



**CONTRACT FOR**  
**SECURITY GUARD SERVICES (STATEWIDE) AND FIRE SAFETY AND**  
**EMERGENCY ACTION PLAN DIRECTORS (Region 1 – NYC Only)**

**BY AND BETWEEN**

**THE NEW YORK STATE OFFICE OF GENERAL SERVICES**

**AND**

**[REDACTED]**

**CONTRACT NUMBER [REDACTED]**

**THIS CONTRACT** (hereinafter “Contract” or “Centralized Contract”) for the acquisition of Security Guard Services (Statewide) and Fire Safety and Emergency Action Plan Directors (Region 1 – NYC Only) is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter “State” or “OGS”) whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, and Dreamland Security Services, Inc. (hereinafter “Contractor”), with offices at 369 East 149<sup>th</sup> Street, 3rd Floor Bronx, NY 10455. The foregoing are collectively referred to as the “Parties.”

**Whereas**, OGS provided notification of availability of a non-competitive solicitation (“Solicitation”) for vendors that provide Security Guards Services (Statewide) and Fire Safety and Emergency Action Plan Directors (Region 1 – NYC Only) by placing a notice in the April 9, 2018 edition of the New York State Contract Reporter; and

**Whereas**, the Solicitation set forth the minimum administrative and technical requirements that a vendor must meet to be eligible for consideration to receive an award; and

**Whereas**, the Solicitation was structured with the counties of New York State divided into nine separate regions; and

**Whereas**, this Centralized Contract requires, for each transaction, that the Authorized User issue a competitive Request for Quote (RFQ) to be issued to eligible Contractors pursuant to a How to Use Process. Each Authorized User Agreement resulting from the competitive RFQ process will be governed first by the terms and conditions specified herein and second by terms and conditions added to the Authorized User Agreement by the Authorized User; and

**Whereas**, the State evaluated Contractor’s submission and determined that the Contractor met the minimum administrative and technical requirements for those Region(s) set forth in Appendix C; and

**Whereas**, in accordance with State Finance Law Article 11, the State has made a determination that the Contractor’s not-to-exceed pricing is reasonable; and

**Whereas**, Contractor agrees to the terms and conditions set forth in this Centralized Contract and the Contractor is willing to provide such services as set forth herein to Authorized Users.

**NOW THEREFORE**, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each party hereto from the other, the Parties hereby agree as follows:

**SECTION 1 INTRODUCTION ..... 5**

1.1 SCOPE AND OVERVIEW ..... 5

1.2 REGIONS ..... 6

1.3 ESTIMATED QUANTITIES ..... 6

1.4 GLOSSARY ..... 6

1.5 APPENDIX A..... 8

1.6 APPENDIX B..... 8

1.7 APPENDIX C ..... 8

1.8 ATTACHMENTS..... 8

1.9 CONFLICT OF TERMS AND CONDITIONS ..... 8

**SECTION 2 TERMS AND CONDITIONS..... 9**

2.1 PERFORMANCE AND BID BONDS ..... 9

2.2 NEW YORK STATE TAX LAW §5-A ..... 9

2.3 NEW YORK STATE RESERVED RIGHTS ..... 9

2.4 AUTHORIZED USER RESERVED RIGHTS..... 10

2.5 CONTRACT PERIOD AND RENEWAL ..... 11

2.6 SHORT TERM EXTENSION..... 11

2.7 PERIODIC RECRUITMENT ..... 11

2.8 PROCUREMENT INSTRUCTIONS ..... 11

2.9 RATES..... 11

2.9.1 PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS ..... 12

2.9.2 OVERTIME PAY AND BILL RATES ..... 12

2.9.3 HOLIDAY HOURLY BILL RATES ..... 12

2.10 PRICE ADJUSTMENTS ..... 13

2.11 INVOICING AND PAYMENTS ..... 13

2.12 CERTIFIED PAYROLL RECORDS..... 13

2.13 SECURITY GUARD LEVEL 1 AND LEVEL 2 REQUIREMENTS AND RESPONSIBILITIES ..... 14

2.13.1 LEVEL 1 SECURITY GUARD MANDATORY REQUIREMENTS ..... 14

2.13.2 LEVEL 2 SECURITY GUARD MANDATORY REQUIREMENTS ..... 14

2.13.3 RESPONSIBILITIES FOR LEVEL 1 AND LEVEL 2 SECURITY GUARDS ..... 14

2.13.4 ADDITIONAL RESPONSIBILITIES FOR LEVEL 2 SECURITY GUARDS ..... 15

2.14 FIRE SAFETY/EAP DIRECTOR (REGION 1 ONLY) REQUIREMENTS AND RESPONSIBILITIES ..... 15

2.14.1 FIRE SAFETY/EAP DIRECTOR (REGION 1 ONLY) MANDATORY REQUIREMENTS ..... 15

2.14.2 RESPONSIBILITIES FOR FIRE SAFETY/EAP DIRECTORS (REGION 1 ONLY) ..... 15

2.15 SERVICE REQUIREMENTS..... 16

2.15.1 STAFFING..... 16

2.15.2 DRUG TESTING..... 16

2.15.3 BACKGROUND, REGISTRATION AND TRAINING ..... 17

2.15.4 CANDIDATE REPORTING DOCUMENTS..... 17

2.15.5 SECURITY PROCEDURES..... 17

2.15.6 COVERAGE..... 18

2.15.7 WORKDAY/HOURS..... 18

2.15.8 LATE ARRIVAL ..... 18

2.15.9 ADDITIONAL SECURITY GUARDS/SPECIAL EVENTS ..... 18

2.15.10 STANDARD EQUIPMENT ..... 19

2.15.11 SITE ASSIGNMENT AND REMOVAL ..... 19

2.15.12 LICENSE ..... 19

2.16 VEHICLE USE CHARGES ..... 19

2.17 ON-SITE WORK ..... 19

2.18 ONGOING COMPLIANCE ..... 20

2.19 DISQUALIFIED RESOURCES..... 20

2.20 MANDATORY RESTRICTIONS..... 20

2.21 QUALITY OF SERVICES ..... 20

2.22 MAINTENANCE OF A MASTER FILE..... 20

2.23 REDUCE WORK..... 20

2.24 GENERIC E-MAILBOX ..... 20

2.25 TOLL-FREE NUMBER..... 21

2.26 RECLASSIFICATION OF JOB TITLES..... 21

2.27 NEW YORK STATE FINANCIAL SYSTEM (SFS)..... 21

2.27.1 NYS STATEWIDE FINANCIAL SYSTEM ..... 21

2.27.2 NYS SFS PROCUREMENT MODULE..... 21

2.28 CONTRACT ADMINISTRATOR ..... 21

2.29 INSURANCE REQUIREMENTS..... 21

2.30 REPORT OF CONTRACT USAGE..... 21

2.31 COMPANY AND CONTACT INFORMATION ..... 22

2.32 CONTRACTOR REQUIREMENT 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..... 22

2.32.1 NEW YORK STATE LAW..... 22

2.32.2 GENERAL PROVISIONS ..... 22

2.32.3 EQUAL EMPLOYMENT OPPORTUNITY (EEO)..... 22

2.32.4 CONTRACT GOALS..... 23

2.32.5 MWBE UTILIZATION PLAN ..... 24

2.32.6 REQUEST FOR WAIVER ..... 24

2.32.7 REQUIRED GOOD FAITH EFFORTS ..... 25

2.32.8 MONTHLY MWBE CONTRACTOR COMPLIANCE REPORT ..... 25

2.32.9 BREACH OF CONTRACT AND LIQUIDATED DAMAGES ..... 26

2.32.10 FRAUD..... 26

2.33 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES..... 26

2.33.1 CONTRACT GOALS ..... 26

2.33.2 SDVOB UTILIZATION PLAN..... 27

2.33.3 REQUEST FOR WAIVER ..... 27

2.33.4 REQUIRED GOOD FAITH EFFORTS ..... 28

2.33.5 MONTHLY SDVOB CONTRACTOR COMPLIANCE REPORT ..... 28

2.33.6 BREACH OF CONTRACT AND DAMAGES ..... 28

2.34 NEW YORK STATE VENDOR RESPONSIBILITY..... 28

2.35 DRUG AND ALCOHOL USE PROHIBITED ..... 29

2.36 TRAFFIC INFRACTIONS..... 29

2.37 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS..... 29

2.38 EXTENSION OF USE..... 29

2.39 FEDERAL FUNDING..... 29

2.40 AMERICANS WITH DISABILITIES ACT (ADA)..... 29

2.41 CAPTIONS..... 29

2.42 SEVERABILITY ..... 29

2.43 COUNTERPARTS..... 30

2.44 NOTICES..... 30

2.45 ENTIRE AGREEMENT ..... 30

**APPENDICES**

Appendix A – *Standard Clauses for NYS Contracts* (January 2014)

Appendix B – *General Specifications* (April 2016)

Appendix C – *Contractor Information*

**ATTACHMENTS**

Attachment 1 – *Pricing*

Attachment 2 – *Insurance Requirements*

Attachment 3 – *Report of Contract Usage*

Attachment 4 – *Request for Quote Form*

Attachment 5 – *Certificate of Compliance*

## SECTION 1 INTRODUCTION

### 1.1 Scope and Overview

The New York State Office of General Services (OGS) is responsible for establishing and managing centralized Contracts for New York State Authorized Users. The OGS Centralized Contracts are awarded regionally with multiple awards being made in each Region for use by Authorized Users of NYS OGS Centralized Contracts (see Section 2.38, *Non-State Agencies Participation in Centralized Contracts*).

