



# Request for Proposals

<b>BID OPENING</b> <b>DATE:</b> March 5, 2019 <b>TIME:</b> 11:00 A.M. EST <b>SOLICITATION NUMBER:</b> 23158		<b>TITLE:</b> Group 73012, Hourly Based Information Technology Services  <b>Classification Codes:</b> 43, 80, 81, 82, 83, 84 & 86	
<b>CONTRACT PERIOD:</b> Five (5) years with a five (5) year extension option			
<b>DESIGNATED CONTACTS:</b> In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts. Email Address: <a href="mailto:ogs.sm.ps_hbits@ogs.ny.gov">ogs.sm.ps_hbits@ogs.ny.gov</a>			
Lynn Pinzer & Sonni D'Andrea Contract Management Specialists <a href="mailto:ogs.sm.ps_hbits@ogs.ny.gov">ogs.sm.ps_hbits@ogs.ny.gov</a>		Terri Karius, Team Leader Marc Kleinhenz, Assistant Director Karen Fowler, Director	

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

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

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

WE ARE NOT BIDDING AT THIS TIME BECAUSE:

**FOR PROCUREMENT SERVICES USE ONLY**

LITERATURE     LETTER     FLASH DRIVE     OTHER     # of Binders/Packages: \_\_\_\_\_  
 PURC. MEMO     CD/DVD     SDHC CARD     \_\_\_\_\_    Documented by: \_\_\_\_\_

## **Bidder Certification and Affirmation**

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for two hundred seventy (270) 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 the Request for Proposals.
2. The Bidder can and will provide and make available, at a minimum, the products, deliverables and/or services as described in the Request for Proposals.
3. The Bidder has read and understands the provisions of the Request for Proposals, and all appendices, attachments, and exhibits attached thereto, including Appendix A - *Standard Clauses for New York State Contracts (January 2014)* and Appendix B – *General Specifications (April 2016)*.
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS's procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at <https://ogs.ny.gov/ACPL/>

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

\_\_\_\_\_  
Print Legal Business Name of Company (including D/B/A)

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**

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ }  
: \_\_\_\_\_ SS.:  
COUNTY OF \_\_\_\_\_ }

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_\_\_\_\_ maintains an office at \_\_\_\_\_, and further that:

**[Check One]**

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

\_\_\_\_\_  
**Notary Public**  
**Registration No.**

**RETURN THIS PAGE AS PART OF BID**

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**APPENDICES**

Appendix A – *Standard Clauses for New York State Contracts (January 2014)*

Appendix B – *General Specifications (April 2016)*

## **ATTACHMENTS**

- Attachment 1 – Reserved
- Attachment 2 – *Bidder Questions Form*
- Attachment 3 – *Mandatory Minimum Qualifications*
- Attachment 4 – *Administrative Information*
- Attachment 5 – *Bidder Submission Checklist*
- Attachment 6 – *Technical Proposal*
- Attachment 7 – *Financial Proposal*
- Attachment 8 – *Insurance Requirements*
- Attachment 9 – *Job Titles, Skill Levels, Regions*
- Attachment 10 – *HBITS Contract (How to Use)*
- Attachment 11 – *HBITS Contract (Forms)*
- Attachment 12 – *HBITS Process*



# 1 INTRODUCTION

## 1.1 Overview

This Solicitation is a Request for Proposals (hereinafter “Solicitation” or “RFP”) issued by the New York State (NYS) Office of General Services (OGS), Procurement Services to solicit bids from qualified Contractors for Hourly Based Information Technology Services (HBITS) as specified herein for all Authorized Users.

The objective of this Solicitation is to provide Authorized Users with information technology staff necessary to support their ever-expanding information technology needs through staff augmentation.

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

This Solicitation shall result in new Centralized Contracts to replace the current Centralized Contracts under Award Number 22439. The Centralized Contracts shall be awarded for up to five (5) years with a five (5) year extension option. The Centralized Contracts shall be awarded statewide.

This Solicitation and the resulting Centralized Contracts shall outline the procedures and methods used by Authorized Users, OGS, and Contractors to provide Authorized Users with a method for procuring Hourly Based Information Technology (IT) Services. This Request for Proposals (RFP) shall be awarded based on Best Value. The RFP will be awarded to the highest scoring thirty (30) Bidders. All thirty (30) Awarded Contractors will be designated as Active Contractors during year one (1) of the Contract. At the end of year one (1), and at the end of each Contract year, and any renewal year(s), the Contractors will be evaluated to determine their designation as either an Active or Inactive Contractor for the upcoming Contract year. The Annual Contractor Evaluation and the Active/Inactive concepts are further explained in Attachment 12 – *HBITS Process*.

The state encourages MWBE, SBE, and SDVOB participation in any Contract resulting from this Solicitation either as a Contractor or Subcontractor. Please see Sections 7.8, 7.11 and 7.12 for additional information.

## 1.2 HBITS Process Overview

A breakdown of responsibilities between the Authorized User, the OGS HBITS Team and the Contractors is described in Attachment 12 – *HBITS Process*.

## 1.3 Scope

Hourly Based IT Services required by Authorized Users to support their ever-expanding information technology needs can be obtained through the procedures and methods outlined under this Solicitation and in Attachment 10 – *HBITS Contract (How to Use)*. Under the resulting Contracts, Authorized Users will perform a preliminary Candidate technical evaluation, interview, perform a post interview evaluation and hire IT staff based on their Position requirements.

The Contractors will be awarded statewide Contracts to provide Hourly Based IT Services across three (3) Regions in New York State. Region 1 includes all Counties in New York State that are not included in Region 2 or Region 3. Region 2 includes Dutchess, Orange and Putnam Counties. Region 3 includes Nassau, Rockland, Suffolk, Westchester, Bronx, Kings, New York, Queens and Richmond Counties.

The awarded Contractors’ rates are actual Wage Rates and shall include any actual Markup that a Contractor intends to charge the State. This Solicitation includes fixed rates rather than not-to-exceed rates.

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

- Deliverable-based IT Services
- Project-based IT Services
- Web hosting
- Installation work which is considered Public Works is excluded from purchase under the scope of this Solicitation
  - Historically, the New York State Bureau of Public Works has maintained that installation, maintenance and repair of equipment attached to any wall, ceiling or floor or affixed by hard wiring or plumbing is public work. In contrast, installation of a piece of equipment which is portable, or a “plug-in” free-standing unit would not be considered public work. This Solicitation does not authorize installation where the equipment becomes a permanent part of the building structure or is otherwise incorporated into the fabric of the building (i.e. installation on a wall, ceiling or floor in a fixed location, or affixed by hard-wiring or plumbing). See Appendix B – *General Specifications (April 2016), Clause 7 Prevailing Wage Rates - Public Works and Building Services Contracts*. For questions about whether a proposed work constitutes public work, please contact the New York State Department of Labor’s Bureau of Public Work District Office in a specific area. A listing of district offices and contact information is available at <https://www.labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm>.
- Authorized Users may require Candidates to attend standard, statewide or agency-wide mandatory training as required by New York State or the Authorized User. In such cases, the Authorized User is responsible for payment of the Candidate’s billable hours for the time spent attending such standard, statewide or agency-wide mandatory training. The Authorized User shall not be responsible for any billable hours or reimbursement for any costs related to any other types of training, whether job-related or not. In no case shall the Authorized User pay for training to provide Candidates with the skills originally specified by the Authorized User in the Form 1.

#### 1.4 Estimated Quantities

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

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

The Contractor must furnish all quantities of services ordered at the Contract rates. Based on historical spend, the total anticipated dollar value of all Contracts under this award is approximately \$150 million annually and the total estimated number of Engagements is approximately 1,000 annually. The historical dollar value listed in this Solicitation is only an estimate.

The individual value of each resulting Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the rates offered.

By submitting a bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this Solicitation. The below charts represent the average Hourly Bill Rates currently in effect for each Job Title, at each Skill Level in each Region:

Skill Level:	Junior	Junior	Junior	Mid Level	Mid Level	Mid Level	Senior	Senior	Senior	Expert	Expert	Expert
Region:	1	2	3	1	2	3	1	2	3	1	2	3
Business Analyst	\$40.52	\$39.99	\$44.34	\$51.44	\$51.81	\$56.95	\$63.59	\$64.11	\$69.75	\$73.24	\$72.97	\$79.43
Database Administrator	\$44.86	\$44.50	\$48.54	\$55.69	\$55.93	\$60.93	\$69.28	\$68.15	\$74.62	\$80.75	\$79.14	\$86.82
Programmer	\$40.88	\$41.02	\$45.07	\$56.08	\$55.24	\$61.22	\$67.76	\$67.09	\$73.92	\$77.04	\$75.92	\$85.97
Project Manager	\$46.80	\$46.60	\$51.72	\$57.14	\$57.16	\$62.74	\$73.73	\$71.89	\$80.31	\$89.64	\$86.87	\$95.58
Specialist	\$43.11	\$44.30	\$47.77	\$56.46	\$57.58	\$61.01	\$70.30	\$69.85	\$75.82	\$84.12	\$81.74	\$90.24
System Administrator	\$41.25	\$40.87	\$44.48	\$51.29	\$50.91	\$55.76	\$64.13	\$62.91	\$69.73	\$73.42	\$72.01	\$79.31
Technical Architect	\$50.19	\$50.53	\$55.89	\$63.67	\$63.25	\$69.53	\$77.72	\$75.84	\$82.20	\$88.82	\$86.90	\$94.68
Technical Writer	\$31.45	\$31.26	\$33.76	\$37.85	\$37.73	\$41.12	\$45.03	\$44.53	\$49.44	\$51.89	\$51.62	\$57.68
Tester	\$35.89	\$36.08	\$39.19	\$42.58	\$43.61	\$47.20	\$53.28	\$52.87	\$58.02	\$60.80	\$59.76	\$65.09

