



Office of General Services
Procurement Services

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AGREEMENT FOR
HEAVY EQUIPMENT RENTAL (STATEWIDE)

BY AND BETWEEN

NEW YORK STATE

OFFICE OF GENERAL SERVICES

AND



CONTRACT NUMBER PS 

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**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT # PS [Enter Agreement Number](#)
CENTRALIZED CONTRACT FOR THE ACQUISITION OF
HEAVY EQUIPMENT RENTAL (STATEWIDE)**

THIS AGREEMENT (hereinafter the “Contract” or the “Agreement”) is made as of the date last written below, by and between the People of the State of New York, acting by and through the **Commissioner of the Office of General Services** (OGS), whose office is on the 36th Floor, Corning Tower, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the “State” or “OGS”) and [\[REDACTED\]](#), having its principal place of business at [\[REDACTED\]](#) (hereinafter referred to as the “Contractor”). OGS and the Contractor are collectively referred to as the “Parties.”

WHEREAS, OGS is statutorily authorized to enter into centralized contracts for commodities and services for use by New York State agencies, departments, public authorities, political subdivisions and any other entities authorized by statute to utilize its centralized contracts (hereinafter “Authorized Users”); and

WHEREAS, OGS has identified a need by New York State agencies and other Authorized Users for Heavy Equipment Rental (Statewide) as further described herein; and

WHEREAS, OGS conducted a procurement to identify the bidder(s) which could provide Heavy Equipment Rental (Statewide), referred to as Solicitation 23397 (hereinafter the “Solicitation”), which was advertised on [Click or tap to enter a date](#) in the New York State Contract Reporter, as required by New York State Economic Development Law; and

WHEREAS, awards were made as backdrop contracts to Contractors for Rental by Authorized Users of the Contractor’s complete Product Line that meets the Contract definition of Heavy Equipment, and who met the criteria for an award, in accordance with the method of award set forth in the Solicitation; and

WHEREAS, the State has determined: that the Contractor submitted a responsive proposal; that the Contractor is a responsible vendor; and that the Contractor is willing to provide the commodities set forth herein under the terms and conditions contained herein.

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:

1. INTRODUCTION

1.1 Overview and Scope

This Contract is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services to provide Authorized Users, as set forth in Appendix B, Section 2, *Definitions*, with a means of acquiring Rental of Heavy Equipment.

The Contract is for the Contractor’s complete Product Line that meets the Contract definition of Heavy Equipment, and associated Ceiling Prices, as set forth in Attachment 1 – *Pricing*.

Heavy Equipment Rental shall be on an as-needed basis by Authorized Users via a competitive Rental Quote process (see Section 3 *Procurement Instructions for Authorized Users*), with Rental provided, at a minimum, to Authorized User locations in the counties set forth in the Rental Area document posted on the OGS website.

Purchase of Heavy Equipment shall not be permitted under this Contract. This Contract is intended for short term Rental (i.e., Daily, Weekly or Monthly). Long term leasing (e.g., six month or more Rental Period), shall not be permitted under this Contract.

1.2 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. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The individual value of this Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Section 28 *Estimated/Specific Quantity Contracts* and Appendix B, Section 25 *Participation in Centralized Contracts*.

Numerous factors could cause the actual quantities of Products purchased under this Contract to vary substantially from the estimates provided in the Solicitation. Such factors include, but are not limited to, the following:

- Such Contracts may be non-exclusive Contracts.
- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
- 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.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

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 provided in Solicitation 23397.

1.3 NYS Comptroller Approval

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

1.4 Definitions

Capitalized terms used in this Contract shall be defined in accordance with Appendix B *Definitions*, or as below.

“**24x7x365**” shall mean 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

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

“**Ceiling Price**” shall refer to a maximum price that Contractor may charge an Authorized User for a service offered under the Contract.

“**Consumables**” shall mean a Product intended to be used in the operation of Heavy Equipment and then must be replaced for continued operation (e.g., fuel, lubricants, filters, tips, teeth, blades, cutting edges).

“**Contract Pricelist**” shall refer to the Excel document, set forth in Attachment 1 – *Pricing* which lists, among other things, a description of the Heavy Equipment available for Rental, a Ceiling Price for Daily, Weekly and Monthly Rental Periods, and Delivery Charge(s), for the Heavy Equipment available for Rental.

“**Daily**” shall refer to a Rental Period of twenty-four (24) consecutive hours or less, computed from the hour of commencement of the Rental Period up to but not including the same hour in the next day and shall apply when the number of hours the Heavy Equipment is operated in such twenty-four (24) hours period does not exceed eight (8) hours of use.

“**Delivery**” shall mean the transport of the Heavy Equipment from the Delivery Origin to the location designated by the Authorized User on the Purchase Order (e.g., location where the Authorized User shall use the Heavy Equipment or the vehicle that the Authorized User shall use to transport the Heavy Equipment), and the return of the Heavy Equipment from the location designated by the Authorized User to the location designated by the Contractor.

“**Delivery Charge**” shall mean the total dollar amount charged to the Authorized User for Delivery. The Delivery Charge is in addition to the Daily, Weekly or Monthly Rental Price.

“**Delivery Origin**” shall mean the location from which the Contractor delivers Heavy Equipment to the Authorized User (i.e., Contractor’s place of business or other location specified by the Contractor). The Delivery Origin shall be expressed as the applicable NYS County on the Rental Quote form.

“**Heavy Equipment**” shall refer to equipment which is intended for heavy work such as earthmoving, construction, lifting containers or materials, drilling holes in earth or rock, concrete or paving application or street sweeping (e.g., aerial lifts, large towable air compressors, generators and light towers, concrete saws, earth compactors and rollers, backhoes, motor graders, skid-steer loaders, bulldozers, wheel loaders, trenchers, utility tractors, excavators, forklifts, sweepers, utility vehicles, trucks with various body types including pickup trucks intended for heavy work, and other related attachments and equipment.

“**Make**” shall refer to the Heavy Equipment OEM company name (e.g., Case, Caterpillar, John Deere).

“**Model**” shall refer to the OEM name or code used to identify particular a subset of a Make (e.g., 621F, 908H2, 624K)

“**Model Year**” shall mean the year used to designate a discrete Model, irrespective of the calendar year in which the equipment was actually produced, provided that the production period does not exceed twenty-four (24) months.

“**Monthly**” shall refer to a Rental Period of twenty-eight (28) consecutive calendar days, computed from the date of commencement of the Rental Period up to but not including the same date in the next calendar month and shall

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apply when the number of hours the Heavy Equipment is operated in any twenty-eight (28) day period does not exceed 176 hours of use.

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

“**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.

“**NYS**” shall mean New York State

“**NYS Contract Price**” shall mean the dollar amount charged to the Authorized User for Product provided under the Contract.

“**NYS Holidays**” refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Dr. Martin Luther King, Jr. Day; Washington’s Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veterans’ Day; Thanksgiving Day; and Christmas Day.

“**NYS Vendor ID**” is a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

“**OEM**” shall mean Original Equipment Manufacturer.

“**OGS**” shall mean the New York State Office of General Services.

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

“**Product Line**” shall mean a group of related Heavy Equipment offered for Rental by a single company in their usual course of business.

“**Rental**” shall mean the provision of Heavy Equipment owned by the Contractor to an Authorized User for a mutually agreed-upon time period (Daily, Weekly or Monthly) and for a mutually agreed-upon price.

“**Rental Period**” shall mean the time period from the date and time upon which transit of the Heavy Equipment to the location designated by the Authorized User (e.g., location where the Authorized User shall use the Heavy Equipment or the vehicle that the Authorized User shall use to transport the Heavy Equipment), begins and the date and time upon which transit of the Heavy Equipment ends at the Contractor’s place of business or other location designated by the Contractor.

“**Rental Price**” shall mean the NYS Contract Price charged to the Authorized User for a Rental for the applicable Rental Period, excluding the Delivery Charge, if applicable.