The OGS Centralized Contracts have an established set of standardized terms and conditions, guidelines, processes and templates that apply to Contractors and their Subcontractors. When an Authorized User has a need for Security Guard Services and/or Fire Safety/EAP Director services, they will issue a competitive Request for Quote (RFQ) in accordance with the terms and conditions of the OGS Centralized Contract, including any additional requirements of the position(s) sought to be filled. The OGS Centralized Contracts for Security Guard Services is limited to unarmed guards. The RFQ will be distributed by the Authorized User to all Contractors for the applicable Region where the work is to be performed and it is in response to the RFQ where the Contractors shall submit the competitive proposed prices to be charged. The result of the RFQ process is an Authorized User Agreement and the Authorized User will either use their NYS Procurement Card (P-Card) or issue a Purchase Order to the selected Contractor to obtain Security Guard and/or Fire Safety/EAP Director services based on the RFQ responses. Procurement Instructions further describing the RFQ process and requirements for Authorized Users to purchase from the Centralized Contracts are found in Section 2.8, *Procurement Instructions*.

The Maximum Not-to-Exceed Hourly Bill Rates shall take into consideration the following for the Region being bid:

1. Prevailing Wage Rate
2. Supplemental Benefit Rate
3. Profit and overhead which may include the following costs:
  - a. Travel (including, but not limited to, mileage)
  - b. Meals
  - c. Lodging
  - d. Site Access (access to and from the site)
  - e. Workers Compensation
  - f. Disability Benefits
  - g. State Unemployment (SUTA)
  - h. Federal Insurance (FICA)
  - i. All other insurance, including, but not limited to:
    - i. Commercial General Liability
    - ii. Business Automobile Liability
    - iii. Crime Liability, etc.
  - j. For NYC (and any other area where required by any federal, state, local law, regulation, ordinance, etc.):
    - i. Paid family leave
    - ii. Paid sick leave
    - iii. Vacation
    - iv. Paid Holidays
    - v. NYC Fire Department fees related to Fire Safety/EAP Director requirements
  - k. All other overhead including, but not limited to:
    - i. Training
    - ii. Uniforms
    - iii. Standard Equipment items 1-4 as detailed in Section 2.14.10
    - iv. Use of MWBEs and SDVOBs
    - v. NYS Department of State fees
    - vi. Background checks
    - vii. Fingerprinting
  - l. Any back-office project management costs for Contractors and for their Subcontractors, including, but not limited to:
    - i. Management of Certified Payroll
    - ii. Management of Security Guard and/or Fire Safety/EAP Director Master Files
    - iii. Management of workforce for scheduling and call-in coverage
    - iv. Ensuring prevailing wage and other (e.g. NYC Sick Law) compliance through mentoring, monitoring, etc. Scheduling work and ensuring adequate staff.

- m. Ensuring Subcontractors proposed to be used by the contractor on an Authorized User’s site comply with various requirements (e.g. fingerprinting, etc.)

The actual Hourly Bill Rates proposed to be charged by Contractors for providing Security Guards and/or Fire Safety/EAP Directors will be set forth in a Contractor’s response to a competitive RFQ issued by the Authorized User, identifying their specific needs relative to the Security Guard services and/or Fire Safety/EAP Director requirements being requested **and based upon the PRC # obtained by each requesting Authorized User.** It is in response to an RFQ when Contractors will bid competitive Hourly Bill Rates.

**1.2 Regions**

The counties of New York State are divided into nine (9) separate Regions. Below, is a listing of the Regions and the applicable counties that are included in each of the Regions.

Region Designation for Solicitation								
1	2	3	4	5	6	7	8	9
Bronx	Nassau	Dutchess	Albany	Clinton	Herkimer	Broome	Chemung	Allegany
Kings	Suffolk	Orange	Columbia	Essex	Jefferson	Cayuga	Monroe	Cattaraugus
New York		Putnam	Fulton	Franklin	Lewis	Chenango	Ontario	Chautauqua
Queens		Rockland	Greene	Hamilton	Madison	Cortland	Schuyler	Erie
Richmond		Sullivan	Montgomery	Saratoga	Oneida	Delaware	Seneca	Genesee
		Ulster	Rensselaer	Warren	Oswego	Onondaga	Steuben	Livingston
		Westchester	Schenectady	Washington	St. Lawrence	Otsego	Wayne	Niagara
			Schoharie			Tioga	Yates	Orleans
						Tompkins		Wyoming

**1.3 Estimated Quantities**

This Contract is an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. This contract shall be for the quantities or dollar values ordered during the contract period. The individual value of the contract is indeterminate and will depend upon the number of contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the services and pricing that best meet their needs in the most practical and economical manner. See *Estimated/Specific Quantity Contracts* and *Participation in Centralized Contracts* in Appendix B, OGS General Specifications.

Numerous factors could cause the actual value of the Contract to vary substantially from the historical value. Such factors include, but are not limited to, the following:

1. Such Contracts will be nonexclusive Contracts
2. There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases
3. The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the contract period; and,
4. The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates/historical values provided in the Solicitation.

**1.4 Glossary**

The terms used in this Contract shall be defined in accordance with Appendix B – *Definitions*. In addition, the following definitions shall apply.

“Authorized User(s)” As defined in Appendix B.

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

“Best Value” means 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). Best value may be equated to low price in response to an RFQ.

“**Bidder**” shall refer to any business entity who submits a response to this Solicitation. At the time that the Bidder executes a Contract with the State for their services a Bidder shall become a “Contractor.” See also “Contractor.”

“**Business Day**” means Monday through Friday, excluding Holidays.

“**Candidate**” shall refer to Level 1 and Level 2 Security Guards and Fire Safety/EAP Directors employed by a Contractor and/or Subcontractor to provide Security Guard and/or Fire Safety/EAP Director Services.

“**Contractor**” shall refer to a responsive and responsible Bidder who is working under an executed contract with New York State. Contractor is a general term.

“**Facility**” means any building, and the grounds, parking spaces/garages, walkways/pathways, enclosed areas, access points/gates, and all other physical areas connected to such building which form a contiguously-owned fixed real estate asset.

“**Hourly Bill Rate**” means the Hourly Bill Rate the Contractor is permitted to charge an Authorized User for one Candidate for one hour. This is inclusive of all costs incurred by Contractor to provide a Security Guard and/or Fire Safety/EAP Director under and Authorized User Agreement.

“**Master File**” means an electronic file maintained by Contractor for each Candidate. The Master File must include for each Candidate a resume, qualifications, certifications, licenses, and background checks.

“**Maximum Not-to-Exceed Daily Vehicle Bill Rate**” means the most (in dollars) a Contractor may ever quote in response to an Authorized User RFQ for a Contractor to provide a vehicle for daily use on this contract for a particular engagement as specified in Attachment 1 - *Pricing* .

“**Maximum Not-to-Exceed Hourly Bill Rates**” means the most (in dollars) a Contractor may ever quote in response to an Authorized User RFQ for an hour worked by a Candidate on this contract for a particular job title, county, region, time period (e.g. overtime), etc. as specified in Attachment 1 - *Pricing* and Section 1.1, *Scope and Overview*. The Maximum Not-to-Exceed Hourly Bill Rates for Level 2 Security Guards must exceed the rates bid for Level 1 Security Guard Maximum Not-to-Exceed Hourly Bill Rates in the same Region.

“**Maximum Not-to-Exceed Training Bill Rate**” means the most (in dollars) a Contractor may ever quote in response to an Authorized User RFQ for a Contractor to provide a training course (AED, CPR, HIPPA and OSHA) to a Candidate on this contract for a particular engagement as specified in Attachment 1 - *Pricing* .