Region:	1	2	3
Architectural Specialist I	\$73.51	\$73.91	\$80.94
Architectural Specialist II	\$68.61	\$70.43	\$77.24
Equipment Operator	\$33.10	\$32.39	\$35.81
Principal Consultant	\$80.36	\$78.84	\$86.70
Production Control Operator	\$38.14	\$37.79	\$40.66
Service Delivery Specialist I	\$48.43	\$47.50	\$52.27
Service Delivery Specialist II	\$47.26	\$46.01	\$51.68
Software Architect #1	\$72.53	\$71.99	\$78.21
Software Architect #2	\$83.35	\$83.09	\$90.25
Sr. Equipment Operator	\$39.18	\$39.04	\$42.27
Sr. Production Control Operator	\$45.62	\$45.04	\$48.44
Technical Specialist 3	\$48.86	\$48.30	\$53.61
Technical Specialist 4	\$58.03	\$56.69	\$62.99
Technical Specialist 5	\$70.80	\$68.12	\$76.99
Technician V	\$78.43	\$78.83	\$87.84

### 1.5 Key Events and Dates

The key dates for this Solicitation are provided below. OGS Procurement Services reserves the right to change any of the dates stated in this Solicitation. Notifications will be posted and released through the New York State Contract Reporter, which can be accessed at <https://www.nyscr.ny.gov>.

EVENT	DATE	TIME
RFP Release	12/24/18	N/A
Registration for Pre-Bid Conference Webinar	1/4/19	N/A
Pre-Bid Conference Webinar	1/7/19	10:00 AM EST
Submission of RFP Questions Due	1/16/19	N/A
Responses to RFP Questions by OGS Procurement Services Due	2/6/19	N/A
Submission of MWBE/SDVOB Subcontracting Interest Email	2/6/19	
Bid Opening/Due Date for Responses	3/5/19	11:00 AM EST
Tentative Awards	6/28/19 (estimate)	N/A

### 1.6 Reserved

### 1.7 Outreach

#### 1.7.1 Meet and Greet

A Meet and Greet for interested Small Business Enterprises (SBEs), Minority and/or Women-Owned Business Enterprises (MWBEs) and Service Disabled Veteran-Owned Businesses (SDVOBs) was held on June 20, 2018. The contact information for the attendees of this event is posted to the OGS Procurement Services Bid Calendar and the NYSCR Website.

## 1.7.2 Pre-Bid Conference Webinar

Participation in the Pre-Bid Conference Webinar is not mandatory but is strongly encouraged. If you would like to participate in this Webinar, you must pre-register by sending an email to [ogs.sm.ps\\_hbits@ogs.ny.gov](mailto:ogs.sm.ps_hbits@ogs.ny.gov) that includes the following information by the deadline noted in Section 1.5 above.

- Company Name
- Contact Name
- Contact Phone Number
- Email Address

There will be no in-person attendance at the Pre-Bid Conference Webinar. All registered vendors will be provided with the Web-Ex details via email prior to the Webinar.

The purpose of the Pre-Bid Conference Webinar is to highlight changes made from the prior release of this Solicitation document and to review Solicitation submission procedures through a PowerPoint presentation. No questions will be accepted.

The Webinar presentation and the list of attendees will be posted to the OGS Procurement Services Website. Notification of this posting will be advertised in the NYS Contract Reporter.

If technological issues arise and are attributable to the State and cannot be immediately resolved, the Pre-Bid Conference Webinar will be re-scheduled.

## 1.8 RFP Questions and Bid Deviations (Inquiry Period)

All questions regarding this Solicitation must be submitted using Attachment 2 – *Bidder Questions Form* and citing the applicable Solicitation document name and document section for each question. The completed form must be in Microsoft Excel format (product release 2010 or higher) and submitted to [ogs.sm.ps\\_hbits@ogs.ny.gov](mailto:ogs.sm.ps_hbits@ogs.ny.gov) by the date indicated in Section 1.5. When submitting Attachment 2 – *Bidder Questions Form*, Bidders must annotate their submissions “23158 HBITS - Questions, [Your Company Name].” OGS Procurement Services reserves the right to not respond to questions submitted in a format different from the format of Attachment 2 – *Bidder Questions Form* or to questions received after the deadline. Bidders are strongly encouraged to submit questions as soon as possible.

Bidder is advised that OGS Procurement Services will not entertain any exceptions to Appendix A - *Standard Clauses for New York State Contracts (January 2014)*. OGS Procurement Services will also not entertain exceptions to the Solicitation or Appendix B – *General Specifications (April 2016)* that are of a material and substantive nature

Bids must conform to the terms set forth in this Solicitation. While it is not the intent of OGS Procurement Services to deviate from the terms and conditions of this Solicitation, extraneous terms shall only be addressed as part of the Inquiry Period where OGS Procurement Services has established a specific process for the submission of extraneous terms and bid deviations. **Any extraneous terms submitted with the bid submission shall not be considered part of the bid submission or resulting Contract and shall be disregarded.**

Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document that will be posted to the OGS Procurement Services website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter. OGS Procurement Services reserves the right to answer additional clarification questions as they deem necessary.

## 1.9 MWBE and SDVOB Interest in Subcontracting with Bidders

A listing of all NYS certified MWBE & SDVOB companies interested in subcontracting with Bidders is posted to the OGS Procurement Services Website. If your company would like to be added to this listing, please send an e-mail entitled “23158 HBITS – MWBE/SDVOB Interest [Your company name]” to [ogs.sm.ps\\_hbits@ogs.ny.gov](mailto:ogs.sm.ps_hbits@ogs.ny.gov) on or before the date noted in Section 1.5. The e-mail must include:

1. Company Name
2. Contact Name, Phone Number, Mailing Address, E-Mail Address
3. Brief description of company type (for example “Company ABC is an Authorized Dealer for XYZ”).
4. NYS Empire State Development Certification Type (MBE, WBE, and/or MWBE).
5. NYS Office of General Services SDVOB Certification
6. NYS SBE, including Number of Employees.

An updated listing of all NYS certified MWBE & SDVOB companies who submit their interest in subcontracting with Bidders by the due date noted above will be posted to the OGS Procurement Services Website. Notification of this Posting will be advertised in the NYS Contract Reporter.

### 1.10 NYS Contract Reporter

Bidders must register with the New York State Contract Reporter (NYSCR) at <https://www.nyscr.ny.gov> to receive notifications about this Solicitation. Navigate to the “I want to find contracts to bid on” page to register for your free account. **To receive e-mail notifications regarding updates to the content or status of a particular ad, you must “bookmark the ad” on the upper right-hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select “send me notification updates” option listed to the right of the ad.**

A list of interested SBE, MWBE and SDVOB companies and the questions and answers will be posted to the OGS Procurement Services Bid Calendar and the NYSCR Website. Any updates to Solicitation documents will also be posted to the OGS Procurement Services Bid Calendar and the NYSCR Website. If you do not opt-in to receive notification updates regarding a specific ad, you will not receive e-mail notifications regarding Solicitation updates. Be advised that submission of responses to the Solicitation that do not reflect and consider updated information may result in your bid being deemed non-responsive and rejected from consideration.

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

Pursuant to State Finance Law § 139-j and § 139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting, on a governmental entity’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter of intent to solicit offers/Bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page of this Solicitation and in the MWBE Designated Contacts and Insurance Designated Contacts sections. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two (2) statutes. Certain findings of non-responsibility can result in rejection for Contract Award and, in the event of two (2) findings within a four (4)-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four (4) years. Further information about these requirements can be found on the OGS website at: <https://www.ogs.ny.gov/acpl/>.

### 1.12 Definitions

Capitalized terms used in this Solicitation shall be defined in accordance with Appendix B – *General Specifications (April 2016), Clause 2 Definitions*, or as below:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Hourly Wage Rate**” shall mean the minimum hourly wage rate which must be paid to the Selected Candidate. For example, Hourly Wage Rate x Mark Up = Hourly Bill Rate.

“**Job Title**” shall mean the Job Titles set forth in this RFP and resulting Contract. A listing of each Job Title and corresponding description is included in Attachment 9 - *Job Titles, Skill Levels, Regions*.

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

“**Markup**” shall mean all costs a Bidder will incur beyond the Hourly Wage Rate paid to a Candidate. This may include, but is not limited, to statutory requirements (i.e.: FICA, FUTA, SUTA, Worker’s Comp, Living Wage, etc.), overhead, recruiting costs, training, visa sponsorship, and profit.

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

“**Monthly Sales Report**” shall mean a Report that shall be submitted on a monthly basis that includes sales to both Executive and Non-Executive Authorized Users only.