“**Rental Quote**” shall refer to a quote for Heavy Equipment Rental, or notification of the unavailability of the requested Heavy Equipment, provided by a Contractor to an Authorized User in response to a Rental Quote Request, on a Rental Quote form. See Attachment 4 – *Rental Quote Forms*.

“**Rental Quote Request**” shall refer to a request from an Authorized User for a Rental Quote. See Attachment 4 – *Rental Quote Forms*.

“**Rental Quote Process**” shall refer to the competitive procurement process that a Contractor must participate in to provide Heavy Equipment Rental under the Contract.

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

“**Weekly**” shall refer to a Rental Period of seven (7) consecutive calendar days, computed from the date of commencement of the Rental Period up to but not including the same day in the following week and shall apply when the number of hours the Heavy Equipment is operated in any seven (7) day period does not exceed forty (40) hours of use.

“**Written**” shall mean any writing that makes use of words. Examples of Written communications include email, facsimile, Internet websites, letters, proposals, and contracts.

1.5 Appendices and Attachments

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

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

Appendix B – *General Specifications* (April 2016)

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

Attachment 1 – *Pricing*

Attachment 2 – *Insurance Requirements*

Attachment 3 – *Report of Contract Usage*

Attachment 4 – *Rental Quote Forms*

1.6 Conflict of Terms

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

- A. Appendix A – *Standard Clauses for New York State Contracts*;
- B. Appendix C – *Federal Funding Agency Mandatory Terms and Conditions*;
- C. The Contract;
- D. Appendix B – *General Specifications*; and
- E. All other appendices and attachments to the Contract.

1.7 Appendix B Modifications

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

- A. Appendix B, Section 31 *Product Delivery*, is deleted in its entirety and replaced by Section 4.14 *Product Delivery* of this Contract.
- B. Appendix B, Section 34 *Title and Risk of Loss for Products Other Than Technology Products*, is deleted in its entirety and replaced by Section 4.17 *Product Acceptance* of this Contract.

2. SPECIFICATIONS

The following minimum specifications shall apply to the Contract. The Authorized Users shall provide supplemental specifications for each Rental in the Rental Quote Requests, and with the resultant Purchase Order, if applicable.

2.1 Heavy Equipment Requirements

The following shall be considered minimum requirements for the Heavy Equipment offered for Rental.

- A. Standards, Codes, Rules and Regulations: Heavy Equipment shall comply with all applicable governmental statutes, regulations, and directives including, but not limited to, those listed below. If applicable, the appropriate decals indicating compliance shall be affixed to the Heavy Equipment.
 - 1. New York Codes, Rules and Regulations (NYCRR), New York State Vehicle and Traffic Law (NYSVTL), and New York State Dept. of Motor Vehicles (NYSDMV).
 - 2. Federal Motor Vehicle Safety Standards (FMVSS), Federal Motor Carrier Safety Administration (FMCSA), National Highway Traffic and Safety (NHTSA), Environmental Protection Agency (EPA), and Occupational Safety & Health Administration (OSHA) requirements.
 - 3. Federal Government and New York State regulations governing the control of air pollution from new motor vehicles and new motor vehicle engines in effect on the date of manufacture. See NYCRR (NY Codes Rules and Regulations), Title 6 *Environmental Conservation*, Part 218, *Emissions Standards for Motor Vehicles and Motor Vehicle Engines*.
- B. Standard Equipment: Unless otherwise specified by the Authorized User, any parts, components, equipment, controls, materials, features, performances, capacities, ratings or designs which are standard and/or necessary to form an efficient and complete working unit shall be furnished. Any item not specified by the Authorized User but deemed necessary for the application of the Heavy Equipment shall be supplied and shall meet the industry standards.
- C. Manuals: Heavy Equipment shall be furnished with standard manuals (e.g. operation, maintenance and parts manuals) as would normally accompany such Heavy Equipment. Manuals may be provided printed and bound, on CD, or at an online website.
- D. Equipment Condition: Prior to the beginning of the Rental Period, Heavy Equipment shall, at a minimum, be provided to the Authorized User in the following condition as applicable to the Heavy Equipment type.
 - 1. Shall be completely assembled, clean, lubricated, serviced, fully functional and capable of performing the task(s) it was designed to perform under the OEM's guidelines. The Contractor shall be responsible for all costs and expenses necessary to provide Heavy Equipment that is in good working condition and repair. The Authorized User shall not be liable for damage caused by improper maintenance of the equipment by the Contractor;
 - 2. All safety devices, including rear view camera and/or backup alarm, shall be in place and operational per the OEM's design. Safety stickers shall be in place and legible;
 - 3. Fuel tank shall be at full capacity;
 - 4. All required documents shall be provided (e.g., vehicle registration, inspection and emissions stickers, certificate of insurance);
 - 5. Shall meet the OEM's minimum recommendations for Gross Vehicle Weight Rating (GVWR), Front Gross Axle Weight Rating (FGAWR), Rear Gross Axle Weight Rating (RGAWR) and curb weight.
 - 6. Shall have vandalism/theft protection covers or other security system in place.
- E. Title and Registration: Title to the Heavy Equipment shall at all times remain with the Contractor and nothing contained in this Contract shall be deemed to have the effect of conferring upon the Authorized User any right or title whatsoever in or to the Heavy Equipment. Purchase of Heavy Equipment is not permitted under this Contract. If applicable, the Heavy Equipment shall be registered to the Contractor with license plate affixed and suitable for operation on the highway.

2.2 Rental Service Requirements

The following shall be considered minimum service requirements for the Rental.

- A. Rental Period: The minimum Rental Period that may be offered under the Contract is a Daily Rental Period. This Contract is intended for short term Rental (i.e., Daily, Weekly or Monthly). Long term leasing (e.g., six month or more Rental Period), is not permitted under this Contract. Saturday, Sunday and government holidays shall not be excluded from Rental Periods, and the Contractor shall offer Heavy Equipment for Rental on these days if such Rental is offered in the Contractor's usual course of business.
- B. Equipment Operators: The Heavy Equipment shall be furnished without operating personnel, and the operation of said Heavy Equipment shall be performed by Authorized User employees.
- C. Equipment Condition Report: A signed, Written equipment condition report shall be provided to the Authorized User for signature prior to the start of the Rental Period, and upon return of the Heavy Equipment to the Contractor. At a minimum, the report shall include a list, as applicable to the Heavy Equipment, of the following:
 - 1. Pre-existing damage and non-functioning features;
 - 2. Operational checks that have been performed;
 - 3. Attachments provided with the Rental;
 - 4. Verification that safety devices are in place and operational and safety stickers are in place and legible;
 - 5. Operators and other manuals included;
 - 6. Tire condition and pressure;
 - 7. Fuel and fluid levels; and
 - 8. Hour/usage meter and odometer readings.

The Contractor and the Authorized User shall review the equipment condition at the point of Delivery as well as at the point of return. If, in the sole opinion of the Authorized User, the Heavy Equipment as delivered does not meet the Contract terms or is in a state of disrepair, it shall be returned, and replacement equipment shall be delivered at the Contractor's expense.

- D. Standard Rental Agreement/Delivery Ticket: Authorized User personnel accepting the Heavy Equipment shall not be authorized to obligate or bind their entity to contractual terms and conditions; therefore, signature on a standard rental agreement/delivery ticket is merely an acknowledgement of receipt of the Heavy Equipment.
- E. Training: Complete instructions and training for the Heavy Equipment, including operation, safety, maintenance and routine service, shall be given by the Contractor to the Authorized User prior to the start of the Rental Period.
- F. Consumables: Authorized Consumables for use with the Heavy Equipment shall be as defined by the Heavy Equipment OEM. The Authorized User is responsible for the cost of all Consumables used during the Rental Period (see Section 4.3 *Rental Price*, Paragraph E *Consumables*). With the exception of fuel, the Contractor shall provide the Authorized User with extra authorized Consumables at the beginning of the Rental Period, and a pricelist for use of the Consumables. Additional Consumables shall be available at the Contractor's location for pickup by the Authorized User. Instructions (verbal and/or included in the Heavy Equipment operations and maintenance manual) shall be provided to the Authorized User detailing the proper procedures for use of Consumables. The Authorized User reserves the right to obtain Consumables from a third party.

