e., pricing quoted to Authorized Users cannot be increased on a year by year basis during the life of the initial or renewal term of the Enrollment). Pricing for each Product ordered under an Enrollment may be reestablished at the beginning of the renewal Enrollment term. Notwithstanding the foregoing, a change in Reseller during the term of an Enrollment may result in a change in pricing based on the new Reseller's Contract pricelist.

7.11.8 Authorized User Refunds.

In the event of termination of service for any reason, Contractor will reimburse Authorized User for any prepaid amount that has been applied to the portion of the service that has been terminated. The refund may be in the form of credit or cash, which will be decided by the Authorized User.

7.11.9 Service Credit related to Online Services.

As described in Section 4.11, Service Credits for Online Services of the CMBA, Contractor shall, on behalf of Authorized Users, facilitate and submit any claims for service credit for Online Services to Microsoft. In the event Microsoft grants a claim for service credit, the Authorized User will receive that service credit directly from the Contractor.

7.11.10 Product Quotes.

Contractor must provide quotes for Product within a maximum of two (2) business days after receiving a request for a quote for Product listed on the NYS Price List. Contractor must honor all quotes for thirty (30) calendar days, regardless of any price increases.

7.11.11 Report of Contract Sales.

Contractor shall submit to OGS Appendix E, Report of Contract Sales, including total sales to Authorized Users, no later than fifteen (15) business days after the close of each calendar quarter. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the quarterly report.

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

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

7.11.12 Contractor Responsibility to Inform Authorized Users.

Contractor shall have the following responsibilities in addition to all other responsibilities under the Contract:

It is essential that Authorized Users fully understand the nature of Products being offered or provided under the Contract prior to issuing a Purchase Order. Accordingly, Contractor is required to fully answer any questions an Authorized User may have regarding the Product and upon request, provide a full written description of the Product.

Contractor shall provide Microsoft-specific available information, as appropriate, to the Authorized User in order to facilitate a determination as to whether an offering complies with the Authorized User's statutory and regulatory requirements and is within the scope of the resulting Contract. This includes, but is not limited to, Microsoft's data protection and privacy protocols and protocols for Authorized User transfer of data at the end of the Enrollment/Affiliate Registration Form term.

Upon request of the Authorized User, the Contractor shall provide for all Online Services, a chart of all roles and responsibilities pertaining to security, data ownership, encryption, and data location, including backup.

Contractor must provide to the Authorized User a copy of the CMBA at the time of an executed Enrollment/Affiliate Registration Form between the Contractor and the Authorized User.

Contractor shall provide and maintain a toll-free telephone and/or online functionality for customer support within Attachment 2, Administrative Proposal Forms.

7.12 CONTRACTOR NON-COMPLIANCE WITH CONTRACT REQUIREMENTS.

Deficient performance or other non-compliance with contractual obligations may result in a Contractor Deficiency Report (CDR). At the discretion of OGS or the Authorized User, a CDR may be filed or submitted at any time by OGS or the Authorized User to identify a Contractor performance issue or other non-compliance with contractual requirements. A template for the CDR is set forth in Appendix H, Contractor Deficiency Report. This CDR process does not impair or limit any other rights OGS or an Authorized User has under the Contract, including, but not limited to, termination for convenience.

When an Authorized User identifies a performance issue or other non-compliance with contract requirements by a Contractor, the Authorized User(s) is encouraged to alert OGS to the deficiency or non-compliance using the CDR, where it will be recorded centrally.

OGS shall provide the Contractor with a copy of each CDR filed. Upon the filing of three Contractor Deficiency Reports within any twelve-month period of the Contract, OGS will, upon notice to the Contractor, commence a Contractor Status Review.

During the Contractor Status Review, Contractor shall continue to fulfill all contractual obligations, provided, however, that OGS reserves the right to issue a suspension notice. During the suspension period the Contractor may not be eligible to receive new orders. The issuance of a suspension notice shall not affect any other rights either OGS or an Authorized User has under the Contract.

After OGS provides the Contractor with notice, it will provide the Contractor with an opportunity to be heard at the Contractor Status review. The Contractor Status Review shall include a discussion with the Contractor regarding the specific incidents as recorded in the CDRs. The time and manner of these discussions shall be at OGS's sole discretion. At the conclusion of its discussions with the

Contractor, OGS may, at its sole discretion, make a determination that the Contractor has materially breached the Contract and may terminate the Contract.

In the alternative, OGS may direct that the Contractor develop an improvement and monitoring plan (“Plan”), subject to OGS approval, to correct the service issues identified in the CDRs. The Plan shall set forth the actions Contractor is required to take to address the issues identified in the CDRs. The Plan shall specify the level of documentation Contractor shall provide to OGS as to its compliance with the Plan and a timeline for submission of such documents.

OGS shall in its sole discretion prescribe the length of time the Contractor shall be allowed to address the issues. OGS, in establishing the length of time, shall consider the severity of the deficiencies or non-compliance. The Plan will be issued in a form and manner determined by OGS. At the end of the time period specified in the Plan, OGS shall review the Contractor’s actions and documentation submitted to assess compliance with the Plan. Contractor’s failure to comply with the Plan shall constitute a material breach of the Contract and may result in termination of the Contract.

7.13 REPLACEMENT CONTRACTOR.

In the event that OGS terminates any resulting Contract, OGS reserves the right to then make a contract award to the Bidder with the next highest Final Cost Proposal Score that is willing to accept a Contract award. The new Contract awardee will be required to update its original Cost proposal, which shall include any decreases in Net Reseller Cost and which may include any increases in Net Reseller Cost that occurred after submission of the Cost Proposal. Prices will increase or decrease by the Contractor applying the applicable Program Agreement Cost-Plus/Cost-Minus Percentage, included in the Contractor’s original Bid submission, to the then current Net Reseller Cost set by Microsoft for each SKU. Under no circumstances will the new Contract awardee be permitted to increase the Cost-Plus Percentages or decrease the Cost-Minus Percentages included with its initial Bid submission. Any changes in pricing attributable to a change in Net Reseller Cost are required to be attested to by the Contractor via Appendix G, Contractor Attestation

Section 8 AUTHORIZED USER RESPONSIBILITIES.

8.1 DETERMINATION OF COMPLIANCE WITH STATUTORY AND REGULATORY REQUIREMENTS.

It is the responsibility of each Authorized User to evaluate the Contract offerings prior to acquisition and determine whether an offering complies with the Authorized User’s statutory and regulatory requirements. For a list of selected statutory and regulatory requirements, Authorized Users may refer to Appendix F, Primary Security and Privacy Mandates.

8.2 NOTE TO AUTHORIZED USERS.

When placing purchase orders under the Contract, the Authorized User must be familiar with the scope of the resulting Contract and shall follow the terms and conditions governing the use of the Contract. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for Contract compliance and meeting the 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. Such documentation should include:

- a statement of need and associated requirements,
- all necessary prior approvals,
- a summary of the Contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase.

8.3 DATA CATEGORIZATION STUDY.

For Authorized User purchases of Online Services other than Office 365, it is recommended that the Authorized User complete a Data Categorization study, consistent with NYS-S14-002 Information Classification Standard (or successor standard) available at <http://www.its.ny.gov/tables/technologypolicyindex.htm>.

The Authorized User should make a business decision, based on its Data Categorization study results, and/or any applicable Microsoft Product terms or Product documentation, as to the appropriateness of the Online Services solution being considered.

8.4 ONLINE SERVICES - CRIMINAL JUSTICE INFORMATION (CJI)

The only Online Service authorized for acquisition under the resulting Contract for use with Criminal Justice Information Services (“CJIS”) data is Office 365.

8.5 ONLINE SERVICES – FEDERAL TAX INFORMATION (FTI)

Because the CMBA does not contain specific contractual provisions related to the requirements set forth in IRS Publication 1075, Online Services may not be used for the storage and processing of FTI.