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

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

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

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

**“NYS Holidays”** shall mean 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 at [https://www.cs.ny.gov/attendance\\_leave/2018\\_legal\\_holidays.cfm](https://www.cs.ny.gov/attendance_leave/2018_legal_holidays.cfm).

**“NYS Vendor ID”** shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

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

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

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

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

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

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

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

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

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

**“Skill Level”** shall mean the Skill Levels set forth in this RFP and resulting Contract. A listing of each Skill Level and corresponding number of months’ required experience is included in Attachment 9 - *Job Titles, Skill Levels, Regions*.

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

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

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

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

### **1.13 Appendices and Attachments**

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

Appendix A – *Standard Clauses for New York State Contracts (January 2014)*

Appendix B – *General Specifications (April 2016)*

Attachment 1 – Reserved

Attachment 2 – *Bidder Questions Form*

Attachment 3 – *Mandatory Minimum Qualifications*

Attachment 4 – *Administrative Information*

Attachment 5 – *Bidder Submission Checklist*

Attachment 6 – *Technical Proposal*

Attachment 7 – *Financial Proposal*

- Attachment 8 – *Insurance Requirements*
- Attachment 9 – *Job Titles, Skill Levels, Regions*
- Attachment 10 – *HBITS Contract (How to Use)*
- Attachment 11 – *HBITS Contract (Forms)*
- Attachment 12 – *HBITS Process*

## 1.14 Conflict of Terms

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

1. Appendix A - *Standard Clauses for New York State Contracts (January 2014)*;
2. The Solicitation, including all Appendices and Attachments;
3. Appendix B – *General Specifications (April 2016)*;
4. Bidder's Bid.

## 2 BIDDER QUALIFICATIONS

### 2.1 Mandatory Minimum Requirements

Bidder must submit a completed Attachment 3 – *Mandatory Minimum Qualifications* with its bid submission. Bidders are advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Bidder shall have the burden of demonstrating to the satisfaction of OGS Procurement Services that it can perform the work required. OGS Procurement Services reserves the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work.

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

**Bidders must meet the following Mandatory Minimum Qualifications of this RFP in order to be evaluated for award. Failure to meet any one (1) of these Mandatory Minimum Qualifications shall result in disqualification of the Bidder's proposal for non-responsiveness.**

#### 2.1.1 Continuous Operation

Bidder must have been in continuous operation for the past three (3) years (December 22, 2015 – December 21, 2018) supplying IT staff placements as covered by the scope of this Solicitation.

Bidder shall utilize Attachment 3 – *Mandatory Minimum Qualifications (Continuous Operation Tab)* to certify that this requirement has been met.

#### 2.1.2 IT Staff Placements

Bidder must have provided at least five (5) IT staff placements **to Governmental Entities within the United States** in any combination of the four (4) highest-demand New York State Job Titles (defined in Attachment 9 – *Job Titles, Skill Levels, Regions*) listed below (or deemed to be equivalent at OGS Procurement Service's sole discretion) – through direct placements as the Contract holder, through indirect placements as the subcontractor, or through the combination of both – within the last two (2) years (December 22, 2016 – December 21, 2018):



- Project Manager
- Technical Architect
- Programmer
- Business Analyst

Bidder shall utilize Attachment 3 – *Mandatory Minimum Qualifications (IT Staff Tab)*, which summarizes the placement type (direct or indirect), qualifying Governmental Entity within the United States, qualifying invoice date, qualifying invoice number and qualifying Job Title.

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

Each qualifying invoice detailing and highlighting the actual Job Title is required for verification purposes and must be included in the Bidder Submission with Attachment 3 – *Mandatory Minimum Qualifications (IT Staff Tab)*. Each qualifying invoice must contain or be accompanied by all the following information:

- Placement Type (Direct or Indirect)
- Job Title\*
- Invoice Number
- Invoice Date (Note: Must be within December 22, 2016 – December 21, 2018)
- Governmental Entity Name within the United States\*\*

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

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

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

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

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

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

### 2.1.3 Verifiable IT Staff Placement Sales

Bidder must demonstrate a minimum of at least \$1,000,000 in verifiable sales for providing IT staff placements within the scope of this Solicitation **to Governmental Entities within New York State** as the Contract holder (direct), the Subcontractor (indirect), or through the combination of both (direct or indirect) within the last two (2) years (December 22, 2016 – December 21, 2018):

Bidder shall utilize Attachment 3 – *Mandatory Minimum Qualifications (Verifiable Sales Tab)*, which summarizes the placement type (direct or indirect), qualifying Governmental Entity, qualifying invoice date, qualifying invoice number and invoice total.

The qualifying invoice total shall only include pricing for the actual IT Staff Placement services sold. The qualifying invoice total shall not include pricing for travel, meals, or other extraneous expenses. Each qualifying invoice detailing and highlighting the actual IT Staff Placement services sold is required for verification purposes and must be included in the Bidder Submission with Attachment 3 – *Mandatory Minimum Qualifications (Verifiable Sales Tab)*. Each qualifying invoice must contain or be accompanied by all the following information:

- Placement Type (Direct or Indirect)
- Job Title within Scope
- Invoice Date (Note: Must be within December 22, 2016 – December 21, 2018)
- Invoice Number
- Invoice Total
- Governmental Entity Name within New York State\*\*

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

\*\* If the Governmental Entity within New York State is not named on the invoice, the Vendor MUST provide the Contract-holder Company Name and Contact Information, as well as the Governmental Entity Name and Contact information.

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

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

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

## 2.2 Administrative Proposal Requirements

Bidder must submit a completed Administrative Proposal with its bid submission. Failure to complete and submit the Administrative Proposal in its entirety, including those items listed in Section 3, may result in disqualification of a Bidder's Proposal for non-responsiveness.

## **2.2.1 Contract Administration**

Bidder shall provide contact information as outlined below by completing and submitting Attachment 4 – *Administrative Information (Contract Administration)* with its bid submission. This information must be maintained and up-to-date at all times during the term of the resulting Contract.

### **2.2.1.1 Contract Administrator**

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

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

### **2.2.1.2 Toll-Free Number**

Contractors must provide a toll-free telephone number for Authorized Users to use, which must be staffed at a minimum from 9:00 AM to 5:00 PM EST Monday through Friday.

### **2.2.1.3 Webcasting**

Contractors must have access to Webcasting technology, such as Skype or GoTo Meeting for the duration of this Contract. This service must be provided to the State and Authorized Users free of charge. Authorized Users may have security restrictions which preclude them from installing certain kinds of applications, software, and/or hardware.

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

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

### **2.2.1.4 Billing Contact**

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

### **2.2.1.5 Emergency Contact**

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

## **2.2.2 New York State Required Certifications**

Bidder shall complete, sign and submit Attachment 4 – *Administrative Information (NYS Required Certifications)* with its bid submission.

## **2.2.3 Encouraging the Use of New York State Businesses**

Bidder shall complete and submit Attachment 4 – *Administrative Information (Encouraging Use of NYS Businesses)* with its bid submission.

## **2.2.4 Bidder Questions and Agreements**

### **2.2.4.1 Bidder Questions**

Bidder shall complete and submit Attachment 4 – *Administrative Information (Bidder Questions)* with its bid submission.

### **2.2.4.2 Bidder Agreements**

Bidder shall complete, sign and submit Attachment 4 – *Administrative Information (Bidder Agreements)* with its bid submission. Answering “No” to the statements in this Section of the Solicitation will delay the evaluation of your bid submission and may result in the rejection of your bid.

## **2.2.5 Bidder Submission Checklist**

Bidder shall complete and submit Attachment 5 – *Bidder Submission Checklist* with its bid submission.

## **2.2.6 Insurance**

Bidder shall produce at its sole cost and expense and provide with its bid submission all proof of required insurance as detailed in Attachment 8 – *Insurance Requirements* and maintain in force at all times during the term of the resulting Contract policies of insurance pursuant to the requirements outlined.

## **2.2.7 EEO 100 (Equal Employment Opportunity Staffing Plan)**

Pursuant to Section 7.11 of this Solicitation, a Bidder shall complete EEO 100 (Equal Employment Opportunity Staffing Plan) in its entirety, sign and submit it with its bid submission.

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

1. Under Solicitation Number, enter the Solicitation Number “23158”.
2. Under Reporting Entity, check the “Contractor” box.
3. Under Report includes Contractor’s, check the “Contractor’s work force to be utilized on this contract” box.
4. In the table requesting the total number of employees for each classification, a Bidder must identify all staff that will be utilized specifically for the resulting HBITS Contracts, if known. At a minimum, a Bidder must account for the following:
  - a) All management level staff that will oversee the Bidder’s execution of the Contract.
  - b) All recruiting staff that the Bidder will use to identify Candidates for Authorized Users.
  - c) All staff responsible for identifying and maintaining the Bidder’s subcontracting network.
  - d) All staff responsible for accounts payable and receivable.
  - e) All Contract Administrators.
  - f) All clerical staff that will assist the individuals above.

## **2.2.8 MWBE 100 (MWBE Utilization Plan)**

Pursuant to Section 7.11 of this Solicitation, a Bidder shall complete MWBE 100 (MWBE Utilization Plan) in its entirety, sign and submit with its bid submission.