Upon return of the Heavy Equipment, the fuel tank shall be refilled to capacity at the Authorized User's expense. The cost of refueling to reach fuel tank capacity shall be included as a separate item on the Contractor's invoice if applicable. Such charge must not exceed the amount charged by the Contractor in its normal course of business.

- G. Maintenance: The Rental Price includes all costs associated with preventative maintenance and normal wear and tear, as defined by the Heavy Equipment OEM. If necessary, in order to comply with the OEM's maintenance schedule, maintenance may be performed during the Rental Period. The Contractor shall either inspect and service its equipment at the Rental location at intervals arranged with the Authorized User, or authorize the Authorized User to perform routine maintenance on behalf of the Contractor. The Contractor shall accept full responsibility for maintenance that the Authorized User has been authorized to perform. If performing maintenance at the Authorized User's location, the Contractor is responsible for cleanup and removal of any resultant waste water and products.
- H. Routine Service: The Authorized User shall be responsible for performing daily inspections (e.g., general condition of the Heavy Equipment, including oil level, tire condition, cooling systems, batteries) and routine service (e.g., grease components prior to use, add diesel exhaust fluid, change oil) required to keep the Heavy Equipment in good repair and running order. If such routine service is required, it is the Contractor's responsibility to inform the Authorized User and confirm that the Authorized User understands the proper procedure for performing the routine service. The costs of labor and Consumables for routine service shall be the responsibility of the Authorized User.
- I. Repair: The Contractor is responsible for repair of any equipment not functioning properly, or becoming non-functional, during the Rental Period, subject to the following:
1. Repairs, other than minor repairs (i.e., repairs that do not require special training and are completed in less than one (1) hour), are to be performed by the Contractor, or arranged for by the Contractor. The Contractor may authorize the Authorized User to perform minor repairs, and shall accept full responsibility for repairs that the Authorized User has been authorized to perform.
 2. In the event that Heavy Equipment failure has been mutually agreed upon by the Contractor and the Authorized User to be the fault of the Authorized User, and the Contractor shall make the repairs, the Contractor shall supply the Authorized User with its currently posted hourly repair rate within three (3) business days upon request. Furthermore, the Contractor is required to supply the Authorized User with all applicable invoices within forty-five (45) days after the repairs are completed. Invoices submitted for payment must include the following:
 - a) Number of mechanics;
 - b) Total hours for repair;
 - c) Hourly labor rate;
 - d) Cost of parts;
 - e) Administrative charges;
 - f) Shipping of parts ordered specifically for the repair; and
 - g) Pictures of broken parts (when requested).
 3. During the Rental Period, any piece of Heavy Equipment that breaks down, or is damaged, shall be repaired or replaced within two (2) business days after notification by the Authorized User. If the Authorized User has previously notified the Contractor that twenty-four (24) hour, seven (7) day a week repair service shall be required for the Rental Period, repair or replacement must be made within ten (10) consecutive hours after notification by the Authorized User. Failure to repair or replace with Heavy Equipment of similar size and capacity within the timeframe specified herein, shall result in a deduction of the Rental Price of 1/8th of the Daily Rental Price per hour of delay, 1/7th of the Weekly Rental Price per calendar day of delay, or 1/28th of the Monthly Rental Price per calendar day

of delay, as applicable, until the Heavy Equipment is repaired or replaced. This assessment shall apply regardless of the length of Rental Period.

4. The Rental Period shall be suspended for the time that the Heavy Equipment is unavailable for use due to required repairs, regardless of cause. In the event of a suspension of the Rental Period, the Rental Period shall either be extended accordingly, or a monetary adjustment satisfactory to the Authorized User shall be provided, at the discretion of the Authorized User.
5. If performing repairs at the Authorized User's location, the Contractor is responsible for cleanup and removal of any resultant waste water and products.
- J. 24/7 Contact Information: The Contractor shall provide general contact information for use by the Authorized User during the Rental Period. This general contact information will be posted on the OGS website for the Award.
- K. In addition, if required by the Authorized User, the Contractor shall provide a 24/7 emergency contact phone number(s) for the Rental Period. If such contact information is required, the Contractor shall respond to Authorized User calls within two (2) hours from the initial call. If the Contractor fails to respond within two (2) hours, then the Rental Price for the applicable day shall be deducted from the Daily, Weekly or Monthly Rental Price, unless otherwise agreed upon by the Authorized User
- L. Credit Evaluations: The Contractor is precluded from conducting credit evaluations for State Agencies. The Contractor may conduct credit evaluations for Non-State Agencies (for listing of eligible entities, see <https://ogs.ny.gov/procurement/nys-laws-extending-use-state-centralized-contracts>) intending to use the Contract and deny services to Non-State Agencies that do not meet the Contractor's standard commercial risk qualifications. The Contractor shall notify the Non-State Agency in writing that their use of the Contract has been denied based on an unsatisfactory credit rating.

3. PROCUREMENT INSTRUCTIONS FOR AUTHORIZED USERS

3.1 Procurement Instructions Overview

The following are procurement instructions for Authorized Users. OGS reserves the right to change the processes set forth in this section and in Attachment 4 – *Rental Quote Forms*, in either non-material or substantive ways without seeking a contract amendment.

- A. When utilizing the Contract, the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
 - A statement of need and associated requirements;
 - Obtaining all necessary prior approvals;
 - A summary of the Contract alternatives considered for the purchase, if any; and
 - The reason(s) supporting the resulting purchase.
- B. An Authorized User shall review the Contracts and associated Contractor Information, Contract Pricelists, Equipment Types document and Rental Area document on the OGS website under Contract Award 23397, and determine which Contractors offer the type of Heavy Equipment required for Rental in the county where the Heavy Equipment shall be used.

3.2 Rental Quote Process

Rental to Authorized Users under this Contract shall be made through a competitive Rental Quote Process as described below. The Contractor shall only provide a Rental under this Contract when the Authorized User has submitted a Rental Quote Request and subsequently requests a Rental as the result of this Rental Quote Process. See Attachment 4 – *Rental Quote Forms*, for forms used in the Rental Quote Process.

- A. When a need is identified, an Authorized User is required to obtain all internal/control agency approvals necessary prior to initiating the Rental Quote Process. Upon internal/control agency approvals, the Authorized User shall complete a Rental Quote Request. The Rental Quote Request shall identify such things as the number and type of Heavy Equipment needed, a description of the Heavy Equipment needed, and delivery and pickup requirements.
- B. Upon completion of a Rental Quote Request, the Authorized User shall submit the request to all Contractors that offer Rental in the applicable County. Rental Quote Requests may be submitted via email or fax, or in person. The emails and faxes shall be sent to the email address(es) and fax numbers set forth in the Contractor Information section of the OGS website. The Contractor shall be responsible for providing updated email address(es) during the Contract period to the Procurement Services Contract Administrator identified on the Contact Award Notification page posted at the OGS website.
- C. From the send date and time of either the email or fax that includes the Rental Quote Request, or when it was presented in person, Contractors shall have a minimum of one (1) complete Business Day, not including either the day that the email or fax was sent, or the day it was presented in person, to submit a Rental Quote. The Authorized User reserves the right to set Rental Quote submittal deadlines that are shorter than one (1) business day in the event of an Emergency. The Rental Quote submittal deadline shall be included on each Rental Quote Request.
- D. A Contractor must provide Rental Quotes to the Authorized User, using the method specified by the Authorized User on the Rental Quote Request, on the Rental Quote form included in Attachment 4 – *Rental Quote Forms*. Instructions for completion are included on the form. A Rental Quote submitted in a format other than on the Rental Quote form may be rejected by the Authorized User.
- E. The Authorized User shall be responsible for reviewing all Rental Quotes received and for selecting the Contractor with the lowest price, including the cost of Delivery, which can meet the requested need for Heavy Equipment Rental. The determination of whether the Heavy Equipment offered in the Rental Quote meets the Authorized User need is at the sole discretion of the Authorized User. If at least three (3) Rental Quotes are not submitted, the Authorized User must justify the reasonableness of the Contractor selection in their procurement record.
 1. Authorized Users are instructed to notify the Contractor that has been selected to provide the Rental within two (2) business days of the deadline for submittal of the Rental Quote. Such notification may be via email, fax or phone, or in person, to the Contractor contact information set forth in the Contractor Information section of the OGS website. Contractors that submitted a Rental Quote but have not been selected shall be notified at the Authorized User's discretion. The Contractor is requested, but not obligated, to refrain from scheduling Rental of the Heavy Equipment specified in the Rental Quote to another customer on the Rental date(s) requested by the Authorized User, for two (2) business days from the deadline for submittal of the Rental Quote.
 2. Upon selection of the Contractor to provide the Rental, the Authorized User shall issue a Purchase Order to the Contractor following the Authorized User's standard procedures (see Section 4.11 *Ordering*), and ensure that a copy of Rental Quote Request, Rental Quotes received, and other pertinent documents are maintained for audit purposes following the Authorized User's standard procedures.