“**May**” denotes the permissive in a contract clause or specification. “May” does not mean “required.” Also see “Shall” and “Must.”

“**Must**” denotes the imperative in a contract clause or specification. “Must” is synonymous with “required.” Also see “Shall” and “May.”

“**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.

“**New York State Department of Labor (NYS DOL)**” – means the Department of the New York State Executive Branch charged with determining the rates and classifications for Public Work and publishing the Prevailing Wages and Supplemental Benefits.

“**New York City Comptroller (NYC Comptroller)**” – Means the elected official in the City of New York charged with determining and publishing the rates and classification for NYC Building Services, including, but not limited to, Security Guard and Fire Safety/AED Director Services for New York City Agencies and NYC Local Authorities within the Five Counties (Boroughs) of Bronx, Kings, New York, Queens, and Richmond.

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

“**Overtime Hourly Bill Rate**” means the hourly bill rate the Contractor is permitted to charge an Authorized Users for work above the Straight Time Hourly Bill Rate where the Security Guard and/or Fire Safety/EAP Director works more than eight hours a day or forty (40) hours a week upon the request of an Authorized User.

“**Prevailing Wage Rate**” means that part of the requirements of Article 9 (Sections 230-239) of the New York State Labor Law, which requires public work Contractors and Subcontractors to pay laborers, workers or mechanics employed in the performance of a public work contract not less than the prevailing rate of wage and to provide supplementals (fringe benefits) in accordance with prevailing practices in the locality where the work is performed.



**“Procurement Services”** means a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such contracts.

**“Purchasing Card (P-Card)”** is a method of procuring and settling the purchase of goods and services. Purchasing Card usage fees are not permitted to be charged by Contractors or Subcontractors.

**“Reclassification of Job Titles”** means a situation where the NYS DOL and/or NYC Comptroller issues an opinion, determination, judgment, classification, order, etc. which results in a job title being classified as public work or an adjustment to the required pay classification which was not part of the published prevailing wage rate schedule (and hence the awarded pricing) at the time of the bid.

**“Region”** means the grouping of counties by the State listed in Section 1.2, *Regions*.

**“Request for Quote (RFQ)”** refers to the document issued by the Authorized User and used to solicit pricing/technical proposals from Centralized Contractors at the time of purchase.

**“Shall”** denotes the imperative in a contract clause or specification. “Shall” is synonymous with “required.” Also see “Must” and “May.”

**“Straight Time Hourly Bill Rate”** means the hourly bill rate the Contractor is permitted to charge an Authorized User for one Candidate for one hour. This is inclusive of all costs incurred by the Centralized Contractor to provide a Security Guard and/or Fire Safety/EAP Director to an Authorized User. This rate must be equal to or less than the Maximum Hourly Bill Rate.

**“Supplemental Benefit”** see above definition of “Prevailing Wage Rates.”

**“Written / Written Communication”** makes use of the written word. Examples of written communications include e-mail, Internet websites, letters, proposals, and contracts.

**“0 (Zero)”** is both a number and the numerical digit used to represent that number in numerals. It is the integer immediately preceding 1 (one).

## 1.5 Appendix A

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

## 1.6 Appendix B

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

## 1.7 Appendix C

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

## 1.8 Attachments

Attachments 1-5, attached hereto, are hereby expressly made a part of this Contract as fully as if set forth at length herein.

## 1.9 Conflict of Terms and Conditions

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

1. Appendix A (January 2014);
2. This document;
3. Appendix B (April 2016); and
4. All other appendices and attachments to the Contract.



## SECTION 2 TERMS AND CONDITIONS

### 2.1 Performance and Bid Bonds

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

### 2.2 New York State Tax Law §5-a

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

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The ST-220-TD can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

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

### 2.3 New York State 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 the 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 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 the 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. Accept and consider for Contract award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
17. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
18. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
19. Reject an obviously unbalanced Bid as determined by the State;

20. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
21. To, make an award within a Region where there are less than three responsive and responsible Bidders or where the Maximum Not-to-Exceed Bill Rates are too low to be sustained for the term of the Contract plus any renewals and extensions or too high as to be within the realm of possible price reasonableness as determined solely by OGS;
22. Make no award for any Service, Region, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Services, or an error in the Solicitation (e.g., use of incorrect reference, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Services, Regions;
23. 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;
24. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

## 2.4 Authorized User Reserved Rights

The Authorized User shall have all the same reserved rights as the State, set forth in Section 2.3. In addition, to the above reserved rights, the Authorized User shall have the following additional reserved rights:

1. To request and select Security Guards and/or Fire Safety/EAP Directors based upon previous experience, skill levels, and/or qualifications. These must be defined within the Attachment 4 – *Request for Quote Form*;
2. To add requirements to the RFQ and resulting Authorized User Agreement that are more advantageous than the terms and conditions established within the Centralized Contract;
3. To disallow Subcontractors proposed to be used by the Contractor on an Authorized User's site and to approve any Subcontractors proposed to be used by the Contractor on an Authorized User's site.
4. To, in the event of an unanticipated or expedited need for services and the RFQ process provided for in the Contract will not allow the Authorized Users to meet such unanticipated or expedited need for services, to acquire such services without issuing an RFQ as required in Section 1.1, *Scope and Overview*, but by obtaining quotes and making an award in accordance with the individual Authorized User's procurement guidelines. The Authorized User shall document the nature of the unanticipated or expedited need for services and the process for obtaining quotes and making the award. The term of any award made without issuing an RFQ as required herein shall be limited to the minimum period of time necessary to meet the unanticipated or expedited need for services, until such time as the RFQ process can be completed;
5. To request the Contractor's insurance policy language for purposes of substantiating compliance with Attachment 2 - *Insurance Requirements*, or such other Insurance Requirements, as required by the Authorized User as part of an RFQ;
6. Conduct Contract negotiations with the next responsible Contractor responding to an RFQ, should the Authorized User be unsuccessful in negotiating with the selected Contractor, and
7. To, in the event of two or more tied quotes in response to an RFQ where Financial/Cost had a weight of 100%, ask each Contractor to submit a best and final quote by a specified date and time. The pricing submitted must be lower than the initial pricing. If Financial/Cost had a weight of less than 100%, the quote with the lowest pricing shall be basis for determining the award.
8. If, in the first six months from the RFQ due date, a Contractor is unable to fulfill the terms of the engagement, the Authorized User may go to the next highest scored Contractor(s) to offer them the engagement if they are willing to honor the prices quoted by the originally awarded contractor. If the Contractor(s) decline, a new RFQ must be issued to acquire services.
9. Additional terms and conditions may be allowed as part of Contractor's response to an Authorized User's RFQ and incorporated into the Authorized User Agreement provided that all of the following conditions are met:
  - a. The Contractor identifies such terms and conditions in Contractor's response to the Authorized User's RFQ; and
  - b. Such terms and conditions do not contradict or violate any of the terms and conditions of the Contract, and/or are more advantageous to the Authorized User and the State than those set forth in the Contract; and
  - c. Such terms place no additional liability or responsibility on the Authorized User or the State; and
  - b. The Authorized User acknowledges in writing that it accepts such additional terms and conditions.

10. To request a replacement Candidate if a previously selected/assigned Candidate is deficient in the performance of an assignment. The Authorized User has the right to approve all replacements and substitute Candidates.

## 2.5 Contract Period and Renewal

The Contract(s) awarded shall be in effect for a term of five years commencing on January 24, 2019. All Contract(s) will be coterminous on January 23, 2024. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to four additional years.

## 2.6 Short Term Extension

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

## 2.7 Periodic Recruitment

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

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for Regions already awarded to the Contractor under this Solicitation. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any subsequent recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

## 2.8 Procurement Instructions

Authorized Users must use the procedure detailed in Attachment 4 – *Request for Quote Form*, for selecting a Contractor. Request for Quotes will be sent to Contractors within the Region that the services detailed in this Solicitation are to be performed. A Request for Quote process must be performed for all transactions made under this Contract except as detailed in Section 2.4(4). An Authorized User shall issue an Authorized User Agreement (Purchase Order, P-Card transaction or other written order for work to the winning Contractor), which is effective and binding on the Contractor at time of order in accordance with Appendix B §45. The Authorized User Agreement shall contain the total exact or estimated cost, if an exact cost cannot be determined at that time. A Contractor shall not initiate services until the Authorized User Agreement is issued, and an Authorized User shall not request performance of services until the Authorized User Agreement has been issued. Authorized User Agreements may be issued for up to a five (5) year period so long as the Authorized User Agreement is issued within the term of the Centralized Contract. An Authorized User Agreement that goes beyond the end of a fiscal year for a state agency will require a purchase order change notice to be implemented in the Statewide Financial System to authorize payments after the end of the prior fiscal year. Change notices are also allowed for up to two (2) years, upon both parties' agreement. Blanket Purchase Orders may be used for either an exact, or estimated number of hours at a set rate for a certain time period, specific to a Region and title.

## 2.9 Rates

Contractor shall provide to the Authorized User, in response to an RFQ, personnel at the quoted hourly bill rates which shall not be less than the cost of the applicable prevailing wage rate including all supplemental benefits and other legal requirements. The Authorized User shall obtain and provide in the RFQ a PRC# for the applicable prevailing wage, which is based upon the date, job title and county within which the work is to be performed as identified at: <https://applications.labor.ny.gov/wpp/publicViewPWChangesArt9.do?method=showIt> If the straight time hourly bill rate proposed by a Contractor is less than the applicable prevailing wage plus all supplemental benefits required to be paid, the Authorized User shall advise the Contractor that it is ineligible to provide the requested services and cannot be awarded the services under the Authorized User's RFQ.

An Authorized User subject to a local law, such as the "living wage" requirement as found in Section 6-109 of

the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies with such local law at the time of RFQ award. If the hourly bill rate(s) proposed by a Contractor for a job title(s) as set forth in Attachment 1 - *Pricing* or in response to an RFQ, are less than the local law then the Authorized User subject to such local law cannot use that Contractor for the requested services. Compliance with such local laws will not be monitored by OGS. Therefore, Authorized Users are responsible for ensuring compliance with any applicable local laws upon evaluation and during the award of the RFQ.

### **2.9.1 Prevailing Wage Rates - Public Works and Building Services Contracts**

This Contract is subject to the prevailing wage rate provisions of New York State Labor Law. See "Prevailing Wage Rates - Public Works and Building Services Contracts" in Appendix B, OGS General Specifications. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility, rejection of bid in response to an Authorized User RFQ, suspension or termination of Contract.

### **2.9.2 Overtime Pay and Bill Rates**

The overtime work assumes the Security Guard and/or Fire Safety/EAP Director has worked an eight (8) hour day or forty (40) hour week for the Authorized User. If a Security Guard and/or Fire Safety/EAP Director is performing work for more than one Authorized User, the Contractor shall inform each of the Authorized Users of the Security Guard and/or Fire Safety/EAP Director's schedule and actual hours worked so that all parties are aware of when the Security Guard or Fire Safety/EAP Director will reach eight (8) hours a day or forty (40) hours a week worked and at what point overtime rates would begin.

The Contractor is responsible for scheduling to ensure no Security Guard and/or Fire Safety/EAP Director is working shifts which would require the payment of overtime, unless an Authorized User either:

1. Requests a change to a previously agreed to purchase/work order with less than five (5) business day notice to the Contractor, or
2. Requests a non-engaged Contractor to provide new service with less than ten (10) business day notice; and
3. Such request results in a Security Guard and/or Fire Safety/EAP Director working more than the (8) hours a day or forty (40) hours a week. Then, the Contractor shall bill the Authorized User at (or below) the overtime hourly bill rate quoted and the Contractor shall pay the Security Guard and/or Fire Safety/EAP Director the overtime pay rate.

In addition, should an Authorized User require the Security Guard or Fire Safety/EAP Director to remain on site past regularly scheduled business hours to accommodate Authorized User's processing or handling of client, customer or employee needs, Authorized User shall be responsible for paying the Overtime Hourly Bill Rate for such request.

For all other situations, should the Contractor fail to properly schedule the Security Guards and/or Fire Safety/EAP Directors to avoid the occurrence of overtime, the Contractor will be responsible for paying the Security Guards and/or Fire Safety/EAP Directors the overtime pay rate, but the Contractor shall only be permitted to bill the Authorized User at the Straight Time Bill Rate.

### **2.9.3 Holiday Hourly Bill Rates**

The NYS DOL Prevailing Wage Rate schedule for Region 1 requires Contractors to pay Security Guards who have worked for the Contractor for at least a year for eight Holidays (Memorial Day, Fourth of July, Labor Day, New Year's Day, Thanksgiving, Christmas, Presidents Day and Martin Luther King Day), and pay Fire Safety/EAP Directors who have worked for the Contractor for at least a year for ten Holidays (Memorial Day, Fourth of July, Labor Day, New Year's Day, Thanksgiving, Christmas, Good Friday, Columbus Day, Day after Thanksgiving, and Presidents Day) but the Candidate is not required to perform work on those holidays. If a Candidate in Region 1 works on a day listed as a paid holiday, this remuneration is in addition to payment of the required prevailing rate for the work actually performed. Contractors may bill Authorized Users at the straight time hourly bill rate agreed to for Holiday

For all other regions, Authorized Users are not required to pay for Holidays not worked. If an Authorized User requires guard service on a NYS Legal Holiday, the Authorized User will include this as an additional requirement in the RFQ and request a Holiday Hourly Bill Rate.



## 2.10 Price Adjustments

The Maximum Not-to-Exceed Bill Rates, Maximum Not-to-Exceed Vehicle Bill Rates, and Maximum Not-to-Exceed Training Bill Rates bid shall be the established pricing structure and shall not be increased for the life of the Centralized Contract with the exception of changes to the Prevailing Wage and Supplemental Benefit rates. Whenever an updated Prevailing Wage Rate and Supplemental Benefit is published by NYS DOL or the NYC Comptroller and becomes effective, OGS shall update all Contractors' Maximum Not-to-Exceed Hourly Straight time and Overtime Bill Rates to reflect the total percentage change, increase or decrease, of the Prevailing Wage Rate plus the Supplemental Benefit rate. For Region 1, OGS will use the greatest increase or decrease in a Prevailing Wage Rate service category to calculate the adjustment. The pricing page on the OGS website will automatically compute the updated total hourly bill rate. Authorized Users will subsequently adjust the rates charged by Contractors for specific engagements by the same percentages approved by OGS.

For example, for Level 1 Security Guards, the current straight time Prevailing Wage Rate plus Supplemental Benefit Rate equals \$20.50. The new Prevailing Wage Rate plus Supplemental Benefit Rate equals \$21.25. The calculation for percent increase is  $\$21.25 - \$20.50 = \$0.75$  Then  $\$0.75/\$20.50 = .03658 \times 100 =$  a 3.7% increase. The Contractor's Maximum Not-to-Exceed Hourly Bill Rate for straight time and overtime would be increased by 3.7%. OGS would adjust their Straight Time Hourly Bill Rate to Authorized Users by 3.7%. Since there is no Prevailing Wage Rate schedule for Level 2 Security Guards, OGS shall increase the Level 2 Straight Time Hourly Bill Rate and the Overtime Hourly Bill Rate by the same percent adjustment that was done for Level 1 Security Guards.

## 2.11 Invoicing and Payments

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing and Prevailing Wage Rates – Public Works and Building Services Contracts*. Invoices shall be submitted monthly.

Invoices must include, at a minimum, the following information:

1. Contractor Name
2. Contractor Billing Address
3. Contractor Federal ID Number
4. NYS Vendor ID Number
5. Account Number
6. NYS Contract Number
7. Name of Authorized User indicated on the Purchase Order
8. NYS Agency Unit ID (if applicable)
9. Authorized User's Purchase Order Number
10. Order Date
11. Invoice Date
12. Invoice Number
13. Invoice Amount
14. Service Description (Security Guard 1, Security Guard 2, Fire Safety/EAP Director, Daily Vehicle Use, Additional Training fee, etc.)
15. Names of all Candidates providing services. The name of each Candidate must match the name on their respective NYS Security Guard or Fire Safety/EAP Director license/certification.
16. Candidate Title
17. License ID Number
18. Date(s) worked
19. Hour(s) worked
20. Hire Date or Service Credit Date, whichever is earlier for each Guard and Fire Safety/EAP Director
21. Hourly Billing Rate
22. Service location

## 2.12 Certified Payroll Records

Contractor shall maintain a certified payroll record for each Candidate and submit the certified payroll to the Authorized User within three business days of the Authorized User's request. At a minimum, certified payrolls must contain all information as required in the sample provided by NYS Department of Labor (DOL) at: <https://www.labor.ny.gov/workerprotection/publicwork/PDFs/PW-12%20Contractor%20Payrolls%20Cert%20.pdf>

To substantiate the certified payroll and invoice, copies of paychecks, W-2s, and time sheets must be

submitted to the Authorized User and/or the State upon request. If Subcontractors are used by the Contractor on an Authorized User's site, the agreement between the Contractor and Subcontractor must be submitted upon request. Authorized User may request additional documentation to support a payment, including, but not limited to, documentation to substantiate the hire dates and/or service credit dates used, such as Personnel records, and documentation to substantiate legal names and current licenses/certifications.

## **2.13 Security Guard Level 1 and Level 2 Requirements and Responsibilities**

### **2.13.1 Level 1 Security Guard Mandatory Requirements**

The Contractor shall provide Security Guards that meet the following requirements:

1. High School Diploma or GED
2. Minimum six months' experience as a New York State Department of State (DOS) registered Security Guard
3. Minimum 18 years of age
4. Able to communicate with visitors and prepare incident reports in English
5. Able to speak, read and write in English
6. Physically capable of performing the essential duties of the position, with or without reasonable accommodation.
7. Have a valid and current DOS Security Guard registration
8. Have a copy of the current DOS Photo ID card and Certification of Compliance (Attachment 5) on file with Contractor
9. Completed all DOS registration and DCJS Security Guard training
10. Any additional site-specific requirements as determined by the Authorized User
11. Any additional specific training and certifications such as AED (Automated External Defibrillator) as determined by the Authorized User

### **2.13.2 Level 2 Security Guard Mandatory Requirements**

The Contractor shall provide Security Guards that meet the following requirements:

1. All mandatory requirements for Level 1 Security Guards
2. One or more of the following:
  - a. Two years of prior Military experience on active duty, and no type of military discharge that renders such Security Guard unsuitable for the position for which he or she is intended.
  - b. Two years of experience as a member of the National Guard or Military Reserves
  - c. Two years of full-time experience as a Police Officer, Probation Officer or Corrections Officer
  - d. Three years of full-time experience as a DOS registered New York State Security Guard
  - e. Two years of experience as a Security Guard Supervisor
  - f. An Associate's or Bachelor's degree in Criminal Justice
3. Any additional site-specific requirements as determined by the Authorized User
4. Any additional specific training and certifications such as AED (Automated External Defibrillator) as determined by the Authorized User.

### **2.13.3 Responsibilities for Level 1 and Level 2 Security Guards**

1. Visibly display the DOS Photo ID on the Security Guard's person at all times while on duty
2. Protect and/or prepare offices, buildings, grounds and occupants against potential incidents and evacuations which may include but is not limited to fire, disruptive activity, violent storm, vandalism, theft, loitering, trespass, burglaries, unlawful entry, bodily harm, building system malfunctions and deficiencies, etc.
3. Report any serious incidents promptly to the police, fire agency or appropriate emergency personnel for response. As necessary sound any mechanical or electronic alarms in order to alert responsible parties to potential danger.
4. Document any issues in logbook
5. Review logbook for issues that may have occurred on a previous shift and may require action. Action may include advising the appropriate Security Guard(s) of the reported potential risks and responsibilities.
6. Monitor and protect all entrances including, but not limited to, checking ID's, ensuring visitors sign-in and sign-out, issuing passes, observe and screen visitors, escort duties, etc.
7. Issue identification cards, and visitor passes; and maintain the integrity of such identification systems

8. Operate detection equipment to screen individuals and prevent passage of prohibited articles into restricted areas
9. Operate and monitor security devices such as video cameras, and related accessories; and report any malfunctions immediately to the proper supervisor
10. Confiscate contraband and or distribute receipts to persons for items such as weapons, tools, scissors and other prohibited items. Log all items and report incidents to Facility Management for appropriate action.
11. Perform routine internal and external walking tour of the building to assure that all entrances and grounds are secured and log any changes or issues
12. Inspection of all fire suppression equipment including, but not limited to, extinguishers, emergency lights, and fire hoses on a monthly basis to ensure good working order. If a deficiency is identified, the Security Guard must immediately inform the Authorized User.
13. Raise and lower flags
14. Ensure compliance of building rules including, but not limited to, restricting food or drinks in a Facility, cell phone restrictions, etc.
15. Attempt to diffuse situation with hostile persons or escort unruly or disruptive persons from premises. If the effort is unsuccessful, call the appropriate emergency contacts.
16. Report directly to Facility Management at Authorized User location
17. Must be able to communicate with law enforcement personnel, other State and city agencies as well as Facility management
18. Interface with third parties including, but not limited to, building security (i.e. New York State Troopers), emergency service personnel and building fire and safety personnel while functioning as a first and primary responder in all fire and safety issues
19. Answer questions and give directions to visitors to assist them in finding appropriate offices and services if necessary.

#### **2.13.4 Additional Responsibilities for Level 2 Security Guards**

1. Must possess demonstrated administrative capabilities to oversee a large security contingent at various locations and the ability to interface with Facility Management.
2. Overall responsibility for all Security Guards at each individual location
3. Ensure all Security Guards are present and on post during operating hours
4. Ensure all Security Guards are properly trained and familiarized with security procedures and operations
5. Ensure all Security Guards are equipped with appropriate equipment
6. Ensure all Security Guards maintain professional and courteous standards

### **2.14 Fire Safety/EAP Director (Region 1 only) Requirements and Responsibilities**

#### **2.14.1 Fire Safety/EAP Director (Region 1 only) Mandatory Requirements**

The Contractor shall provide staff that meets the following requirements:

1. Must comply with Title 3 of the Rules of the City of New York § 113-03 Fire Safety/EAP Director Certificates of Fitness.
2. May require all mandatory requirements for Level 1 Security Guards at certain Authorized User locations when a Fire Safety/EAP Director is also utilized as Level 1 Security Guards and/or Fire Safety/EAP Directors.
3. Must comply with all updates/changes/amendments to Title 3 of the Rules of the City of New York including compliance with the requirement Fire Safety/EAP Directors be trained and licensed as a Fire and Life Safety (FLS) Director, effective March 1, 2020, or such other time as required by New York City.

#### **2.14.2 Responsibilities for Fire Safety/EAP Directors (Region 1 only)**

1. Responsible for implementing the building's Fire Safety/EAP Plan
2. Report to, supervises and staffs the Fire Command Station
  - a. Liaisons and advises the FDNY during operations
  - b. Notifies building occupants of fire, FDNY operations and updates as needed
  - c. Directs evacuation during fire or emergency
3. Provides information to the FDNY
  - a. Location of fire or emergency
  - b. Evacuation of occupants from and to locations
  - c. Problems with building systems or occupants



4. Responsible for implementing the Fire Prevention Plan
5. Supervises and trains:
  - a. Fire Brigade
  - b. Floor Wardens
  - c. Deputy Floor Wardens
  - d. Building Evacuation Supervisors
  - e. Building occupants
6. Maintains records as required by law and/or regulation
7. Performs inspections as required by law and/or regulation
8. Conducts, supervises and evaluates fire drills
9. May have additional Security Guard responsibilities
10. The Contractor must have a backup Fire Safety/EAP Director that can:
  - a. Function as the Fire Safety/EAP Director during the absence of the assigned Fire Safety/EAP Director
  - b. Perform duties during fires and emergencies as directed by the Fire Safety/EAP Director
11. Complies with all other Title 3 of the Rules of the City of New York § 113 requirements, including compliance with the requirements that such Fire Safety/EAP Directors must be licensed as a Fire and Life Safety (FLS) Director, effective March 1, 2020, or such other time as required by New York City.

## 2.15 Service Requirements

### 2.15.1 Staffing

If requested by an Authorized User, a designated representative of the Authorized User has the right to interview each Candidate that is to be provided to the Authorized User for service and can approve or disapprove assignment. Authorized User must notify Contractor of acceptance or disapproval as soon as possible, but no later than twenty-four (24) hours after interview or the Candidate shall be deemed approved.

If requested by the Authorized User and identified on the Request for Quote Form, the Contractor must first consider hiring current Security Guards and/or Fire Safety/EAP Directors employed at the Facility. Contractor has the right to screen the current Security Guards and/or Fire Safety/EAP Directors to ensure they meet all requirements as outlined in this Solicitation. If the current Security Guards and/or Fire Safety/EAP Directors meet all requirements, Contractor must make employment offers. If the current Security Guards and/or Fire Safety/EAP/EAP Directors do not meet all requirements, Contractor is not obligated to make employment offers but must document the deficiencies to the Authorized User.

The Contractor may use Subcontractors to fulfill services on an Authorized User's site with the Authorized User's approval; however, OGS and Authorized Users will only contract with the successful Bidder known as the Primary Contractor.

No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this Solicitation or the resulting Contract. The Contractor accepts full responsibility for the actions of any Candidate or Subcontractor's Candidate who performs requested Services on an Authorized User's site.

The Contractor shall be responsible for informing the Subcontractors of all terms, conditions and requirements of this Solicitation and an Authorized User's RFQ and shall coordinate and control the work of the Subcontractors on an Authorized Use's site.

If Subcontractors will be used on an Authorized User's site, Contractor must notify Authorized Users in writing prior to start date.

### 2.15.2 Drug Testing

All Contractor's and Subcontractor's Candidates providing Security Guard and/or Fire Safety/EAP Director services must be free of any illegal drugs. An Authorized User may request in writing that the Contractor provide a copy of satisfactory (negative) drug test for a Security Guard and/or Fire Safety/EAP Director. If so requested, the Contractor shall require a Candidate to complete a drug test prior to starting at an Authorized User location but no more than 10 days before their start date. The drug test can be based on either a urine sample or mouth swab (oral fluid) for, at a minimum, marijuana, cocaine, opiates, amphetamines and phencyclidine, meeting Substance Abuse and Mental Health Services Administration (SAMHSA) standardized cut-off levels. The drug test will be at the expense of the Contractor.

In addition to the initial drug test, during an engagement the Authorized User may request a random drug test for a current Candidate. These additional tests would be at the expense of the Contractor and limited to one additional test per Candidate per year. If an Authorized User requests further drug testing, Contractor shall have such tests performed at the Authorized User's expense. Contractor shall reimburse Authorized User for costs associated with each positive result for illegal drugs.

### 2.15.3 Background, Registration and Training

Contractor and all Security guards are required to complete and comply with all background checks, registration and training requirements as listed on the Department of State, Division of Licensing Services website: <http://www.dos.ny.gov/licensing/securityguard/sguard.html> and the New York State Division of Criminal Justice Services website: (<http://www.criminaljustice.ny.gov/ops/sgtraining/index.htm>) and Contractor and Fire Safety/EAP Directors must comply with Title 3 of the Rules of the City of New York § 113-03 Fire Safety/EAP Director Certificates of Fitness **prior** to the Candidate beginning services at a Facility.

An Authorized User may require in an RFQ additional training which may include but not be limited to:

1. AED (Automated External Defibrillator)
2. HIPAA (Health Insurance Portability and Accountability Act)
3. OSHA (Occupational Safety and Health Administration) 10-hour course

The cost of any additional training required by an Authorized User will be billed at the competitive rate submitted by Contractor in response to the Authorized User's RFQ.

An Authorized User will specify the Facility specific training (either on the job or in the classroom) to be completed within thirty days of assignment within the RFQ.

### 2.15.4 Candidate Reporting Documents

1. Upon first reporting to the Facility for assignment, the Security Guard must present to the Authorized User the following items:
  - a. DOS ID - A valid NYS Department of State (DOS) Photo ID Registration (must be visibly displayed on Security Guard at all times). The Contractor is responsible to pay the Department of State the fee associated with registration of each Security Guard with Contractor.
  - b. NOTARIZED CERTIFICATION OF COMPLIANCE - A current Certification of Compliance shall be signed and dated by Contractor and notarized. A copy must be maintained in the Contractor's office within the assigned Candidate' file and available for audit. The "Certification of Compliance" shall be reissued annually on the anniversary date for each such Candidate assigned and provided to the Facility manager with a copy filed in the Master file maintained by the Contractor for each Candidate. A copy of this certificate is included as Attachment 5 – *Certificate of Compliance*.
2. Upon first reporting to the Facility for assignment, the Fire Safety/EAP Director must present to the Authorized User the following items:
  - a. Must present a valid driver's license or state identification card
  - b. Must present copy of current NYC Fire Department Certificate of fitness as a Fire Safety/EAP Director.
  - c. NOTARIZED CERTIFICATION OF COMPLIANCE (Attachment 5) – as noted above
  - d. It is the obligation of the Contractor to maintain current and all prior copies of the Certification of Compliance forms in each Fire Safety/EAP Director's file for review by NYS and/or the Authorized User utilizing the Security Guard's services.

### 2.15.5 Security Procedures

At the request of the Authorized User, Contractor must comply with Authorized Users specific security policies. The Contractor will work with Authorized User to obtain necessary clearances prior to the Candidate's start date. Contractor may be required to provide information such as, but not limited to, the company name, the Candidate's name (as it appears on ID), valid driver license number, etc. to an Authorized User.

### 2.15.6 Coverage

Security coverage as specified in the Authorized User RFQ must be maintained at each requested Facility. In the event of anticipated and/or unanticipated absenteeism and tardiness, it is the obligation of the Contractor to maintain sufficient staffing as required by the RFQ. The Contractor must have a procedure in place for Candidates to communicate both tardiness and absence in a fashion that allots enough time for a replacement Candidate of equal or better qualification(s) to be retained for the shift in question without any additional cost to Authorized User.

### 2.15.7 Workday/Hours

A Candidate may work up to eight (8) hours in any one day and up to forty (40) in any one workweek for the appropriate prevailing wage rates. A Candidate who works more than eight (8) hours in any one day or more than forty (40) hours in any workweek shall be paid in accordance with Section 2.9.2, *Overtime Pay and Bill Rates*.

#### **Standard Work Day:**

A typical work day may be up to an eight and one half (8-1/2) work shift inclusive of one thirty minute meal period. The thirty-minute meal period will be unpaid.

#### **Meal Time:**

Defined as thirty minutes within the standard eight (8) hour workday when the Security Guard and/or Fire Safety/EAP Director may eat. The Security Guard and/or Fire Safety/EAP Director may be required to remain on premises and be available to respond to emergencies. If so, the Security Guard and/or Fire Safety/EAP Director will be paid for the thirty-minute meal period.

#### **Overtime:**

Authorized Users do not anticipate paying overtime rates under this contract except where the Authorized User requires Fire Safety/EAP Directors to work on weekends as per the Prevailing Wage requirements. The Contractor will be responsible for scheduling Candidates so that shifts do not exceed the parameters identified in the prevailing wage schedule for which overtime pay is required. In the event, that overtime is necessary to maintain coverage due to scheduling problems on the part of the Contractor, the Contractor shall pay the appropriate overtime rate to the Security Guard and/or Fire Safety/EAP Director at no additional cost to Authorized User. If an Authorized User requires Security Guards and/or Fire Safety/EAP Directors to remain on site at the end of their regularly scheduled shift due to Authorized User's clients/customers/employees remaining on site for continued services beyond the Authorized User's regularly scheduled closing time, the Authorized User shall be responsible to pay for the overtime payments for such Security Guards and/or Fire Safety/EAP Directors.

#### **Closed Sites on Scheduled Days/Scheduled Times:**

In the event an Authorized User determines to close a site on a particular Scheduled Day/Scheduled Time, and therefore does not require Candidates, and does not provide the Contractor with at least two (2) business day notice, excepting for a declared emergency, the Contractor shall be permitted to charge the Authorized User for the business day as if the Candidate(s) were working at an open Facility.

### 2.15.8 Late Arrival

An Authorized User shall not pay for any scheduled time for the period the Candidate was late. More than three late arrivals in a one-month period by the same Candidate may result in that Candidate being disqualified from performing future services for the Authorized User under this Contract. Lateness shall be defined by the Authorized User.

### 2.15.9 Additional Security Guards/Special Events

It is anticipated that during the term of this contract Contractors will be required by some Authorized Users to provide additional Security Guards for additional shifts and/or special events or holidays. Once the date of the special event or holiday to be worked is determined, the Authorized User will submit the request in writing to the Contractor with as much notice as possible.

### 2.15.10 Standard Equipment

The following equipment will be required for each Security Guard and Fire Safety/EAP Director and shall be provided by the Contractor at the Contractor's expense:

1. An operable flashlight
2. Pen or pencil and watch
3. Memo book
4. Whistle

If the Authorized User requires the following items, such items shall be provided by the Authorized User to the Candidate assigned and at no cost to Contractor. All items remain property of the Authorized User:

1. Building keys, where applicable;
2. Logbook;
3. Guard and/or Fire Safety/EAP Director Handbook;
4. General and special orders; and
5. Two-way radio/beeper (or other communication device).

### 2.15.11 Site Assignment and Removal

When requesting Candidates, the Authorized User shall allow sufficient processing time for a Contractor to screen, recruit and hire Security Guards and/or Fire Safety/EAP Directors. Once the Contractor receives confirmation from an Authorized User that Contractors Quote was selected, Contractor will have a minimum of ten (10) business days to fulfill order ensuring the Candidates meet the required specifications as outlined in the Contract and/or Request for Quote, unless there is an agreement between the Authorized User and Contractor to a different timeframe.

The first time a Candidate is sent to an Authorized User's site, the Contractor or approved Subcontractor must furnish the Authorized User with appropriate documentation as set forth in Section 2.15.4, *Candidate Reporting Requirements*.

The Authorized User representative, in its sole judgment, may require the removal of any Candidate failing to meet contract requirements or for nonperformance of any duty under either the Contract and/or Authorized User RFQ. Authorized User shall give Contractor as much prior notice as is reasonable for the requested removal and shall advise the Contractor in writing within twenty-four hours of such request.

A sufficient number of staff should be provided to accomplish the specified service in the frequencies requested as noted on the RFQ Document.

### 2.15.12 License

Contractor must have and shall maintain a valid Watch, Guard or Patrol agency license issued by the New York State Department of State for each bureau, agency, sub-agency, office and branch office to be owned, conducted, managed or maintained by Contractor to supply the security guards and/or Fire Safety/AED Directors. Contractor must submit to OGS evidence of current licenses every two years.

### 2.16 Vehicle Use Charges

Upon Authorized User request, requirements for Security Guard Services may include vehicles for patrolling facilities. Pricing for vehicles is all-inclusive and may include but is not limited to: daily vehicle expense, insurance, gas, repairs and maintenance, etc. The rates provided in response to this Solicitation are not-to-exceed rates. The Maximum Not-to-Exceed Daily Vehicle Bill Rate will be adjusted as per the provisions in Section 2.10, *Price Adjustments*. It is at the Request for Quote stage where Contractor should quote competitive prices.

### 2.17 On-Site Work

Services performed on-site by Contractor's Security Guards and/or Fire Safety/EAP Directors shall be rendered in accordance with these additional requirements as determined by the Authorized User:

1. Sign-In: Candidates shall sign in and out in accordance with the Authorized User's security procedures and guidelines. Failure to sign in or out, whether intentional or not, may be understood to mean that service was not performed. This includes signing in and out for lunch/dinner and any breaks that result in the Candidate being away from their designated work station.
2. A review of all Facility use rules for the subject location.
3. An introduction for each respective Agency organization, chain of command, etc.

Any other additional security or other requirements set forth by the Authorized User in the RFQ.

## 2.18 Ongoing Compliance

After award of contract, Contractors must continue to meet or exceed all the requirements outlined in this Contract and all Attachments throughout the term of the contract. OGS reserves the right to require documentation from any Contractor at any time throughout the term of the contract to verify ongoing compliance.

## 2.19 Disqualified Resources

Any Candidate that an Authorized User deems unfit to perform a position at the time of RFQ response or any time in the future shall be recorded by notifying the Contractor in writing, and may result in that Candidate being disqualified from performing future services for the Authorized User under this Contract.

## 2.20 Mandatory Restrictions

1. No smoking allowed by Security Guard and/or Fire Safety/EAP Director in Authorized User facilities other than in designated smoking areas.
2. No personal use by Security Guard and/or Fire Safety/EAP Director of Authorized User's telephones, computers or telecommunications equipment, without prior written permission of the Authorized User.
3. No Security Guard and/or Fire Safety/EAP Director may bring any weapon of any type into any Authorized User building, including, but not limited to, the following: firearms, knives, billy clubs, nightsticks, blackjacks, gas discharge guns, etc.
4. No Security Guard and/or Fire Safety/EAP Director may use during work hours or carry on patrol any radio, recorder, television, reading material, music maker, game or pictorial material unless approved in writing by the Authorized User.
5. No Security Guard and/or Fire Safety/EAP Director shall be under the influence or carry the odor of alcoholic beverages while on duty, nor shall any Security Guard and/or Fire Safety/EAP Director carry or consume any alcoholic beverage while on duty.
6. No Security Guard and/or Fire Safety/EAP Director shall be under the influence of, carry or ingest a controlled substance, except as prescribed by medical authorities and then only if the Security Guard and/or Fire Safety/EAP Director performance of duties shall not be impaired in any way.

## 2.21 Quality of Services

Contractor agrees that the services provided under this Contract will be provided in a professional manner in accordance with industry standards, and that all candidates proposed in response to an RFQ will have all required licenses, certifications or permits necessary or required by applicable law and/or regulations to perform the requested services.

## 2.22 Maintenance of a Master File

The Contractor shall maintain a Master File for each Security Guard and/or Fire Safety/EAP Director Candidate. Each Master File must be stored in electronic format (i.e., electronic or scanned documents). Master File should contain copies of Security Guard's NYS DOS license, I-9 Employment Eligibility Form, high school degree or General Equivalency Diploma (GED), driver's license, registration, training certifications, drug test results, military credentials, NYC Fire Department Certificate of Fitness, Certificate of Compliance and any other Security Guard or Fire Safety/EAP Director proof of qualification. Contractor must verify and document for the Master File the hire date or service credit date, whichever is earlier, that determines a Security Guard's and/or Fire Safety/EAP Director's Prevailing Wage and Supplemental Benefit pay rates. If a Subcontractor is approved for use to provide the requested services on an Authorized User's site, the Contractor shall require the Subcontractor to maintain the Master File and provide a complete copy of it to the Authorized User or NYS OGS upon request.

## 2.23 Reduce Work

The Authorized User has the right to reduce the length of the work assignment and the Contractor shall be provided a minimum of five business days' notice, except when reduction is due to a force majeure event, as defined in Clause 44 of Appendix B, or if the Security Guard and/or Fire Safety/EAP Director presents a risk to the safety and well-being of his/herself or others. Contractors shall not assess any fees or penalties for reductions in work assignments.

## 2.24 Generic E-Mailbox

Contractor shall maintain a generic e-mail mailbox for use by Authorized Users when issuing Request for Quotes. The e-mailbox must be monitored consistently throughout each business day in order to provide timely responses to Authorized Users' requests. Any changes to the generic e-mailbox must be provided within one (1) business day to the Contract Manager listed on the Contract Award Notification page.



## 2.25 Toll-free number

A Contractor shall provide and maintain a toll-free telephone number or messaging service for the Authorized User usage. Contractor must staff this toll-free number at a minimum from 9:00am to 5:00pm Monday through Friday Eastern Standard Time.

## 2.26 Reclassification of Job Titles

In the event NYS DOL/ NYC Comptroller classify the Level 2 Security Guards as "Public Work" and publish Prevailing Wage Rates and Supplemental Benefits, OGS shall review each Contractor's Maximum Not-to-Exceed Bill Rates for Level 2 Security Guards to determine if a price adjustment is necessary.

## 2.27 New York State Financial System (SFS)

### 2.27.1 NYS Statewide Financial System

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions. The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at:

<https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>. There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly. The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

### 2.27.2 NYS SFS Procurement Module

NYS anticipates during the term of this contract that a potential SFS Procurement Module may be launched and all contract spend by state agencies (and potentially all other Authorized Users) may be required to be in this module. Contractor agrees that if required by OGS, all RFQs, purchase orders, and invoicing will be performed using this module for either:

1. State Agencies, Only,
2. All Authorized Users, or
3. For State Agencies and certain other categories of Authorized Users as required by OGS.

## 2.28 Contract Administrator

Contractor must maintain a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide either the new administrator's name and contact information, or an interim contact person until the position is filled. Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the OGS Contract Management Specialist in charge of administration of the Award and subsequent contract(s).

## 2.29 Insurance Requirements

The Contractor shall, at its sole cost and expense, maintain in full force at all times during the term of the Contract, all policies of insurance pursuant to the requirements outlined in Attachment 2 - *Insurance Requirements*.

## 2.30 Report of Contract Usage

The Contractor shall furnish semi-annual reports, using the format specified in Attachment 3 - *Report of Contract Usage*, containing total sales for both State Agency and Authorized Non-State Agency Contract invoicing as follows:

1. For the period of January 1 through June 30, semi-annual reports must be provided by COB July 30 immediately following,
2. For the period of July 1 through December 31, semi-annual reports must be provided by COB January

- 30 immediately following, and
3. In the event award of contract takes place after either January 1<sup>st</sup> or July 1<sup>st</sup> for the semi-annual reporting period, Contractor shall report all invoicing up to either June 30<sup>th</sup> or December 31<sup>st</sup> from the award date, utilizing i the timeframes listed in items 1 and 2 for all subsequent reporting period.

Reports of Contract Usage are to be submitted to OGS NYS Procurement, to the attention of the Contract Administrator, as shown on the front page of the Contract Award Notification document posted on the OGS website. Attachment 3 - *Report of Contract Usage* template must be used, the report must be completed in its entirety and submitted in MS Excel format only (incomplete, altered, locked, pdf. or hard copy submissions will not be accepted). OGS Procurement reserves the right to request additional information if needed. Additional related sales and/or detailed Authorized User purchase information may be required by OGS and must be supplied within 30 calendar days, upon request.

OGS reserves the right to alter, amend, or revise this section at any time during the life of the contract.

## 2.31 Company and Contact Information

Changes regarding Contractor's company and/or contact information should be submitted no later than five (5) business days of the change to the OGS Contract Administrator.

## 2.32 Contractor Requirement 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

### 2.32.1 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.

### 2.32.2 General Provisions

1. 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 and for this Solicitation, MWBE goals are set at the Centralized Contract level, not in each individual quote in response to an RFQ.
2. 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. 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.
3. Failure to comply with all the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to Section 2.32.9., *Breach of Contract and Liquidated Damages*, and/or enforcement proceedings as allowed by the Contract and applicable law.

### 2.32.3 Equal Employment Opportunity (EEO)

1. 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.
  - a. 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.
- b. 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.
2. Form EEO 100 - Staffing Plan.
    - a. 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.
  3. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")
    - a. 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. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO\_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
    - b. Separate forms shall be completed by Contractor and any Subcontractor.
    - c. 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.
  4. Contractor shall comply with the provisions of the Human Rights Law, 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.

### 2.32.4 Contract Goals

1. 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 qualified MBEs and WBEs) at the OGS Centralized Contract Level, based upon the value of all State Agency and Authority (as defined in 5 NYCRR § 140.1) Authorized User Agreements. The total OGS Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract for all Authorized Users.
2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established above, 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.
3. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as Subcontractors or suppliers in the performance of the OGS Contract (see clause 2.32.7. below).

### 2.32.5 MWBE Utilization Plan

1. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
2. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the State Agency and Authority Authorized User Agreements in the Regions being bid, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the OGS Contract, the estimated or, if known, actual dollar amounts to be paid to the MWBEs. 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 NYS 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.
3. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt. OGS recognizes that Bidders may not know all the MWBEs that Bidder will use during the course of the OGS Contract, therefore, Bidders should contact the OGS MWBE office for assistance and guidance in completing the initial MWBE Utilization Plan and updates to that plan throughout the term of the OGS Contract.
4. 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.
5. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
  - a. If a Bidder fails to submit a 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.
6. 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 Section 2.32.4, *Contract Goals* of this Section.
7. 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.

### 2.32.6 Request for Waiver

1. 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.
2. 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 2.32.7. 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 2.32.5(3), (4) & (5) 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) days of receipt.
3. 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.
4. 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.

### 2.32.7 Required Good Faith Efforts

1. 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:
  - a. 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 and copies of such solicitations and any responses thereto.
  - b. A list of the certified MWBEs appearing in the Empire State Development 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.
  - c. 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.
  - d. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
  - e. 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.
  - f. Other information deemed relevant to the request.

### 2.32.8 Monthly MWBE Contractor Compliance Report

1. 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 requires Contractors to 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/>. **Contractors must advise the OGS Office of Minority- and Women-Owned Business Enterprises throughout the term of the OGS Contract of all State Agency and Authority Authorized User Agreements it is awarded so that information may be entered into the NYSCS.**
2. When a Contractor receives a payment from a State agency or Authorized User following a purchase from an OGS Procurement Services contract, 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. Audit notices may also come from a State Agency or Authority Authorized User. 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.
3. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE Subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "Introduction to the System for Vendors" 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/events.asp>
4. 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.

5. 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.
6. 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 and a requesting Authorize User, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause 2.32.9. below.

### **2.32.9 Breach of Contract and Liquidated Damages**

1. In accordance with Executive Law Section 316-a and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.
2. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
3. If, after Contractor has been afforded due process to respond to the allegation that it willfully or intentionally failed to comply with the MWBE participation goals, OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by the OGS, Contractor shall pay such liquidated damages to the OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law, in which event the liquidated damages shall be payable if the Director renders a decision in favor of the OGS.

### **2.32.10 Fraud**

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

**ALL FORMS ARE AVAILABLE AT: <https://www.ogs.ny.gov/MWBE/Forms.asp>**

### **2.33 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.

#### **2.33.1 Contract Goals**

1. 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.

2. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as Subcontractors or suppliers in the performance of the Contract (see clause 2.33.4. below).

### 2.33.2 SDVOB Utilization Plan

1. 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.
2. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the State Agency and Authority Authorized User Agreements in the Regions being bid, a description of the Contract scope of work the Bidder intends the SDVOB to perform to meet the goals on the OGS Contract, the estimated or, if known, actual dollar amounts to be paid to the SDVOBs, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the SDVOB 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.
3. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within 20 days of receipt.
4. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
5. 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.
6. 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.
7. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including, but not limited to, a finding of Contractor non-responsibility.

### 2.33.3 Request for Waiver

**Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts in the Division for guidance.**

1. 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 2.33.4. 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 2.33.2 (3), (4) & (5) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
2. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
3. If OGS, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report

(SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

#### **2.33.4 Required Good Faith Efforts**

1. In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:
2. Copies of solicitations to SDVOBs and any responses thereto.
3. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
4. 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.
5. 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.
6. Other information deemed relevant to the waiver request.

#### **2.33.5 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 the OGS Contract Management Specialist.

#### **2.33.6 Breach of Contract and Damages**

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

**ALL FORMS ARE AVAILABLE AT:**

<https://ogs.ny.gov/Veterans/default.asp>

### **2.34 New York State Vendor Responsibility**

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

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

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

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

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

### 2.35 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 Candidates shall not be permitted in performance of the Contract.

### 2.36 Traffic Infractions

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

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

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

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

### 2.38 Extension of Use

Any Contract resulting from this bid Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions. Please contact NYS Procurement Services Customer Services for more information via email at: [OGS.sm.customer.services@ogs.ny.gov](mailto:OGS.sm.customer.services@ogs.ny.gov).

### 2.39 Federal Funding

For an Authorized User using Federal funds, Contractor shall cooperate in adding to the Authorized User's Agreement any Federal funding contract clauses necessary for the Authorized User's Project. An Authorized User shall identify to Contractor, as a condition of using this Contract and during the RFQ process, whether Federal funds will be utilized for the Project.

### 2.40 Americans with Disabilities Act (ADA)

The Federal ADA Act, signed into law July 26, 1990, bars employment discrimination and requires all levels of Government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidders are required to identify and offer any software or hardware products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals.

Although it is not mandatory for Bidders to have this equipment in order to receive an award, it is necessary to identify any such equipment offered they have which falls into the above category.

### 2.41 Captions

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

### 2.42 Severability

If any provision of this Contract is deemed invalid or unenforceable, such determination shall have no effect on the balance of the Contract, which shall be enforced and interpreted as if such provision was never included in the Contract.



## 2.43 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Agreement shall bind such party.

## 2.44 Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at the following address: 23106 Contract Administrator Office of General Services New York State Procurement 38th Floor Corning Tower Empire State Plaza Albany, NY 12242 and (ii) if to Contractor, addressed to the individual identified as the "Centralized Contract Contact," and at the specified address identified on Page 2 of this Agreement. The Parties may from time to time, specify any address in the United States as its address for purpose of notices under this Agreement by giving fifteen (15) Business Days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Agreement. All notices sent shall be effective upon actual receipt by the receiving party. The Contractor will be required to forward a copy of the official notice to an Authorized User that is associated with the subject of the notice. Written notice of any alleged breach by one party to the other shall provide specific facts, circumstances and grounds upon which the breach is being declared.

## 2.45 Entire Agreement

This Contract and the referenced Appendices and Attachments constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein. In accordance with the terms set forth in Appendix B §26 Modification of Contract Terms, and §30 Purchase Orders, no preprinted terms or conditions on a Purchase Order issued by an Authorized User which seek to vary the terms of this Contract or impose new duties or obligations on the Contractor shall have any force and effect.

### Signature Page

**IN WITNESS WHEREOF**, the Parties have executed this Contract as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Contract being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B, and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

**CONTRACTOR**

Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Company Name: \_\_\_\_\_  
 Federal ID: \_\_\_\_\_  
 NYS Vendor ID: \_\_\_\_\_

**THE PEOPLE OF THE STATE OF NEW YORK**

Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