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

1. Under Contract/Solicitation Number, enter the Solicitation Number “23158”.
2. Under MWBE Goals in Contract, enter “15%” for MBE and “15%” for WBE.
3. Under Certified MWBE Subcontractor/Supplier Name, enter a minimum of one (1) MBE and one (1) WBE Subcontractor which you will work with if awarded a Contract.
4. Under Detailed Description of Work, describe the nature of Subcontracts/ supplies/ services the Bidder intends to obtain from each identified MWBE.

5. Under Dollar Value of Subcontracts/supplies/services and intended performance dates of each component of the Contract, enter the amount, if known. If unknown at this time, you should say “Unknown at this time.” You do not have to include the performance dates.

### **2.2.9 SDVOB 100 (SDVOB Utilization Plan)**

Pursuant to Section 7.12 of this Solicitation, a Bidder shall complete SDVOB 100 (SDVOB Utilization Plan) in its entirety, sign and submit with its bid submission.

For the purposes of a response to this Solicitation, the SDVOB Utilization Plan must be completed in full unless otherwise specified below:

1. Under Contract/Solicitation Number, enter the Solicitation Number, “23158”.
2. Under SDVOB Goals in Contract, enter “6%”.
3. Under SDVOB Subcontractor/Supplier Name, enter a minimum of one (1) SDVOB Subcontractor which you will work with if awarded a Contract.
4. Under Detailed Description of Work, describe the nature of Subcontracts/supplies/services the Bidder intends to obtain from each identified SDVOB.
5. Under Dollar Value of Subcontracts/supplies/services and intended performance dates of each component of the Contract, enter the amount, if known. If unknown at this time, you should say “Unknown at this time.” You do not have to include the performance dates.

### **2.2.10 NYS Vendor Responsibility**

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

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, or to go directly to the VendRep System go to the File Your Vendor Responsibility Questionnaire at the Office of the State Comptroller’s (OSC) website at <http://www.osc.state.ny.us/vendrep/>.

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see Section 2.2.12. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

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

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

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

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

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

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

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor must 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.

### **2.2.11 NYS Tax Law Section 5-a**

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four (4) quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four (4) quarterly periods immediately preceding the quarterly period in which the certification is made.

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

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

### **2.2.12 NYS 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 (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and to each of your authorized resellers (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables a vendor to use the Vendor Self-Service application to manage all vendor information in one (1) central location for all transactions related to the State of New York.

If Bidder is already registered in the New York State Vendor File, the Bidder must enter its Vendor ID on the first page of this Solicitation. Authorized resellers already registered should list the Vendor ID number along with the authorized reseller information.

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form ([http://www.osc.state.ny.us/vendors/forms/ac3237s\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf)) and submit the form to OGS in advance of bid submission. Please send this document to the Designated Contact identified in the

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Solicitation. In addition, if an authorized reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the Vendor File please visit the following website:  
[http://www.osc.state.ny.us/vendor\\_management/](http://www.osc.state.ny.us/vendor_management/).

### **2.3 Technical Proposal Requirements**

Bidder must submit a completed Attachment 6 – *Technical Proposal* with its Bidder Submission. Failure to complete and submit Attachment 6 – *Technical Proposal* in its entirety may result in disqualification of a Bidder's Proposal for non-responsiveness.

All electronic copies of invoices submitted with Attachment 6 for Question #10 must be saved in a separate folder labeled "TechProposalQ10Invoices". All invoices must be saved as searchable PDFs

### **2.4 Financial Proposal Requirements**

Bidder must submit a completed Attachment 7 – *Financial Proposal* with its bid submission. Failure to complete and submit Attachment 7 – *Financial Proposal* in its entirety may result in disqualification of a Bidder's Proposal for non-responsiveness.

Attachment 7 – *Financial Proposal* consists of the following:

#### **2.4.1 Hourly Wage Rate**

Bidder shall enter a single Hourly Wage Rate (rounded to two (2) decimal places) for each and every Job Title, at four (4) distinct Skill Levels, in each of the three (3) Regions. An Hourly Wage Rate of zero or a range will result in the submission being found as non-responsive. Failure to bid all Job Titles and Skill Levels in all Regions will result in a finding of non-responsiveness.

The Hourly Wage Rates proposed in Attachment 7 – *Financial Proposal* for each Job Title, Skill Level and Region and as set forth in the resulting Contracts shall be deemed EXCLUSIVE of travel, meals and lodging. Refer to Attachment 12 – *HBITS Process* for information regarding travel, meals and lodging terms.

#### **2.4.2 Markup Percentage**

Bidder shall enter one (1) Markup percentage (rounded to two (2) decimal places) that shall apply to each Job Title and Skill Level within each Region. Bidders shall provide one (1) Markup percentage per Region not to exceed a total of three (3) Markup percentages. OGS Procurement Services is not seeking a Markup percentage for each individual Job Title. Failure to provide Markup percentages for each Region will result in a finding of non-responsiveness.

#### **2.4.3 Hourly Bill Rate**

The Hourly Bill Rate shall automatically populate based upon the Hourly Wage Rate bid and the Markup percentage bid for that Region.

## **3 BID SUBMISSIONS**

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

All bid submissions must be signed by a person authorized to bind the Bidder to the terms of the Solicitation Documents and the content of the bid submission.

Be advised that submission of responses to the Solicitation that do not reflect and consider updated information may result in your Bid being deemed non-responsive and rejected from consideration. Updated information will be posted on the NYSCR website, <https://www.nyscr.ny.gov/> and the OGS Procurement Services Bid Calendar.

### 3.1 Reserved

### 3.2 Contents

A complete bid submission includes the following Electronic and Hardcopy Requirements. Failure to submit a bid submission per the below instructions may result in delay of bid submission review and may result in the Bidder being found non-responsive. An official authorized to contractually bind the Bidder must sign, where applicable, the documents from Sections 3.2.1 and 3.2.2 below.

In the case of discrepancies between Electronic and Hardcopy Submissions of the documents required in both formats, the Electronic Submission shall take precedence over the Hardcopy Submission.

#### 3.2.1 Electronic Media

Electronic media shall be included on Microsoft Windows formatted USB flash drives and must be clearly labeled. USB flash drives (2.0 or higher) must not be password protected or require the installation of software in order to read files. All bid submissions shall be saved in separate unprotected files in Microsoft Office products (Word and Excel) in product release 2010 or higher, or searchable PDF where indicated. Any of the documents listed below delivered in a format different from the format indicated will be considered non-responsive and will not be considered for evaluation.

Any electronic submission that is incomplete or cannot be opened/accessed may be rejected.

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 flash drive.

##### 3.2.1.1 Administrative & Technical Proposals

Bidder shall submit two (2) digital storage devices (USB flash drives 2.0 or higher), clearly labeled containing the following document(s), completed in their entirety, signed (where applicable), notarized (where applicable) and scanned (where applicable). **No financial information shall be included** with the Administrative & Technical Proposal Submission:

1. Pages 1 through 3 of this Solicitation
  - a. Page 1 – Bidder Information (PDF)
  - b. Page 2 – Bidder Certification and Affirmation (PDF)
  - c. Page 3 – Individual, Corporation, Partnership, or LLC Acknowledgement (PDF)
2. Attachment 3 – *Mandatory Minimum Requirements*
  - a. Continuous Operation (Excel)
  - b. IT Staff (Excel)
    - i. Qualifying Invoices (Searchable PDF) – See Note 1 below
  - c. Verifiable Sales (Excel)
    - i. Qualifying Invoices (Searchable PDF) – See Note 1 below
3. Attachment 4 – *Administrative Information*
  - a. Bidder Information (Excel)
  - b. Contract Administration (Excel)
  - c. NYS Required Certifications (PDF)\*
  - d. Encouraging Use of NYS Businesses (Excel)
  - e. Bidder Questions (Excel)
  - f. Bidder Agreements (PDF)\*
  - g. FOIL Redaction (Excel)
4. Attachment 5 – *Bidder Submission Checklist* (Excel)
5. Attachment 6 – *Technical Proposal* (Excel)
  - a. Question 10 Invoices (Searchable PDF) - See Note 2 below
6. Proof of Compliance with Insurance Requirements
  - a. Workers' Compensation Coverage (PDF)
  - b. Disability Benefits Coverage (PDF)
7. Equal Employment Opportunity Staffing Plan Form EEO 100 (PDF)



8. MWBE Utilization Plan Form MWBE 100 (PDF)
9. SDVOB Utilization Plan Form SDVOB 100 (PDF)
10. NYS Vendor Responsibility Questionnaire For-Profit Business Entity (*not required if completed on-line via the New York State VendRep System*) (PDF)
11. Contractor Certification to Covered Agency Form ST-220-CA (PDF)

*\*These documents must be completed using Excel, signed (where applicable), notarized (where applicable) and submitted in PDF Format.*

Each component listed above shall be included in its own folder and labelled accordingly. Each electronic file submission shall be externally labeled “*Bidder Name (if applicable), #23158, HBITS Administrative/Technical Proposal*”.