3.3 Rental Quote Reserved Rights

- A. Authorized User Reserved Rights. Authorized Users reserve the right in the Rental Quote Process to:
1. Reject any or all responses received in response to a Rental Quote Request;
 2. Withdraw the Rental Quote Request at any time, at the Authorized User's sole discretion;
 3. Issue a Purchase Order for all or part of the number of pieces of Heavy Equipment requested in a Rental Quote Request;
 4. Disqualify any Contractor submitting a Rental Quote whose conduct and/or proposal fails to conform to the requirements of the Rental Quote Request;
 5. Seek clarifications and revisions of Rental Quotes;
 6. Prior to the Rental Quote Request submittal deadline, amend the specifications to correct errors or oversights, or to supply additional information, as it becomes available;
 7. Prior to the Rental Quote Request submittal deadline, direct Contractors to submit modifications addressing subsequent Rental Quote Request amendments;
 8. Change any of the schedule dates with notification to all Contractors that received a Rental Quote Request from the Authorized User;
 9. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the Contractors that have submitted a Rental Quote in response to a Rental Quote Request;
 10. Waive any requirements in the Rental Quote Request that are not material;
 11. Utilize any and all ideas submitted in the Rental Quotes received;
 12. Adopt all or any part of a Contractor's Rental Quote in selecting the optimum provider of the Heavy Equipment Rental.
 13. Negotiate with the Contractor responding to the Rental Quote Request within the Rental Quote Request requirements to serve the best interests of the State. This includes requesting clarifications of any or all Contractor's Rental Quotes;
 14. Require clarification at any time during the Rental Quote Process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Contractor's Rental Quote and/or to determine a Contractor's compliance with the requirements of the Rental Quote Request;
 15. Select an alternate provider for the Heavy Equipment Rental other than the selected Contractor in the event of unsuccessful negotiations or, optionally, in other specified circumstances as detailed in the Rental Quote Request; and
 16. Use information obtained through site visits, management interviews, and the state's investigation of a Contractor's qualifications, experience, ability or financial standing, and any material or information submitted by the Contractor in response to the Authorized User's request for clarifying information in the course of evaluation and/or selection under the Rental Quote Request.
- B. New York State Reserved Rights. The State reserves the right to:

1. Use an on-line process, such as an eProcurement system, to make acquisitions under the Contracts. Contractor agrees to participate in an on-line process established by OGS;
2. Aggregate the volume of Authorized User requests for Heavy Equipment Rental by combining requests under one Rental Quote Request; and
3. Issue a Rental Quote Request with general specifications for Heavy Equipment that may be utilized by all Authorized Users over a period of time.

3.4 Authorized User Responsibilities and Rights

The Authorized User shall have the following responsibilities and rights in regard to the Heavy Equipment Rental:

- A. Delivery: An Authorized User may choose to either use their own personnel and equipment for Delivery, or a third-party provider.
- B. Inspection: Upon Delivery, the Authorized User shall inspect the Heavy Equipment in accordance with Section 4.14 *Product Delivery*, Paragraph D, and sign a mutually agreed-upon equipment condition report. After Authorized User inspection and execution of the condition report, the Authorized User shall sign a receipt certifying Delivery of the Heavy Equipment and mutual agreement with the equipment condition report (see Section 2.2 *Rental Service Requirements*, Paragraph D *Standard Rental Agreement/Delivery Ticket*).
- C. Equipment Operators: Only employees of the Authorized User who are qualified and trained in the safe operation of the Heavy Equipment shall be permitted to operate the Heavy Equipment. The Authorized User shall provide and pay for all workers' compensation insurance and pay all payroll taxes required by law and applying to such operators.
- D. Permits: The Authorized User shall be solely responsible for obtaining, maintaining and paying costs of any permits or licenses needed for the use or operation of the Heavy Equipment. This includes any OSHA required certifications or licenses associated with the Rental. The Contractor makes no representation regarding the requirement of permits for the use or operation of the Heavy Equipment.
- E. Care and Operation: The Heavy Equipment may only be used and operated in a manner consistent with the OEM's operating manual. Its use must comply with all laws, ordinances, and regulations relating to the possession, use, or maintenance of the Heavy Equipment, including registration and/or licensing requirements. The Authorized User shall not remove, alter, disfigure or cover up any numbering, lettering, or insignia displayed upon the Heavy Equipment;
- F. Consumables: In accordance with Section 2.2 *Rental Service Requirements*, Paragraph F *Consumables*, the Authorized User is responsible for the cost of all Consumables used during the Rental Period, and with replenishing them as needed during the Rental Period using the proper procedures specified in the OEM's operating manual, or as directed by the Contractor. Upon return of the Heavy Equipment to the Contractor, if the fuel tank is not at full capacity it shall be refilled at the Authorized User's expense. The Authorized User reserves the right to utilize fuel pumps other than those owned by the Contractor.
- G. Maintenance: In accordance with Section 2.2 *Rental Service Requirements*, Paragraph G *Maintenance*, the Authorized User shall grant access to the Heavy Equipment to the Contractor during the Rental Period for the purposes of inspecting and servicing the unit at mutually agreed-upon intervals. If previously agreed-upon, the Authorized User may perform routine maintenance on behalf of the Contractor.
- H. Routine Service. In accordance with Section 2.2 *Rental Service Requirements*, Paragraph H *Routine Service*, the Authorized User shall perform daily inspections and routine service (e.g., grease components prior to use, add diesel exhaust fluid, change oil) required to keep the Heavy Equipment in good repair and running order. Exterior washing, cleaning and decontamination (e.g., if used in a hazardous waste operation) of the Heavy Equipment, prior to return, shall be the responsibility of the Authorized User.

- I. Minor Repair: In accordance with Section 2.2 *Rental Service Requirements*, Paragraph I *Repair*, Subparagraph 1, the Authorized User may perform minor repairs, (i.e., repairs that do not require special training and are completed in less than one (1) hour), with prior authorization from the Contractor.

- J. Equipment Damage or Loss after Delivery: The Authorized User assumes all risks of loss or physical damage to the Heavy Equipment caused by theft, accident or vandalism during the Rental Period, and agrees to return it to the Contractor in the condition specified in the mutually agreed-upon equipment condition report, with the exception of normal wear and tear as defined by the OEM. The Authorized User is responsible for tire damage or excessive wear or damage to the machine (e.g., broken glass, lights or gauges and bent sheet metal, fenders, handrails). Determination of which party is at fault for the damage or loss shall be mutually agreed between the parties, and the burden of proof is with the Contractor.
 - 1. In the event of an accident and/or vandalism, the Authorized User shall inspect and appraise damage, or arrange for such services, prior to any repairs. The Authorized User shall be responsible for filing all reports that are necessary and forwarding the reports to the Contractor.
 - 2. The Authorized User can either request that the Contractor make any repairs or, with mutual agreement of the Contractor, elect to use one of its own in-house repair shops.
 - 3. If the Heavy Equipment is deemed a total loss or the cost of the necessary repairs exceed the Heavy Equipment value, the Contractor shall be reimbursed for the residual value of the Heavy Equipment's value based either on the average of the wholesale and retail price as listed in the current monthly edition of a mutually agreed-upon industry used equipment guide, or other method that is mutually-agreed upon by the Contractor and the Authorized User. This payment shall serve as full satisfaction of any and all Authorized User liabilities under the Contract. The Authorized User's liability to pay the Daily, Weekly or Monthly Rental Price ceases at the same time that the Heavy Equipment becomes unusable. The Authorized User shall pay the Contractor the accrued Rental cost, on a prorated basis, for the Rental Period during which the accident or vandalism occurred. Upon payment of residual value, the Contractor shall provide the Authorized User with the title or certificate of ownership and transfer ownership of said Heavy Equipment to the Authorized User. The Authorized User then has the right to salvage or otherwise dispose of such Heavy Equipment.
 - 4. In the event of theft, if the Heavy Equipment is not recovered within thirty (30) days, the Heavy Equipment is to be declared a total loss. The Contractor shall be reimbursed for the residual value of the Heavy Equipment based on the average of the wholesale and retail price as listed in the current monthly edition of a mutually agreed-upon industry used equipment guide. This payment shall serve as full satisfaction of any and all Authorized User liabilities under the Contract. The Authorized User's liability to pay the Daily, Weekly or Monthly Rental Price ceases at the same time that notification of the theft is reported to the Contractor. The Authorized User shall pay the Contractor the accrued Rental cost, on a prorated basis, for the Rental Period during which the theft occurred. Upon payment of residual value, the Contractor shall provide the Authorized User with the title or certificate of ownership and transfer ownership of said Heavy Equipment to the Authorized User. The Authorized User then retains ownership of the Heavy Equipment if it is later recovered.

- K. Insurance and Insurance Certificate: Insurance that covers the Heavy Equipment rented by the Authorized User, effective for the full Rental Period, shall be provided as set forth below.
 - 1. State Agencies. At the start of the Contract term, and upon renewal of the insurance policy, the OGS Bureau of Risk & Insurance Management shall issue a Certificate of Insurance that specifies the blanket physical damage coverage provided for all Rentals, other than vehicles, by Authorized Users that are State Agencies covered by the State's self-retention policy. Such coverage shall be for physical damage only, with a one million (\$1,000,000) limit per item, and a five million (\$5,000,000) general aggregate for the year.
 - 2. A separate Certificate of Insurance shall be issued to the Contractor, prior to commencement of the Rental Period, by the OGS Bureau of Risk & Insurance Management for each Rental of Heavy

Equipment that is a vehicle (i.e., has a license plate affixed to it and may be operated on a roadway). Such coverage shall be for physical damage only, and have a \$400,000 limit per loss.

3. Other Entities. All Authorized Users that are not covered by the State's self-retention policy shall obtain insurance for any Heavy Equipment Rental in an amount satisfactory to the Contractor. A copy of the insurance certificate, or other satisfactory proof of insurance, shall be provided to the Contractor prior to the commencement of the Rental Period. At the Authorized User's discretion, insurance coverage for the Rental Period may be obtained from the Contractor.
- L. Option to Renew: If the Authorized User is not in material default upon the expiration of the Rental Period, the Authorized User shall be given priority to renew or extend the Rental Period, if the Heavy Equipment has not been previously scheduled for Rental by a third party.
- M. Moving Equipment: The Authorized User shall have the right to move Heavy Equipment at their own expense to locations different from the Delivery location, provided that the new location(s) is located in NYS. The Authorized User must have prior authorization from the Contractor to move the Heavy Equipment outside NYS boundaries. If moving the Heavy Equipment results in a different pickup location than previously agreed-upon, the only additional charges allowed to the Contractor shall be for additional mileage, if any.
- N. Subletting and Assignment: The Authorized User shall not be entitled to sublet or assign any of its rights under this Contract or to any of the Heavy Equipment rented to any entity that is not an Authorized User. The Authorized User may sublet the Heavy Equipment to another Authorized User only with the prior Written consent of the Contractor.

4. TERMS AND CONDITIONS

4.1 Contract Term and Extensions

The Contract shall be in effect for a term of up to five (5) years. The Contract term shall commence after all necessary approvals and shall become effective October 8, 2025, or upon the date of OSC approval of the final executed documents, whichever is later, and the Contract term shall end five (5) years from the effective date (i.e., either October 7, 2030, or five (5) years from the date of OSC approval).

All OGS Centralized Contracts resulting from Solicitation 23397 shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for two (2) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to the approval of OSC and any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B *Contract Term – Extension*.

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

4.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B *Contract Term – Extension*. In the event that OGS determines that a short term extension is in the best interests of the State, (e.g., a replacement Contract has not been issued, or an extended period is needed for Authorized Users to transition to another procurement method), any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any previously approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, unless otherwise noted in the extension notification or agreement, this extension automatically terminates should a replacement Contract be issued in the interim.

4.3 Rental Price

Pricing for Heavy Equipment Rental under this Contract shall be subject to the following terms and conditions. Heavy Equipment Rental Prices shall not exceed the prices charged to other government or private entities in the Contractor's normal course of business.

- A. Daily Rental: The Daily Rental Price shall be for a Rental Period of twenty-four (24) consecutive hours or less, computed from the hour of commencement of the Rental Period up to but not including the same hour in the next day and shall apply when the number of hours the Heavy Equipment is operated in any twenty-four (24) hour period does not exceed eight (8) hours of use.

A "double shift," if offered, shall mean sixteen (16) hours of use per day, and the Rental Price shall be one (1) and a half times the Daily Rental Price.

A "triple shift," if offered, shall mean twenty-four (24) hours of use per day, and the Rental Price shall be two (2) times the Daily Rental Price.

- B. Weekly Rental: The Weekly Rental Price shall be for a Rental Period of seven (7) consecutive calendar days, computed from the date of commencement of the Rental Period up to but not including the same date in the following week and shall apply when the number of hours the Heavy Equipment is operated in any seven (7) day period does not exceed forty (40) hours of use.
- C. Monthly Rental: The Monthly Rental Price shall be for a Rental Period of twenty-eight (28) consecutive calendar days, computed from the date of commencement of the Rental Period, and shall apply when the number of hours the Heavy Equipment is operated in any twenty-eight (28) day period does not exceed 176 hours of use.
- D. Overtime and Extended Rental Period Charges: Where Heavy Equipment is operated in excess of the above stated hourly maximums, as determined by the equipment hour/usage meter, such excess shall be charged at the following rates. If the Heavy Equipment does not have an hour/usage meter, then the hours used shall be determined by the Authorized User.
1. 1/16th of the Daily Rental Price for each hour used in excess of eight (8) hours in any one (1) day;
 2. 1/80th of the Weekly Rental Price for each hour used in excess of forty (40) in any one weekly period;
or
 3. 1/352nd of the Monthly Rental Price for each hour used in excess of 176 in any 28 consecutive day period.

After the Rental Period has expired, the Rental Price for a fraction of any Authorized User requested extended Rental Period shall be at the fractions listed above.