Note 1: All qualifying invoices as described in Sections 2.1.2, and 2.1.3, must be saved in separate folders labeled “IT Staff Invoices” and “Verifiable Sales Invoices” and within those folders the qualifying invoice file names must be the invoice number or a range of invoice numbers. All qualifying invoices referenced must be saved as searchable PDFs.

Note 2: All electronic copies of invoices submitted with Attachment 6 for Question #10 must be saved in a separate folder labeled “TechProposalQ10Invoices”. All invoices must be saved as searchable PDFs

### **3.2.1.2 Financial Proposal**

Bidder shall submit two (2) digital storage devices (USB flash drives 2.0 or higher), clearly labeled containing the following document(s), completed in their entirety, signed (where applicable), notarized (where applicable) and scanned (where applicable). Bidder is reminded that **no Administrative or Technical Proposal information shall be included** with the Financial Proposal Submission:

1. Attachment 7 – *Financial Proposal (Excel)*

Each electronic file submission shall be externally labeled “*Company Name (if applicable), #23158, HBITS Financial Proposal*”.

## **3.2.2 Hardcopy Submissions**

### **3.2.2.1 Administrative & Technical Proposals**

Bidder shall submit two (2) sets of hardcopy Bid submissions, one (1) set with original signatures, clearly labeled as “Originals,” containing the following document(s), completed in their entirety, signed in black or blue ink (where applicable) and notarized (where applicable). Bidder is reminded that **no financial information shall be included** with the Administrative & Technical Proposal Submission:

1. Pages 1 through 3 of this Solicitation
  - a. Page 1 – Bidder Information
  - b. Page 2 – Bidder Certification and Affirmation
  - c. Page 3 – Individual, Corporation, Partnership, or LLC Acknowledgement
2. Attachment 3 – *Mandatory Minimum Requirements*
  - a. Continuous Operation
  - b. IT Staff
    - i. Qualifying Invoices
  - c. Verifiable Sales
    - i. Qualifying Invoices

3. Attachment 4 – *Administrative Information*
  - a. Bidder Information
  - b. Contract Administration
  - c. NYS Required Certifications
  - d. Encouraging Use of NYS Businesses
  - e. Bidder Questions
  - f. Bidder Agreements
  - g. FOIL Redaction
4. Attachment 5 – *Bidder Submission Checklist*
5. Attachment 6 – *Technical Proposal*
  - a. Question 10 Invoices
6. Proof of Compliance with Insurance Requirements
  - a. Workers' Compensation Coverage
  - b. Disability Benefits Coverage
7. Equal Employment Opportunity Staffing Plan Form EEO 100
8. MWBE Utilization Plan Form MWBE 100
9. SDVOB Utilization Plan Form SDVOB 100
10. NYS Vendor Responsibility Questionnaire For-Profit Business Entity (*not required if completed on-line via the New York State VendRep System*)
11. Contractor Certification to Covered Agency Form ST-220-CA

Each component listed above shall be divided by Tabs and labelled accordingly. The Bidder shall also clearly identify the following information on the outside front cover of each Submission copy.

*"Bidder Name/ #23158, HBITS Administrative/Technical Proposal"*

If the Bidder Submissions are submitted in a loose-leaf binder, this information shall also appear on the spine of the binder.

### **3.2.2.2 Financial Proposal**

Bidder shall submit two (2) sets of hardcopy bid submissions **in a separate, sealed package**, one (1) set with original signatures, clearly labeled as "Originals," containing the following document(s), completed in their entirety, signed in black or blue ink (where applicable) and notarized (where applicable). Bidder is reminded that **no Administrative or Technical Proposal information shall be included** with the Financial Proposal Submission:

1. Attachment 7 – *Financial Proposal*

Bidder shall clearly identify the following information on the outside front cover of each Submission copy.

*"Bidder Name (if applicable), #23158, HBITS Financial Proposal"*

If the bid submissions are submitted in a loose-leaf binder, this information shall also appear on the spine of the binder.

### **3.2.3 Documents Not Required with Bid Submission**

The following documents have been provided for informational purposes and will be used upon Contract Award by Contractor and/or Authorized User. **These documents are not required with a bid submission.**

1. Appendix A - *Standard Clauses for New York State Contracts (January 2014)*
2. Appendix B – *General Specifications (April 2016)*
3. Attachment 8 – *Insurance Requirements*
4. Attachment 9 – *Job Titles, Skill Levels, Regions*
5. Attachment 10 – *HBITS Contract (How to Use)*
6. Attachment 11 – *HBITS Contract (Forms)*
7. Attachment 12 – *HBITS Process*

### 3.3 Format and Content of Bid Submission

With respect to any Bid documents provided in Excel format, only those cells provided for entering Proposal pricing and/or requested information are to be accessed by the Bidder. Bidders should note that any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Proposal requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Proposal requirements.

### 3.4 Entire Bid Submission

Each bid submission should be packaged, sealed and submitted to the address below:

Office of General Services  
New York State Procurement Services  
38th Floor Corning Tower  
Empire State Plaza  
Albany, NY 12242

A Bidder is solely responsible for timely delivery of its bid submission to the location set forth in the Solicitation prior to the stated bid opening date/time stated in Section 1.5. The time of bid receipt is determined by OGS Procurement Services according to the clock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of bids to OGS Procurement Services prior to the date of the bid opening. Late bids shall be rejected, except as provided in Appendix B – *General Specifications (April 2016), Clause 5 Late Bids*.

Each bid submission should have a label on the outside of the package or shipping container outlining the following information. If submitting in multiple packaging, the number of boxes or packages (e.g., 1 of 2; 2 of 2) should also appear on the label:

**PROPOSAL ENCLOSED**  
Solicitation 23158, HBITS RFP  
Solicitation Due 3/5/19  
11:00 AM

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

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

E-mail or facsimile bid submissions are not acceptable.

### 3.5 Bid Opening Results

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

OGS Procurement Services posts Solicitation results on the OGS Procurement Services web page at: <https://nyspro.ogs.ny.gov/nyspro-bid-openings>. The web page will list the Bidders that responded to this Solicitation. Such information is anticipated to be available online within two (2) Business Days after the bid opening.

### 3.6 Proposal Security

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

### **3.7 Bid Liability**

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

### **3.8 Firm Offer**

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

## **4 GENERAL INFORMATION**

### **4.1 Notice to Bidders**

All bid submissions and accompanying documentation shall become the property of the State of New York and shall not be returned.

Bidders are responsible for the accuracy of the bid submissions. All Bidders are directed to take extreme care in developing their bid submissions. Prior to submission, Bidders are cautioned to carefully review their bid submissions for completeness and accuracy.

### **4.2 Incorporation**

Portions of the successful bid submission and of this Solicitation and its Attachments will be incorporated into a Contract to be executed by the Contractor and OGS Procurement Services.

### **4.3 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 OGS Procurement Services business are encouraged to pre-register for building access by contacting the OGS Procurement Services receptionist at (518) 474-6262 at least 24 hours prior to the visit. Visitors who are pre-registered may check in directly at the information desk. Visitors who are not pre-registered will be directed to a designated phone to call the OGS 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.

### **4.4 Debriefing**

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

### **4.5 NYS Reserved Rights**

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

1. Reject any or all bids received in response to the Solicitation;
2. Withdraw the Solicitation at any time at the sole discretion of the State;
3. Make an award under the Solicitation in whole or in part;
4. Disqualify any Bidder whose conduct and/or bid fails to conform to the requirements of this Solicitation;
5. Seek clarifications and revisions of the bid;
6. Amend the Solicitation prior to the bid opening to correct errors or oversights, or to supply additional information as it becomes available;

7. Direct Bidders, prior to the bid opening, to submit bid modifications addressing subsequent Solicitation amendments;
8. Change any of the schedule dates with notification through the NYS Contract Reporter;
9. Eliminate any mandatory, non-material requirements 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. Adopt all or any part of a Bidder's bid in selecting the optimum configuration;
13. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all bids;
14. 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 this Solicitation;
15. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
16. 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;
17. Accept and consider for Contract Award bids with non-material bid deviations or non-material bid defects such as errors, technicalities, irregularities, or omissions;
18. Use any information which OGS Procurement Services obtains or receives from any source and determines relevant, in OGS Procurement Service's sole discretion, for the purposes of bid evaluation and Contractor selection;
19. Reject an obviously unbalanced bid or unrealistic bid, as determined by the State;
20. Offer a Bidder the opportunity to provide supplemental information or clarify its bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing;
21. Request current Bidder financial statements documenting past sales history that demonstrates ability to service a Government Entity Contract with dollar sales volume similar to the scope of this bid; documents must be provided within five (5) Business Days of request;
22. Request additional documentation from the Bidder and to request reports on financial stability from independent financial rating services;
23. Unilaterally make revisions, changes and/or updates to any templates Appendices (excluding Appendices A and B) and/or Attachments to the OGS Procurement Services Centralized Contract without processing a formal amendment and/or modification.

## **5 METHOD OF AWARD**

### **5.1 New York State Philosophy**

Pursuant to Article XI of the New York State Finance Law, New York State evaluates bids for services in an objective, comprehensive manner designed to benefit both the State and participating Bidders. Through this process the State identifies Contractors who will best meet its needs and will be the most cost effective. During the evaluation process, OGS Procurement Services may require clarifying information from a Bidder. If specific sections of the written proposal require clarification, OGS Procurement Services will contact the Bidders and request clarifying information. The Bidder must respond by the deadline provided by OGS Procurement Services.