- E. Consumables: At the beginning of the Rental Period, the Contractor shall provide the Authorized User with a pricelist for Consumables that may be used with the Heavy Equipment during the Rental Period (see Section 2.2 *Rental Service Requirements*, Paragraph F *Consumables*). All charges for Consumables are to be detailed on the Rental invoice issued to the Authorized User.
- F. Repairs. The cost of repairs (e.g., labor, travel costs, parts, and supplies) shall be the responsibility of the Contractor unless it is determined that the breakdown or damage is the direct result of the Authorized User's negligence. In the event of physical damage to equipment caused by negligence by the Authorized User, necessary repair/replacement costs shall be borne by the Authorized User. These costs are not to exceed the current labor rates and OEM's suggested retail prices for charges for similar service to other government or private entities in the Contractor's normal course of business. All charges for repairs are to be detailed on the Rental invoice issued to the Authorized User.
- G. Downtime: Deductions from the Rental Price shall not be made for reasonable downtime. Reasonable downtime shall include time necessary for an Authorized User to perform routine service (e.g., grease components prior to use, add diesel exhaust fluid, change oil) or minor repairs requiring less than one (1) hour, and time for the Contractor to repair or replace Heavy Equipment. See Sections 2.2 *Rental Service Requirements*, Paragraph G *Maintenance*, Paragraph H *Routine Service*, and Paragraph I *Repair*.
- H. Early Return: Unless otherwise agreed upon by the Contractor, the Rental Price shall not be subject to any deduction in the event that the Authorized User returns the Heavy Equipment to the Contractor before the expiration of the previously agreed-upon Rental Period. The Contractor shall not assess additional early return charges to the Authorized User.

4.4 Delivery Charge

The Delivery Charge is the total dollar amount charged to the Authorized User for Delivery of the Heavy Equipment from the Delivery Origin to the location designated by the Authorized User on the Purchase Order (e.g., location where the Authorized User shall use the Heavy Equipment or the vehicle that the Authorized User shall use to transport the Heavy Equipment), and the return of the Heavy Equipment from the location designated by the Authorized User to the location designated by the Contractor. The Delivery Charge may include fees for the following services provided by the Contractor to the Authorized User.

- A. Loading/Unloading: Any fee for loading the Heavy Equipment onto the vehicle that shall be used to transport the Heavy Equipment, and/or for unloading the Heavy Equipment once it has reached the intended destination.
- B. Transportation Charge: The charge for the Contractor to transport the Heavy Equipment to the location designated by the Authorized User and from that location to the return location designated by the Contractor, which shall be calculated using one of the following methods. If the Contractor offers more than one method of calculation for the transportation charge for the Heavy Equipment Rental, then the method utilized shall be at the discretion of the Authorized User.
 - 1. Per Mile. A per mile transportation charge shall be calculated by multiplying the per mile price by the number of miles traveled for Delivery. *Note: In the event that the mileage used for calculation is considered to be excessive by the Authorized User, or exceeds the mileage estimate previously agreed-upon, the Contractor shall be required to provide a reasonable explanation for the mileage. The Authorized User shall not be responsible for mileage charges that are determined to be excessive.*
 - 2. Per Hour. A per hour transportation charge for Delivery to the Authorized User shall be calculated by multiplying the per hour price by the number of hours accrued from the time that the loaded Heavy Equipment left Delivery Origin to the time that unloading of the Heavy Equipment commenced at the location designated by the Authorized User. A per hour transportation charge for Delivery for pickup from the Authorized User shall be calculated by multiplying the per hour price by the number of hours accrued from the time that the loaded Heavy Equipment left Authorized User location to the time that unloading of the Heavy Equipment commenced at the location designated by the Contractor. The

time accrued shall not include time used by the Contractor for personnel breaks, fueling or lodging. If the time accrued includes a fractional number of hours, (e.g., 45 minutes or one and a half hours), then the per hour transportation charge for that fractional time period shall be prorated and adjusted to be rounded to the nearest quarter hour of the per hour charge, as applicable. *Note: In the event that the number of hours used for calculation is considered to be excessive by the Authorized User, or exceeds the number of hours estimate previously agreed-upon, the Contractor shall be required to provide a reasonable explanation for the number of hours. The Authorized User shall not be responsible for per hour charges that are determined to be excessive.*

3. Flat Rate. A flat rate transportation charge shall be equal to either the flat rate identified on the Contract Pricelist, or a lower dollar amount mutually agreed-upon prior to the Rental Period.
- C. Other: Other Contractor costs associated with providing the Delivery (e.g., tolls, highway and other special permit fees) shall only be included in the Delivery Charge if they are previously agreed upon, and are costs that the Contractor has incurred specifically in relation to the individual Authorized User's Delivery.

The above fees shall only be included in the Delivery Charge if the Authorized User receives the applicable service (i.e., loading/unloading, transportation charge, other) with the Rental. An Authorized User may utilize their own personnel and equipment for loading/unloading and transportation. Additionally, if the Heavy Equipment moves from one customer to another the Delivery Charge for the first customer shall not overlap that of the second customer.

In the event that an Authorized Users requests Delivery of multiple pieces of Heavy Equipment, only a single loading/unloading charge, that is the one highest for the Heavy Equipment loaded, shall be allowed as long as it is physically possible to load all the equipment on a single trailer. Only one (1) transportation charge shall also be applied in such situations.

4.5 Ceiling Price

The Contractor shall provide Ceiling Prices for all Heavy Equipment available for Rental under the Contract, and applicable Delivery Charges, for inclusion on the Contract Pricelist (see Attachment 1 – Pricing.)

- A. OGS reserves the right to reject Product from the Contract Pricelist that is determined, at the sole discretion of OGS, to have an unreasonably high Ceiling Price. Such determination shall be based on available industry Heavy Equipment Rental pricing guide(s) and comparison with Rental Prices offered by competitors in the same geographic area.
- B. All Rental Prices included on a Rental Quote shall be equal to or less than the Ceiling Price listed on the Contract Pricelist. A Rental Quote that includes a Rental Price that exceeds the published Ceiling Price(s) for the Rental of the Heavy Equipment shall be deemed non-responsive and shall result in the rejection of the Rental Quote for that Rental Quote Request.
- C. The Ceiling Prices shall include all Contractor costs to maintain and provide to the Authorized User fully functioning Heavy Equipment that meets the requirements set forth in Section 2.1 *Heavy Equipment Requirements*, without additional compensation. The Ceiling Price includes, but is not limited to:
 1. Labor, parts, material and equipment costs to maintain the Heavy Equipment as recommended by the OEM. See also Section 2.2 *Rental Service Requirements*, Paragraph G *Maintenance*, and Paragraph H *Routine Service*;
 2. Repairs and replacement of parts resulting from routine use, as necessary. See also Section 2.2 *Rental Service Requirements*, Paragraph G *Maintenance*, Paragraph H *Routine Service*, and Paragraph I *Repair*;
 3. Administrative, reporting, or other requirements, and all associated costs, including, but not limited to, travel, parking fees, permits, licenses, and insurance.

4.6 Pricelist Updates

Contractor may update its pricelist as follows:

- A. Updates to the Heavy Equipment listed on the Contract Pricelist (e.g., addition of new Heavy Equipment or deletion of Heavy Equipment) may be requested quarterly (see Section 4.35 *Centralized Contract Modifications*), and such changes shall go into effect when notification of OGS approval is received by the Contractor.
- B. Ceiling Prices are firm for the first twelve (12) months of the Contract period. Thereafter, adjustments to Ceiling Prices may be requested quarterly (see Section 4.35 *Centralized Contract Modifications*), and shall go into effect when notification of OGS approval is received by the Contractor. Ceiling Price update requests from a Contractor at any other time will not be granted, unless OGS determines that such update is in the best interests of the State and/or its Authorized Users.
- C. Contractors shall be permitted to reduce its pricing at any time during the Contract term, without prior approval from OGS.
- D. Contractors shall submit its updated pricelist to the OGS Procurement Services Contract administrator pursuant to the requirements of Section 4.7 *Pricelist Update Format*, below for review and written approval prior to issuing to Authorized Users.

The Authorized User may permit the Contractor to substitute Heavy Equipment for Rental, prior to OGS approval, if the Model listed on the Contract Pricelist is unavailable and the substitute Model is deemed by the Authorized User to be equal or better than the Heavy Equipment listed on the published Contract Pricelist. Rental pricing for such substitute Heavy Equipment shall be equal to the Rental pricing for the Heavy Equipment that is unavailable. See also Section 4.15 *Default on Delivery*. The Contractor shall add the substitute Heavy Equipment to the Contract Pricelist with the subsequent quarterly Contract Pricelist update.

- E. Pricelist updates are effective upon notification from OGS that the update has been approved. Revised pricelists shall be posted by OGS on the OGS Contract website within five (5) Business Days after approval, or as soon as possible thereafter.

4.7 Pricelist Update Format

Contractor is required to submit Contract pricelist updates in the format requested by the OGS Contract administrator. The pricelist update must be dated, and submitted electronically via e-mail to the OGS Contract administrator. Unless otherwise directed, the pricelist update must include the complete updated pricelist, with the following changes from the pricelist currently posted on the OGS website identified (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts). The OGS Contract administrator may also provide a pricelist update template that must be used for submissions.

- Product additions or deletions;
- Price adjustments (e.g., increases or decreases to the Rental or Transportation Ceiling Prices, or another cost indicator identified as applicable for a Product); and
- Other changes to a Product listed on the pricelist that is currently posted on the OGS website (e.g., Equipment Description).

All Contract pricelist updates shall be accompanied by either a separate cover letter, or a paragraph within the body of an email, describing the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA Schedule, or to add/delete Products, etc.).

At the request of OGS, Pricelist updates that include Product additions or price increases must be accompanied by proof of reasonableness of price for the applicable Products. Proof of reasonableness may be in the form of

pricing from a contract held with a government or private entity, invoices from sales made to such entities, or sales reports, that are less than twelve (12) months old from the date of the Contract pricelist update submission for the products offered, or such other information as determined by OGS.

4.8 Contract Pricelist Updates Reserved Rights

In connection with any Contract pricelist update, OGS reserves the right to:

1. Request additional information;
2. Reject Contract pricelist updates in full or in part;
3. Remove previously approved Products from Contracts;
4. Remove Products from Contract pricelist updates;
5. Request additional discounts for new or existing Products.
6. Require the Contractor to lower its offered pricing to that which OGS has determined to be reasonable and to remove items from Contractor's pricelist which are either out of scope, not in compliance with Contract requirements, or for which pricing is determined not to be reasonable;
7. Confirm that the existing Contract price and all related columns on the pricelist, adheres to Contract terms and conditions, and to remove any items determined not to be in compliance with the Contract;
8. Deny pricelist updates to Contractors that are delinquent regarding administrative requirements, including, but not limited to, the submission of Attachment 3 – *Report of Contract Usage*, and/or proof of insurance requirements; and
9. Request price list updates in addition to the annual limit imposed above in Section 4.6 *Pricelist Updates*, or to not permit price list updates requested within six (6) months prior to the end of the Contract term.

4.9 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

4.10 Price Structure

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

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

4.11 Ordering

Purchase Orders shall be made in accordance with the terms set forth in Appendix B *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, Make, Model and description of the Heavy Equipment to be provided for Rental; Rental Price, Rental Period, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

4.12 Minimum Order

There is no minimum order for this Contract.

4.13 Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B *Contract Invoicing*.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Rental Quote Request Number, if applicable;
- Make, Model, description and Rental Price of the Heavy Equipment provided for Rental;
- Description and Rental Price of attachments included with the Heavy Equipment, if applicable;
- Price of Consumables and provided with the Rental
- Rental Period and location;
- Delivery Charge;
- Repair costs, if applicable; and
- Total NYS Contract Price for the Rental.

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/nys-vendors>.

4.14 Product Delivery

Contractor shall deliver Heavy Equipment anywhere within the boundaries of the New York State counties applicable to the Contractor, as set forth in the Rental Area document posted on the OGS website for Award 23397, and as designated by the Authorized User in the Rental Quote Request and on the Purchase Order. The following terms and conditions, in addition to Appendix B *Product Delivery* and *Shipping/Receipt of Product*, apply to Delivery:

- A. The Contractor agrees to bear the risk of loss, injury, or destruction of the Heavy Equipment, prior to Delivery of the Heavy Equipment to the Authorized User.
- B. Delivery shall be made in accordance with instructions on the Purchase Order from each Authorized User. It shall be presumed by the parties that the Contractor received the Purchase Order on the third business day following the date of the Purchase Order, unless the Contractor provides credible evidence that the order was received on a later date. If there is a discrepancy between the Purchase Order and what was listed in the Rental Quote Request, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from Procurement Services.
- C. Delivery must be made within the time frame(s) and to the location(s) mutually agreed-upon between the Authorized User and the Contractor. Failure to comply with agreed-upon Delivery time(s) and location(s) may subject Contractor to liquidated or other damages (see Section 4.16 *Liquidated Damages*). The Authorized User may refuse Heavy Equipment when Delivery is made outside the agreed-upon Delivery time(s) and location(s). The acceptance by the Authorized User of Delivery outside the agreed-upon Delivery time(s) and location(s), with or without objection or reservation by the Authorized User, shall not waive the right to claim damage for such breach, nor preclude the Authorized User from pursuing any remedy provided herein, including termination of the Rental, nor shall such acceptance constitute a waiver of the requirements of any obligation to be performed by Contractor.
- D. Upon Delivery, Contractor shall provide a Heavy Equipment condition report to the Authorized User (see Section 2.2 *Rental Service Requirements*, Paragraph C *Equipment Condition Report*). The Authorized User shall inspect the Heavy Equipment and associated materials, supplies and Consumables for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered and are ready for acceptance. Such inspection shall not be construed as acceptance. If there are any apparent defects in the Heavy Equipment and associated materials, supplies and Consumables at the time of delivery, the Authorized User shall promptly notify the Contractor. Without limiting any other rights, the Authorized User may require the Contractor to repair or replace the Heavy Equipment and associated materials, supplies and Consumables, at Contractor's expense, before acceptance.
- E. After Authorized User inspection, the Authorized User and Contractor shall sign a receipt certifying Delivery of the Heavy Equipment and mutual agreement with the equipment condition report (see Section 2.2 *Rental Service Requirements*, Paragraph D *Standard Rental Agreement/Delivery Ticket*). Responsibility for damage to the Heavy Equipment shall pass from Contractor to the Authorized User upon completion of Delivery to the Authorized User, provided that the Contractor can produce evidence that such damage occurred while in the possession of the Authorized User. In the event damage to the Heavy Equipment is later noted and a properly signed receipt cannot be found, the Authorized User shall not be held responsible for the damage if the Contractor cannot provide evidence that such damage occurred while in the possession of the Authorized User.
- F. If the Contractor is providing transportation of the Heavy Equipment, the Contractor is responsible for obtaining all highway and other special permits that may be required. The cost of such permits shall be the responsibility of the Contractor, unless the Contractor has incurred the costs specifically in relation to the individual Authorized User's Delivery.
- G. The Delivery Charge shall be calculated in accordance with Section 4.4 *Delivery Charge*.
- H. The Contractor may respond to Rental Quote Requests from Authorized Users, and provide Rental and associated Delivery in counties other than those set forth as applicable to the Contractor in the Rental

Area document posted on the OGS website for Award 23397. Delivery locations may also be expanded, with mutual agreement, per Section 4.32 *Non-State Agencies Participation in Centralized Contracts*, and Section 4.33 *Extension of Use*, incorporated herein.

4.15 Default On Delivery

If during the Contract period a Contractor has accepted a Purchase Order from an Authorized User and has agreed in writing to provide a Heavy Equipment Rental at a mutually agreed-upon timeframe, and the Heavy Equipment specified in the Rental Quote becomes unavailable or cannot be supplied for any reason (except as provided for in Appendix B, Section 44 *Savings/Force Majeure*), substitute Heavy Equipment deemed by the Authorized User to be equal to the Heavy Equipment specified in the Rental Quote must be supplied by Contractor if requested by the Authorized User. If substitute Heavy Equipment is not available or not deemed equal to the Heavy Equipment specified in the Rental Quote, then the Contractor must supply available alternative Heavy Equipment that most closely meets the specifications in the Rental Quote. The Rental Price for substitute or alternative Heavy Equipment shall be equal to or less than the Rental Price provided in the Rental Quote.