All proposals 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. The basis for these Contract Awards shall be Best Value. A best value award optimizes quality, cost, and efficiency among responsive and responsible Bidders and is consistent with the best interests of the State of New York.

### **5.2 Awarded Contracts**

The State shall award thirty (30) Contracts to responsive and responsible Bidders, that obtain the 30 highest scores. All 30 Awarded Contractors will be designated as Active Contractors during year one (1) of the Contract. At the end of year one (1), and at the end of all Contract years, and any renewal years, the Contractors will be evaluated to determine their

designation as either an Active or Inactive Contractor for the upcoming Contract year. The Annual Contractor Evaluation and the Active/Inactive concepts are further explained in Attachment 12 – *HBITS Process*.

### 5.3 Proposal Weighting

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

- Technical Score = 30% of Final Score (Up to 30 Points Can Be Awarded)\*\*
  - \*\*Quantitative Factor = 5% of Technical Score (1.5 Points Can Be Awarded) (See Example Below)
- Financial Score = 70% of Final Score (Up to 70 Points Can Be Awarded)

\*\*Quantitative Factor Example: Where the total evaluation criteria are worth 100 points, weighted 30% Technical and 70% Financial, any Bidder who is an MWBE, SBE or SDVOB will be awarded 1.5 out of 100 points, representing 5% of the 30% Technical Score. If no responsive Bidder is an MWBE, SBE or SDVOB, then no Quantitative Factor points will be awarded.

### 5.4 Proposal Evaluation Teams

The Technical Proposals and the Financial Proposals shall be evaluated separately and independently by two (2) Evaluation Teams. The Scores resulting from each Evaluation Team shall not be shared until such time as both Evaluation Teams have completed their evaluations. Only then will the Evaluation Scores be combined to obtain a Final Score.

#### 5.4.1 Technical Proposal Evaluation Team

The Technical Proposal Evaluation Team will consist of OGS Procurement Services staff and one (1) individual from an Executive Agency.

#### 5.4.2 Financial Proposal Evaluation Team

The Financial Proposal Evaluation Team will consist of OGS Procurement Services staff who are not members of the Technical Proposal Evaluation Team.

### 5.5 Evaluation Process

#### 5.5.1 Mandatory Minimum Requirements Review

After the bid opening, the Mandatory Minimum Qualifications will be reviewed for completeness and conformance with the requirements in Section 2.1 – *Mandatory Minimum Requirements*. The Mandatory Minimum Requirements review will be based on the Bidder's response provided in Attachment 3 – *Mandatory Minimum Qualifications*, which must be provided in the prescribed format. Proposals that do not follow the prescribed format may be eliminated from consideration. All responses to this Section will be subject to verification for accuracy.

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

#### 5.5.2 Administrative Proposal Screening

Bidders who meet the Mandatory Minimum Requirements review will have their Administrative Proposal screened for completeness and conformance with the requirements in Section 2.2. The Administrative Proposal Screening must be provided in the prescribed format(s). Proposals that do not follow the prescribed format(s) may be eliminated from consideration. All responses to this Section will be subject to verification for accuracy.

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

### 5.5.3 Technical Proposal Evaluation (30 Points)

Bidders whose Administrative Proposal Submission is deemed responsive will have their Technical Proposal evaluated for completeness and conformance with the requirements in Section 2.3. The Technical Proposal evaluation will be based on the Bidder's response provided in Attachment 6 – *Technical Proposal*, which must be provided in the prescribed format. Proposals that do not follow the prescribed format may be eliminated from consideration. All responses to this Section will be subject to verification for accuracy.

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

The Technical Score will be based on the criteria provided in Section 2.3 and the Quantitative Factor described in Section 5.3. The criteria will be weighted as deemed appropriate by the Technical Evaluation Team prior to the bid opening. All scoring for the criteria provided in Section 2.3 and the Quantitative Factor described in Section 5.3 will total a maximum of 30 possible points. The Quantitative Factor will represent 5% of the Technical Score, or 1.5 points. For example, Bidders who are an MWBE, SBE or SDVOB will be awarded 1.5 out of 100 points, representing 5% of the 30% Technical Score. If no responsive Bidder is an MWBE or SBE or SDVOB, then no Quantitative Factor points will be awarded.

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

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

### 5.5.4 Financial Proposal Evaluation (70 Points)

Bidders whose Technical Proposal Submission is deemed responsive will have their Financial Proposal evaluated for completeness and conformance with the requirements in Section 2.4. The Financial Proposal Evaluation will be based on the Bidder's responses provided in Attachment 7 – *Financial Proposal*, which must be provided in the prescribed format. Proposals that do not follow the prescribed format may be eliminated from consideration. All responses to this Section will be subject to verification for accuracy.

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

The Financial Score shall be based on a pre-determined market basket comprised of various Job Title, Skill Level and Region combinations (**Market Basket Combination**) as deemed appropriate by the Financial Evaluation Team, but which shall be determined prior to the bid opening and applied equally for all Bidders. There is only one (1) Market Basket that consists of an undisclosed number of Market Basket Combinations. Each Market Basket Combination consists of one (1) Job Title, one (1) Skill Level and one (1) Region. The following steps shall be based upon the proposed Hourly Bill Rate (Hourly Wage Rates times the corresponding Markup percentage – rounded to two (2) decimal places – as listed in Attachment 7 – *Financial Proposal* of Bidders Proposal). OGS Procurement Services reserves the right to exclude any unbalanced, unrealistic or inordinately low or high bids from the following calculations if, in the judgment of OGS Procurement Services, the bid would skew the results.

1. An Average Hourly Bill Rate (**Average Bid**) shall be calculated for each Bidder using the pre-determined market basket combinations.

Market Basket Combination*	Bidder 1 Hourly Bill Rate	Bidder 2 Hourly Bill Rate	Bidder 3 Hourly Bill Rate	Bidder 4 Hourly Bill Rate	Bidder 5 Hourly Bill Rate
Title 1	\$54.25	\$99.16	\$40.60	\$52.98	\$37.55
Title 2	\$55.40	\$100.08	\$49.80	\$55.00	\$40.70
Title 3	\$70.20	\$98.50	\$62.00	\$77.00	\$30.00
Title 4	\$100.00	\$97.20	\$88.90	\$89.44	\$52.00
<b>Average Bid</b>	<b>\$69.96</b>	<b>\$98.74</b>	<b>\$60.33</b>	<b>\$68.61</b>	<b>\$40.06</b>

\*For the purposes of this example only, 4 Market Basket Combinations are being used.

2. A Median Hourly Bill Rate (**Median Bid**) shall be calculated using the Average Bid of all Bidders.

Bidder*	Average Bid
Bidder 1	\$69.96
Bidder 2	\$98.74
Bidder 3	\$60.33
Bidder 4	\$68.61
Bidder 5	\$40.06
<b>Median Bid</b>	<b>\$68.61</b>

\*For the purposes of this example only, 5 Bidders are being used

3. A pre-determined **Percentage of Median Permitted** as deemed appropriate by the Financial Evaluation Team, but which shall be determined prior to the bid opening and applied equally for all Bidders, shall be applied above and below the Median Bid to obtain a **Low Acceptable Bid** and a **High Acceptable Bid**. Bidders with an Average Bid that is higher than the High Acceptable Bid or lower than the Low Acceptable Bid shall not receive a Financial Score and shall be eliminated from further consideration.

Note that the Financial Evaluation Team may change the Percentage of Median Permitted to ensure that up to 60 bids from the Bidder pool continue to Step 4.

<b>Median Bid</b>	<b>\$68.61</b>	<b>+/- % of Median Permitted:</b>	<b>40*</b>
<b>Low Acceptable Bid:</b>	<b>\$41.17</b>	<b>High Acceptable Bid:</b>	<b>\$96.05</b>
<b>Bidder</b>	<b>Average Bid</b>	<b>Points (out of 70)</b>	
Bidder 2	\$98.74	<b>OUT - HIGH</b>	
Bidder 5	\$40.06	<b>OUT - LOW</b>	

\*For the purposes of this example only, the Percentage of Median Permitted is 40%.



4. Of the Bids that passed step three (3) above, each Market Basket Combination will be evaluated separately using the lowest Hourly Bill Rate to determine the number of points awarded. Each Market Basket Combination will be equally weighted, and a corresponding **Points Value** will be assigned to each Market Basket Combination. The lowest Hourly Bill Rate for each Market Basket Combination will receive the maximum points for that combination, and all other Hourly Bill Rates will receive a proportionate number of points (Lowest Hourly Bill Rate / Bidder Hourly Bill Rate \* Points Value = Points Awarded). All points awarded for each Market Basket Combination (rounded to two (2) decimal places) will be totaled to determine each Bidder’s Financial Score. This method does not guarantee that any one (1) Bidder will receive a total of 70 points.

Market Basket Combination*	Bidder 1	Bidder 3	Bidder 4
5	\$54.25	\$40.60	\$52.98
19	\$55.40	\$58.90	\$55.00

\*For the purposes of this example only, 20 Market Basket Combinations were used. Each Market Basket Combination was assigned a Points Value of 3.5 (due to equal weighting). Scores for Market Basket Combinations 5 and 19 are shown here.

Market Basket Combination 5

Bidder 1:  $\$40.60 / \$54.25 \times 3.5 = 2.62$  points  
 Bidder 2:  $\$40.60 / \$40.60 \times 3.5 = 3.5$  points  
 Bidder 3:  $\$40.60 / \$52.98 \times 3.5 = 2.68$  points

Market Basket Combination 19

Bidder 1:  $\$55.00 / \$55.40 \times 3.5 = 3.47$  points  
 Bidder 2:  $\$55.00 / \$58.90 \times 3.5 = 3.27$  points  
 Bidder 3:  $\$55.00 / \$55.00 \times 3.5 = 3.5$  points

**5.5.5 Final Score**

The Technical Score and the Financial Score will be added together to determine the Bidder’s Final Score. The thirty (30) highest scoring Bidders will receive a Tentative Award.

**5.6 Notification of Award**

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

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

**6 RESERVED**

**7 TERMS AND CONDITIONS**

**7.1 Contract Term and Extensions**

1. Base Term. The Contract shall be in effect for a term of five (5) years. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B – *General Specifications (April 2016), Clause 22 Contract Creation/Execution*). The Contract is expected to begin on or about July 1, 2019 and run until June 30, 2024. All

Contracts resulting from this Solicitation regardless of start date shall have a co-terminus end date, including any subsequent extensions.

2. **Extensions.** At the State's option, a Contract may be extended with mutual consent of the parties for up to a five (5) year period. Whether the optional extension is exercised is at the sole discretion of the State. A Contractor reserves the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B – *General Specifications (April 2016), Clause 23 Contract Term – Extension*.
3. **City of New York only.** The Contract term provided for in this section shall extend 6 months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

## 7.2 Short Term Extension

This section shall apply in addition to any rights set forth in Appendix B – *General Specifications (April 2016), Clause 23 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 three (3) months 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 six (6) months in lieu of three (3) months. However, this extension automatically terminates should a replacement Contract be issued in the interim.

## 7.3 Contract Survival

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

## 7.4 Pricing

Pricing will be collected using Attachment 7 – *Financial Proposal* in accordance with the instructions provided. In the resulting Contract, for each Region, an Hourly Bill Rate will be calculated by multiplying the Hourly Wage Rate bid for each Job Title and Skill Level by the Markup percentage. This will result in pricing Schedules that will be posted to the OGS HBITS Website.

OGS Procurement Services reserves the right to conduct an optional rate decrease exercise during the term of the resulting Contract to increase the potential cost savings to New York State and to be more competitive within the HBITS market if it is deemed to be in the best interest of the State.

## 7.5 CPI Rate Adjustments

At the start of Contract years 2 and each successive Contract year thereafter, and any renewal year(s), the Contractor's Hourly Wage Rates in Attachment 7 – *Financial Proposal* may be subject to an increase or decrease, equal to the percentage, in the Consumer Price Index (CPI) for all urban consumers (CPI-U) as published ninety (90) days prior to the anniversary date for the preceding 12-month period by the U.S. Department of Labor, Bureau of Labor Statistics, Washington D.C. 20212, but not to exceed 3%. The index is currently available through the Internet at the Bureau of Labor Statistics web site at <https://stats.bls.gov/>. Please be advised that the following path/process on the U.S. Department of Labor is subject to change as the website may be updated from time to time.

- Select “Subjects”
- Under Inflation & Prices section, select “Consumer Price Index (CPI)”
- Select “CPI Data”, then select “Tables”
- Under Supplemental Files, select “Archived CPI Supplemental Files”
- Under the appropriate Month and Year select “CPI-U” (Consumer Price Index for All Urban Consumers) or successor report
  - Indent Level 0 – All Items

### 7.5.1 Calculation of CPI Adjustment

Rate adjustments using the CPI involve changing the Hourly Wage Rate by the percent change in the level of the CPI between the reference period and a subsequent time period. This is calculated by first determining the index point change between the two (2) periods and then the percent change. The rate adjustment must be calculated as follows. Take the CPI for the 3rd month prior to the month of the start date of the Contract and subtract this figure from the CPI value for the 3rd month prior to the anniversary date of the Contract. For example, if the start date begins in December, use the September CPI. That sum is then divided by the CPI value for the original 3rd month prior to start date and this result is then multiplied by 100 to equal the percent change that is the rate adjustment value. This percentage of increase or decrease must be applied to the Contract year, effective on the latter of the anniversary date or upon notification by the OGS HBITS Team.

The following example illustrates the computation of percent change:

CPI for current period	136.0
Less CPI for previous period	- 129.9
Equals index point change	= 6.1
Divided by previous period CPI	/ 129.9
Equals	= 0.047
Result multiplied by 100	0.047 x 100
Equals percent change	= 4.7%

### 7.5.2 Agreement of CPI Adjustment

The Contractor is solely responsible for notifying the OGS HBITS Team via email to the OGS HBITS Contractors mailbox of a CPI rate change and to submit this notification no earlier than 90 calendar days and no later than the first day of the month prior to the start date of the Contract year. The Contractor shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease to the OGS HBITS Team. The subject line of the email request must contain “Request for CPI Adjustment”.

In the event of a CPI rate increase, should the Contractor fail to make a request and submit supporting documentation to the OGS HBITS Team within the timeframe noted above, the Contractor shall be deemed to have waived its right to any increase in rate for that year. However, the State shall not be barred from making the appropriate adjustment in the case of a decrease in rate as determined in accordance with the above methodology.

### 7.5.3 CPI Adjustment for Selected Candidate Placements Already in Effect

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

### 7.5.4 CPI Adjustment to Markup

Under no circumstance will a CPI adjustment be applied to the Markup Percentage submitted in Attachment 7 – *Financial Proposal*.

## 7.5.5 Government Mandated Program Rate Adjustments

The State may, at its sole discretion, address the issue of Government mandated program rate adjustments on a case by case basis if and when such a Governmental Mandate comes to pass.

## 7.6 Invoicing and Payment

### 7.6.1 Method of Payment for Executive Agency Authorized Users

This section only applies to Executive Agency Authorized Users as defined in Section 1.12.

The Contractor shall submit a complete and accurate invoice to OGS, not the Executive Agency Authorized User, for consulting services provided to Executive Agency Authorized Users. Such invoice shall be submitted monthly, in arrears. OGS may require only one (1) invoice to be submitted each month, or one invoice per Executive Authorized User each month, and shall be exclusive of expenses. Invoices must be electronically submitted directly to OGS by the 15th of the following month for the prior months' services. Payment of consulting services provided to Executive Agency Authorized Users under this Contract shall be the sole responsibility of OGS.

Each invoice shall include but is not limited to the following information. The form and manner of submission is at the sole discretion of OGS and is subject to change during the term of the resulting Contract

- Contractor Name
- Contractor Billing Address
- NYS Vendor ID Number
- NYS Contract Number
- NYS OGS Unit ID
- Invoice Date
- Invoice Number
- Dates of Service
- Task Order Number
- Candidate Name
- Number of Hours Worked
- Hourly Bill Rate
- Total Amount per Task Order (# of Hours \* Hourly Bill Rate)
- Agency Sub-Total Amount (if applicable)\*
- Total Invoice Amount

\*If applicable, the invoice must include a sub-total of all active Task Orders for each separate and distinct Executive Agency Authorized User. For example, the NYS Department of Health may have three (3) active Task Orders, and the NYS Department of Transportation may have two (2) active Task Orders. The invoice must contain a sub-total included under the NYS Department of Health for their three (3) Task Orders, a sub-total included under the NYS Department of Transportation for their two (2) Task Orders and a Grand Total for all five (5) active Task Orders.

The OGS HBITS Team will review each Invoice for accuracy and approve the invoice for payment. The Authorized User will be obligated to review and validate the hours worked by each Selected Candidate and will report any errors to the OGS HBITS Team or directly to the Contractor. Any required adjustments on any monthly invoice shall be included on the next monthly invoice cycle.

The Contractor must make available upon request all supporting documentation including, but not limited to time sheets with original signatures, which will include the daily hours worked by each Selected Candidate.

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

For additional guidance on invoicing, please visit <https://bsc.ogs.ny.gov/content/vendor-information>.

## **7.6.2 Method of Payment for Non-Executive Agency Authorized Users**

This section only applies to Non-Executive Agency Authorized Users as defined in Section 1.12.

Contractor shall invoice the Non-Executive Agency Authorized User, monthly in arrears, for all services rendered during the month for the benefit of the Authorized User, with appropriate invoices with full supporting detail(s) to the Authorized User's reasonable satisfaction. Invoices for payment shall be submitted to the Authorized User at the end of each month for services satisfactorily completed during that month. Bi-weekly or weekly billing for services rendered is not allowed.

At a minimum, said invoicing will include the Contract ID number, the name of the Non-Executive Agency Authorized User, the location where services were performed, the name of the Selected Candidate, the Hourly Bill Rate, Markup percentage and, either in its body or as an attachment shall itemize services performed during that month, names of Selected Candidates being billed along with total hours worked for the given billing period, for each Selected Candidate. Such information will be supported by time sheets with original signatures, which will include the daily hours worked by the respective individual(s) attached to invoices as backup. The Authorized User will be obligated to review and validate all invoices submitted by the Contractor.

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

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

## **7.6.3 Additional Payment Provision**

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

## **7.7 Services Warranty**

Authorized Users shall have the right to interview Candidates, either in-person, by telephone, or via Webcasting, to determine their qualifications. The qualifications must reflect the position of the specific Job Title requested. An Authorized User reserves the right to reject Candidates if the Authorized User determines that the Candidate is not qualified based on the referenced Job Title and other mandatory requirements. Authorized Users have the right to request a replacement Candidate if the original Selected Candidate is deficient in the performance of an assignment (see Attachment 12 – *HBITS Process* for details on Selected Candidate Replacement).

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

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

## **7.8 Subcontractors**

All Contracts between the Contractor and its Subcontractors must be by bona fide written Contracts that mandate compliance with the terms and conditions of the resulting HBITS Contract. Contractors shall be fully liable for their respective Subcontractors' performance and compliance with all Contract terms and conditions. A Contractor is required to identify all Subcontractors involved with the placement of a Selected Candidate with an Authorized User. This includes Subcontractors that are directly paying the Hourly Wage Rate to the hired Selected Candidate. A Contractor must also identify if any Subcontractor is a New York State SBE or New York State certified M/WBE or SDVOB. A Contractor serving as a Contractor under this procurement is prohibited from also serving as a Subcontractor to another Contractor under this Procurement.

Contractor must include in all Subcontracts related to the Contract, in such a manner that they will be binding upon each Subcontractor with respect to work performed relating to the Contract, provisions specifying that:

- Work performed by the Subcontractor must be in accordance with the terms and conditions of this Contract including, but not limited to, Appendix A - *Standard Clauses for New York State Contracts (January 2014)*;
- Subcontractor must pass through all terms and conditions of the Contract, including but not limited to Appendix A - *Standard Clauses for New York State Contracts (January 2014)* and Hourly Wage Rate requirements, to any lower tier subcontracts;
- Nothing contained in such Subcontract shall impair the rights of the Authorized User or the State;
- Nothing contained in such Subcontract shall create any contractual relationship between any Subcontractor and Authorized User or the State;
- Subcontractor must maintain and protect against any unauthorized disclosure of records with respect to work performed under the Subcontract in the same manner as required of the Contractor;
- The State and/or Authorized User must have the same authority to audit the records of all Subcontractors as it does those of the Contractor; and
- Subcontractor must cooperate with any investigation, audit, or other inquiry related to the Contract or the resulting Contract or any litigation relating thereto.

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

## 7.9 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 can 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/>.

## 7.10 Consultant Disclosure

State Finance Law requires:

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

*Process and Document Preparation:*

## STATE CONTRACTORS EMPLOYMENT INFORMATION

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

## CONTRACTS FOR CONSULTING SERVICE

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

## REPORT REQUIREMENTS

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

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

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

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

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

## ANNUAL REPORT REQUIREMENTS

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

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

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

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

## SUMMARY

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

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for approval, a completed Form A. New contracts for consulting services, including those contracts resulting from mini-bids, must include a requirement that Form B be submitted annually by the contractor to the contracting agency, DCS and OSC.

## COMPLETING THE FORMS

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

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

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

### **Reports that are to be submitted to OSC may be transmitted as follows:**

By mail:

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

### **Reports that are to be submitted to DCS may be transmitted as follows:**

By mail:

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

### **To OGS HBITS Team (Required for the Contractors Annual Evaluation)**

By email:

[ogs.sm.hbits.contractors@ogs.ny.gov](mailto:ogs.sm.hbits.contractors@ogs.ny.gov)

## **7.11 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**

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- 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, liquidated damages pursuant to clause IX of this section, and/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](mailto: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 conviction and prior arrest.

#### **IV. Contract Goals**

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and/or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR §§ 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women-Owned Business Enterprises. 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.
- C. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

#### **V. MWBE Utilization Plan**

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, and the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.

- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an MWBE Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

## VI. Request for Waiver

- A. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the [OGS Office of Minority- and Women-Owned Business Enterprises for guidance.](#)**
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports, determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

## VII. Required Good Faith Efforts

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required 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.

### VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month’s activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System (“NYSCS”) to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor’s responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification (“audit notice”) indicating that a representative of its company needs to log-in to the NYSCS to report the company’s MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor’s responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two (2) webinar trainings offered through the NYSCS: “**Introduction to the System – Vendor training**” and “**Contract Compliance Reporting - Vendor Training**” to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com>.
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on “**Account Lookup**” to identify the Contractor’s account by company name. Contact information should be reviewed and updated if necessary by choosing “**Change Info.**” It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through “**Request New User.**” When identifying the person responsible, please add “**- MWBE Contact**” after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for “**Contact Us & Support**” then “**Technical Support**” on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month’s activity to: OGS MWBE Office, 29<sup>th</sup> Floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor’s responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages provisions in clause IX below.

## **IX. Breach of Contract and Liquidated Damages**

Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.

A. Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

B. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

## **X. 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>

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

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

### **I. Contract Goals**

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

### **II. SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their Bid.
- B. The Utilization Plan must list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future Bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract Award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.
- C. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it must respond to the notice of deficiency, within seven (7) Business Days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS must notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five (5) Business Days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Bid or proposal
- E. OGS may disqualify a Bidder's Bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB Contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan must constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS must be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

### III. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor must speak to the Designated Contacts in the Division for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting Documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses II (C), (D) & (E) will apply. If the Documentation included with the Bidder's/Contractor's waiver request is complete, OGS must evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. Contractor must attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

- D. If OGS, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regard to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) Business Days of receipt. Such response may include a request for partial or total waiver of SDVOB Contract goals. Waiver requests must be sent to [ogs.sm.ps\\_hbits@ogs.ny.gov](mailto:ogs.sm.ps_hbits@ogs.ny.gov).

#### IV. Required Good Faith Efforts

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

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

#### V. Monthly SDVOB Contractor Compliance Report

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

#### VI. Breach of Contract and Damages

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

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

### 7.13 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B – *General Specifications (April 2016), Clause 25 Participation in Centralized Contracts*.

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

### 7.14 Extension of Use

Any Contract resulting from this Solicitation may be extended to additional states or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in any resultant Contract if such state normally  
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allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

### **7.15 New Accounts**

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

### **7.16 Centralized Contract Modifications**

1. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new products at the same or better rate level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
2. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products, make rate level revisions, delete products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
3. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
4. All modifications proposed by Contractor must be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor must submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.
5. Modifications proposed by OGS or an Authorized User, including updates and amendments, must be processed in accordance with the terms of the Centralized Contract and Appendix B, *Clause 26 Modification of Contract Terms*.

### **7.17 Drug and Alcohol Use Prohibited**

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

### **7.18 Traffic Infractions**

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

### **7.19 Information Security Breach and Notification Act**

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York State who own or license computerized data which includes private information including an individual's unencrypted personal information plus one (1) or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Disclosure of breach of that private information to all individuals affected or potentially affected must occur in



the most expedient time possible without unreasonable delay, after necessary measures to determine the scope of the breach and to restore integrity, but with delay if law enforcement determines it impedes a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: Office of the Attorney General and the Department of State and the State Office of Information Technology Services (for Section 208 only), and the State Police (for Section 899 Only). Information relative to the law and the notification process is available at: <https://its.ny.gov/incident-reporting>.

## **7.20 Work in the United States**

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

## **7.21 Minimum Utilization**

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

## **7.22 Contract Amendment Process**

During the term of the Contract, the Contract may be amended as changes occur within the industry. OGS reserves the right to consider amendments which are not specifically covered by the terms of the Contract but are judged to be in the best interest of the State. OGS, an Authorized User, or the Contractor may suggest amendments.

## **7.23 Performance and Bid Bonds**

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

## **7.24 Non-Compete Agreements**

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

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

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

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

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

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance

document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

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

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

The certification required above can be found on Attachment 4 – *Administrative Information*, which Bidder must submit with its bid.

## **7.26 Audit of Contractors**

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

At any time during the life of this Contract, OGS Procurement Services reserves the right to audit the accuracy and timeliness of the Administrative Fee. Audits shall be conducted during regular business hours, upon not less than fifteen (15) business days prior written notice. Administrative Fees will be due immediately for any errors or omissions disclosed by any such audit. If, as a result of any such audit, Administrative Fees are determined to have been underpaid by more than five (5) percent (5%) for the period audited, Contractor shall pay the costs of such audit or three (3) times the discrepancy, whichever is higher. Failure to make such payments or repeated errors on subsequent audits may result in the scheduling of a responsibility meeting and may lead to termination of this Agreement.

At any time during the life of this Contract, OGS Procurement Services reserves the right to audit the accuracy and timeliness of all payments and supporting documentation between Contractors, Subcontractors and Selected Candidates. Audits shall be conducted during regular business hours, upon not less than fifteen (15) business days prior written notice. Failure to comply or repeated errors on subsequent audits may result in the scheduling of a responsibility meeting and may lead to termination of this Agreement.