Alternatively, the Authorized User may, at their sole discretion, cancel the order and obtain Rental from a third party. In such event the Contractor shall reimburse the Authorized User for all excess costs over the Rental Price and Delivery Charge included on the Rental Quote.

4.16 Liquidated Damages

In the event of a delay or default in the Delivery timeframe to the Authorized User previously agreed-upon by the Contractor and the Authorized User, the Authorized User shall be entitled to and may assess against the Contractor as liquidated damages and not by way of penalty, a sum calculated as follows:

Twenty-Five dollars (\$25) per twenty-four (24) hour period, per Heavy Equipment unit, to compensate for delay, and other losses, detriments and inconveniences attendant upon such delay from the end of the grace period commencing from the time Delivery was due to the Authorized User as mutually agreed-upon in writing. A grace period of one (1) twenty-four (24) hour period, commencing on and including the mutually agreed-upon date for Delivery, shall be extended to the Contractor prior to the assessment of such liquidated damages. Notice is hereby given to the Contractor that, despite the extensions of the grace period herein specified, time shall be of the essence in regard to Delivery.

Liquidated damages, if assessed, shall be deducted from the Rental Price for each Heavy Equipment unit delivered against a Purchase Order and listed on the invoice (see Section 4.13 *Invoicing and Payment*).

4.17 Product Acceptance

Notwithstanding the form of shipment, title or other property interest, risk of loss for Products shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, acceptance of the Heavy Equipment provided for Rental shall be when the Heavy Equipment is actually put into use after the date and time of completion of Delivery to the Authorized User.

Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor when the Heavy Equipment is actually put into use after the date and time of completion of Delivery to the Authorized User constitutes acceptance by the Authorized User.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Heavy Equipment prior to acceptance, such tests and data sets to be specified by Authorized User.

4.18 Contract Administration

The Contractor shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Contractor shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five Business Days if it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

4.19 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS supports requisition-to-payment processing and financial management functions.

The State may be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

4.20 Insurance

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 2 – *Insurance Requirements*.

4.21 Report of Contract Usage

Contractor shall submit Attachment 3 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, no later than 10 days after the close of each calendar quarter. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the quarterly report.

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

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

The report in Attachment 3 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

This Contract may be terminated if, on the one-year anniversary date of the Contract Award, and annually thereafter, the reports required to be filed under this Section show that the Contractor has made no sales to any Authorized User under the Contract for the prior year. Termination of the Contract under this Section is in addition to Appendix B *Termination*, and shall take effect upon written notification to the Contractor. The Contract may also be terminated for failure to file the reports required under this Section.

4.22 Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
 - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
 - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

- B. Form EEO 100 - Staffing Plan. Plan

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

- C. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)
The Contractor shall complete, and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January to report the actual workforce utilized during the previous quarter in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website:
<https://ny.newnycontracts.com>

The Workforce Audits must be completed electronically in the NYS Contract System Workforce Audit Module. Separate audits shall be completed by Contractor and all subcontractors, and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

IV. Contract Goals

- A. OGS hereby establishes an overall goal of 0% for MWBE participation, 0% for Minority-Owned Business Enterprises ("MBE") participation and 0% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/>. 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 Business Diversity. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333.1. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an MWBE Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333.1, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with

the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.

- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

VII. Required Good Faith Efforts

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- 1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations and any responses thereto.
- 2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- 3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
- 4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
- 5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
- 6. Other information deemed relevant to the request.

VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company

needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System - Vendor training**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/FrontEnd/TrainingList.asp>
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "**Vendor Account Lookup**" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "**Change Info**." It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "**Request New User**." When identifying the person responsible, please add "**- MWBE Contact**" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "**Contact Us & Support**" then "**Technical Support**" on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS OBD Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

IX. Breach of Contract and Liquidated Damages

- A. Where OGS determines that the Contractor is not in compliance with the MWBE requirements of this Section, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

X. Fraud

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

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

Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.

4.23 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

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

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

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

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

4.24 Environmental Sustainability and NYS Executive Order Number 22

New York State is committed to environmental sustainability, and seeks to minimize the environmental impact of any Products that the State Procures. Executive Order No. 22 *Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program* ("EO 22"), requires State Agencies, authorities, and public benefit corporations ("Affected Entities") to follow GreenNY procurement specifications for commodities, services and technology. The GreenNY specifications consider a wide range of factors including avoidance of toxic substances, pollution reduction and prevention, sustainable manufacturing, reduction of greenhouse gas emissions, packaging, and water conservation. Resources are available on the OGS website at <https://ogs.ny.gov/greeny-purchasing-requirements-and-tools> for procurement managers and Contractors to learn about which Contracts provide environmentally preferable Products.

A list of currently approved specifications is located on the OGS website at <https://ogs.ny.gov/greeny/approved-greeny-specifications>.

Contractor(s) shall note Products that meet GreenNY Specifications on its Contract pricelist (see Attachment 1 – *Pricing*), and on Contract Usage Reports (see Section 4.21 *Report of Contract Usage*), in the format requested by OGS. OGS reserves the right to require that Contractors provide supporting documentation to demonstrate how identified Products meet the applicable GreenNY Specification(s).

4.25 Consumer Products Containing Mercury

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

4.26 Diesel Emission Reduction Act

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

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

4.27 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

In accordance with Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019, Contractor or Subcontractor shall not provide to the State or Authorized User any equipment, system, or service that uses covered telecommunications equipment or services, as defined by the NDAA, as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver, as set forth in the NDAA and the rules and regulations promulgated thereunder.

4.28 Overlapping Contract Products

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

4.29 NYS 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.

4.30 NYS Tax Law Section 5-a

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

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at 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.

4.31 "OGS or Less" Guidelines

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

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

4.32 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B *Participation in Centralized Contracts*. For Purchase Orders issued by the Port Authority of New York and New

Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the *Price* clause shall be modified to include delivery to locations adjacent to New York State.

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

4.33 Extension of Use

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

4.34 New Accounts

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

4.35 Centralized Contract Modifications

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

4.36 Drug and Alcohol Use Prohibited

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

4.37 Traffic Infractions

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

4.38 Contract Documents; Electronic Format

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the contract and any extensions thereof, and for a period of six (6) years after the term of the contract has ended. Contractor shall submit such documents with original signatures to OGS upon request. If Contractor seeks to assign the contract during the term, Contractor shall provide all documents relating to the bid and contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.

4.39 Purchasing Card Orders

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B *Purchasing Card*), also referred to as the Procurement Card, the Contractor shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.

5. GENERAL PROVISIONS

5.1 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 its address set forth herein, and (ii) if to Contractor, addressed to Contract Administrator at the address set forth herein.

The parties may, from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. Contact information for the designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

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 any 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.

5.2 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.

5.3 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.

5.4 Counterparts

This Contract 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 Contract. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Contract, and shall bind such party.

5.5 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, Section 26 *Modification of Contract Terms*, and Section 30 *Purchase Orders*, no alteration or modification shall be made by including terms or conditions on a Purchase Order, order form or other document which seek to vary the terms of this Contract or impose new duties or obligations on the Contractor or Authorized User, and no such terms shall have any force and effect.

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date last written below, and the Contract shall become effective and binding on the date of OSC approval. The Parties further hereby certify that 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 Parties agree that this Contract may be signed electronically, and that by signing below, the Parties intend to be bound by the terms of this Contract. The Parties understand and agree that electronically signing the document is the legal equivalent of having placed a handwritten signature and affirmation on the document.

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 Contract, Appendix A *Standard Clauses For New York State Contracts* (June 2023), Appendix B *General Specifications* (April 2016), and State Finance Law § 139-j and § 139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, 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: _____
Date: _____
Company Name: [Full Legal Business Name of Contractor]
Federal ID: [Contractor FEIN]
NYS Vendor ID: [Contractor NYS Vendor ID]

THE PEOPLE OF THE STATE OF NEW YORK, ACTING BY AND THROUGH THE COMMISSIONER OF GENERAL SERVICES

Signature: _____
Printed Name: _____
Title: _____
Date: _____
Office of General Services

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER