

How to Use This Contract

This document provides the Authorized User general instructions on how to use the Project Based Information Technology (IT) Consulting Services (PBITS) Contract ("Contract"). These instructions assume the Authorized User has a good knowledge of IT project procurement methodology. An Authorized User must familiarize itself with the Contract Terms and Conditions. Additional general procurement information is available on the OGS website.

Section 1. General Information

1.1 OGS CENTRALIZED CONTRACT SCOPE

The Contract streamlines the procurement of Project Based IT Consulting Services for Authorized Users. To purchase fixed-price Deliverable services, an Authorized User must use the process outlined below.

1.2 LOT VALUES

The Contract has been grouped into three (3) lots (see table below). Lot placement was determined by the individual Contractor's response to OGS Solicitation #22772.

| Lot Number | Project Value |
|---|----------------------------|
| Lot 1 Limited to NYS MWBEs, NYS SBEs, and NYS SDVOBs | Up to \$200,000 |
| Lot 2 | \$200,001 - \$7,500,000 |
| Lot 3 | \$7,500,001 - \$25,000,000 |

The estimated project value, including any Enhancement budget up to 10%, shall be used to determine which Lot must be used. Mini-Bids must be completed within a single Lot. The total value of the Mini-Bid, including any optional Enhancement budget, cannot exceed the maximum value of the Lot. If a Contractor's Mini-Bid is lower or higher than the Lot Number Project Value, the Contractor's Mini-Bid shall be found non-responsive.

1.3 REQUIREMENTS

- A competitive Mini-Bid is required for every transaction under this Contract.
- Mini-Bids shall only be distributed to one Lot.
- The Authorized User must distribute the Mini-Bid to all Contractors in the selected Lot, who are listed as the Contract awardees at the time of the Mini-Bid release, unless a Contractor has removed itself from consideration via the Mini-Bid Participation Interest process. When sending the Mini-Bid via email, it is recommended that all Contractor email addresses be entered in the "To" line rather than the "BCC" line for visibility purposes if a subsequent Purchase Order will be issued by the OGS Business Services Center.
- An Authorized User must prepare a comprehensive Statement of Work detailing the Information Technology consulting project, preferably using the Mini-Bid template.
- All Mini-Bid awards are based on Best Value. Additional guidance regarding Best Value is provided below in Section 2.6 of this document.
- All services performed for an Authorized User shall only be performed within the continental United States.
- An Authorized User shall conduct its Mini-Bid in accordance with the requirements set forth in the Contract and this *How to Use* document.
- E-mail addresses for all awarded Contractors in each Lot can be found on the OGS PBITS website at: <http://www.ogs.ny.gov/purchase/snt/awardnotes/7360022772MailingListEmails.xlsx>. See the tabs on the bottom of the document to access the E-mail addresses for each Lot.
- Projects must not begin until all insurance requirements in the Contract, as well as any Agency specific insurance requirements, have been met. Additional guidance is provided in Section 2.7.5 of this document.

1.4 IN-SCOPE PROJECTS

Project Based IT Consulting Services required by an Authorized User must be obtained via a Mini-Bid process under this Contract. The Authorized User shall issue a Mini-Bid with a detailed Statement of Work for the required Consulting

Services. A Mini-Bid may include, but will not be limited to, projects requiring: analysis, data classification, design, development, testing, quality assurance, security, and associated customized training for IT based applications.

Additional examples of in-scope projects include, but are not limited to:

- Technical architecture advisory services;
- Business analysis for project development;
- Proprietary software application development/customization, programming and integration;
- Data information management (including data migration, data conversion, data manipulation, data Integration);
- Project management project support services - including, but not limited to; project management, project quality assurance and control, and independent verification & validation (IV&V);
- Disaster recovery/business continuity and testing;
- Quality assurance;
- Continuity of operations planning (COOP);
- Data categorization; and
- Open-source software implementation.

1.5 OUT-OF-SCOPE WORK

There are service offerings expressly **excluded** from the scope of this Contract. In many instances, such services and/or offerings are (or will be) covered by another OGS Centralized Contract. Examples include:

- Staff augmentation services;
- Time and material services;
- Web hosting;
- Automated network monitoring or any other service provided principally through an automated process;
- Hardware Maintenance and Support;
- Software Maintenance and Support
- Ongoing Maintenance and Support;
- Services priced on a per asset basis;
- Services priced on a contingency basis;
- Equipment maintenance;
- Prepackaged training courses;
- E-Learning;
- Managed services;
- Acquisition of equipment (hardware)
- Acquisition of software, either Commercial off-the-shelf (COTS) software or pre-existing software;
- Acquisition of non-consulting services, such as network provisioning, voice services (local, long-distance), or video bridging;
- Cloud based or "As a Service" offerings, including but not limited to SaaS, IaaS, PaaS, and XaaS;
- Any offering that is a combination of equipment, hardware, software, cloud, or "as a service" offering; and
- Consulting or other installation work which is considered Public Works is excluded from purchase under the scope of this Contract.

Section 2. Preparing the Mini-Bid

2.1 AUTHORIZED USER COMPLIANCE WITH MWBE, SDVOB and SBE PARTICIPATION

MWBE participation goals for this Contract shall be equal to or greater than 30% of the State Agency and Authority (as defined in New York State Executive Law Article 15-A §310 and hereinafter referred to as "State Agency") spend. When a State Agency issues a Mini-Bid under this OGS Centralized Contract, the State Agency shall establish Agency-specific goals for participation of New York State certified MWBEs and shall seek submittal of the MWBE Utilization Plan. State Agencies will seek an overall participation rate equal to or greater than 30% based on all acquisitions made throughout the term of the Contract awarded hereunder.

Authorized Users not addressed under Article 15-A should follow their procurement policies related to MWBE utilization.

Authorized Users of this Contract are strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. SDVOBs can be readily identified on the directory of certified businesses at:
http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf.

Furthermore, Authorized Users are reminded that they must continue to utilize small businesses consistent with current State law.

2.2 DEBRIEFING, PROTEST, AND DISPUTE PROCESSES

Authorized Users subject to Article 11 of the State Finance Law shall provide the opportunity for debriefings in accordance with Section 163 (9)(c). All other Authorized Users are strongly encouraged to provide an opportunity for debriefing. Please see the Mini-Bid Template Sections 3.5, 3.6, and 3.7 for further details.

The following should be included in all Mini-Bids:

1. Debriefing Process;
2. Protest Process; and
3. Dispute Resolution Process.

2.2.1 Debriefing Process

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

2.2.2 Protest Process

The Authorized User is required to provide language regarding the Authorized User's Bid Protest procedures. In the event that an Authorized User does not have a Bid Protest policy, refer to OSC or OGS Bid Protest policy for guidance in creating your Agency policy. Should a Bid Protest be submitted by a Contractor regarding a Mini-Bid, the Bid Protest will be considered and decided by the Authorized User.

2.2.3 Dispute Resolution Process

The Authorized User is required to provide language regarding the Authorized User's Dispute Resolution procedures. In the event that an Authorized User does not have a Dispute Resolution Policy, please refer to OGS dispute resolution policy for guidance in creating your Agency policy. Should a dispute be submitted by a Contractor regarding a Mini-Bid the dispute will be considered and decided by the Authorized User.

If either party has any protests or disputes, the party shall notify the other party in writing. The party in receipt of the notification must then make good faith efforts to solve the problem or settle the disagreement amicably, including meeting with the party's representatives to diligently attempt to reach a satisfactory result through negotiation.

If the Contractor and the Authorized User are unable to resolve a conflict through negotiation, then both parties will comply with the Authorized User's stated dispute resolution policy which must be included as part of the Authorized User Agreement.

2.3 CONTRACT TERMS AND CONDITIONS

An Authorized User must understand the Terms and Conditions of the Contract prior to project development.

In accordance with Appendix B, Section 28, Modification of Contract Terms, an Authorized User may add additional required terms and conditions to the Mini-Bid and resulting Authorized User Agreement only if such terms and conditions are more favorable to the Authorized User and do not conflict with or supersede the Terms and Conditions of the Contract. Examples of additional terms and conditions include:

- New York State Procurement Rights;

- Any additional security or confidentiality requirements regarding access to sensitive data (such as Federal tax information, health information, criminal justice information or education information);
- Any additional requirements imposed by the funding source;
- Expedited delivery timeframe; and
- Additional incentives, such as discount for expedited payment/Procurement Card use.

2.4 ADDITIONAL CONTRACTOR TERMS AND CONDITIONS WITHIN AN AUTHORIZED USER AGREEMENT

As part of Contractor's response to an Authorized User Mini-Bid, a Contractor may propose additional terms and conditions which do not contradict or violate any of the terms and conditions of the Contract, are more advantageous to the Authorized User, and place no additional liability or responsibility on the Authorized User. Such additional terms and conditions may be allowed and incorporated into the resulting Authorized User Agreement, provided the Contractor identifies such terms and conditions in the Contractor's response to the Mini-Bid and the Authorized User accepts such additional terms and conditions. Authorized User should review any such proposed terms and conditions to ensure compliance with the Contract.

2.4.1 Mini-Bid Order of Precedence:

The Terms and Conditions of the Contract are expressly incorporated in, and applicable to, the Authorized User Agreement.

Conflicts of terms and conditions shall be resolved in the following order of precedence:

- A. Appendix A, Standard Clauses for New York State Contracts;
- B. The Contract executed by Contractor and OGS;
- C. Appendix B, General Specifications January 2015, 22772 Project Based Information Technology Consulting (Statewide);
- D. Other Appendices; and
- E. Authorized User Agreements or purchases made between an Authorized User and the Contractor.

2.5 STATUTORY REQUIREMENTS

An Authorized User of this Contract:

- Must adhere to the procedures of this Contract.
- Must adhere to Authorized User's internal policies and procedures.
- Must adhere to all federal, State and/or local statutes, as applicable.

2.6 DEVELOP A STATEMENT OF WORK

The Authorized User should fully identify their project needs, which may include, but are not limited to such factors as:

- Project Plan
 - Milestones/timeframes
 - Dependencies
 - Roles and responsibilities
 - Other decision points
- Project Timeline;
- Background checks;
- Key personnel interviews;
- Location where work will be performed;
- Risk projections and mitigation strategies based on the presented Mini-Bid;
- Systems to integrate with;
- Hardware and software environment;
- "As-is" state of project;
- Any additional requirements imposed by the funding source;
- Location where work will be performed;
- Deliverables/payment points;
- Implementation end date;

- “To-be” state of project;
- Available State staffing resources;
- Knowledge Transfer; and
- Training.

Using the above information, the Authorized User shall develop a mandatory Statement of Work (SOW) with enough specificity to allow a Contractor to adequately respond to a Mini-Bid.

2.7 DEVELOP A PROCUREMENT PLAN

Based on the individual project, the Authorized User should consider the following factors when developing the Mini-Bid:

- Pre-Mini-Bid
 - Surveying the Contractor pool of the appropriate Lot for interest in the project, utilizing the Mini-Bid Participation Interest Template. (This is an optional process.)
- Total procurement timeframes, including but not limited to:
 - Mini-Bid release date,
 - Pre-bid conference,
 - Intent to bid,
 - Question and answer period,
 - Mini-Bid due date,
 - Key personnel interviews,
 - Tentative project start date,
 - Project timeline, and
 - Legislative deadlines.
- Technical/financial weighting:
 - Technical weighting must be no more than 70%, including consideration whether to use the quantitative factors set forth in State Finance Law section 163(1)(j), if applicable:
 - If applicable, the quantitative factor for MWBE/SBE/SDVOB can be up to 5% of the total Technical Value;
 - Financial weighting must be no less than 30%;
 - Authorized Users are encouraged to develop a weighting ratio within these parameters that will provide Best Value – for example 60% Technical / 40% Financial;
 - Best Value may also be based on Contractor meeting the mandatory requirements (pass/fail) and lowest cost (100% financial weighting); and
 - Evaluation methods.
- Reference checks on completed IT projects.
 - OGS strongly recommends reference checks on past projects.
 - Was the project on time?
 - Was the project on budget?
 - Did the final Product meet or exceed expectations?

Once the procurement plan is complete, the Mini-Bid Template is used to create the final Mini-Bid.

Additionally, the minimum time, excluding the date of release, between issuance of the Mini-Bid by the Authorized User to the Mini-Bid Opening is as follows:

- Lot 1 Mini-Bids: Five (5) Business Days;
- Lot 2 Mini-Bids: Ten (10) Business Days; and
- Lot 3 Mini-Bids: Fifteen (15) Business Days.

An Authorized User should consider the complexity of the Project and allow sufficient time for a Contractor to respond to the Mini-Bid.

2.8 ADDITIONAL CONSIDERATIONS FOR THE AUTHORIZED USER

2.8.1 Lot Determination

Prior to selecting the appropriate Lot, Authorized Users must calculate the anticipated cost of the Project using their estimated hours of work required to complete the Project.

Authorized Users are cautioned that misidentifying the Lot which their project falls under may result in bids that fall outside of the selected Lot structure. Mini-Bid(s) falling outside the solicited Lot structure MUST BE FOUND NON-RESPONSIVE. If this should occur, Authorized Users need to consider reassessing the transaction to determine if a rebid in a different Lot would result in a successful Mini-Bid award.

2.8.2 Retainage

Authorized Users may include Retainage in their Mini-Bid. Authorized Users may include a provision to retain a percentage of each individual Deliverable payment of no more than 20% until after they accept a completed specific Deliverable or after they accept a completed Project. Additionally, Authorized Users may include a provision that Retainage may be reduced when the Contractor substantially reduces the agreed upon Deliverable timeline. If Authorized Users include a Retainage provision they must include the requirement for Retainage, the total percentage of Retainage to be withheld, and the requirements for the release of the Retainage amount.

The use of Retainage, the retained percentages and timing for release employed is at the discretion of the Authorized User within the limits listed in the preceding paragraph. An Authorized User may negotiate with a Tentative Awardee regarding Retainage if Retainage is included in the Mini-Bid. If Retainage is not included in a Mini-Bid, then it must not be available under the final Authorized User Agreement.

| Retainage Example: \$200,000 fixed-price Contract, with a 10% Retainage to be withheld until the completion of the project. Contractor will receive the accrued Retainage that has been held back (\$12,500) with the payment due for the final Deliverable after the client has accepted that Deliverable. | | | |
|--|-------------------------------|----------------------|---|
| | Fixed Deliverable Cost | 10% Retainage | Actual Payment to Contractor after acceptance of Deliverable |
| Deliverable 1 | \$25,000 | \$2,500 | \$22,500 |
| Deliverable 2 | \$50,000 | \$5,000 | \$45,000 |
| Deliverable 3 | \$50,000 | \$5,000 | \$45,000 |
| Deliverable 4 | \$75,000 | N/A | \$75,000 + \$12,500 (accrued Retainage amount) = \$ 87,500 |

2.8.3 Enhancement Budget

Authorized Users may include an Enhancement budget in their Mini-Bid.

- If an Enhancement budget is included, the anticipated total cost of the Project must include the allowable Enhancement budget amount anticipated (up to 10%).
 - This approximate cost shall be used in selecting the appropriate Lot and must remain within the maximum Lot value.
- If an Enhancement budget is included, notice must be provided in the Mini-Bid.
- The Enhancement budget may also be used for unforeseen travel or unforeseen Deliverables.
- If an Enhancement budget is not included in a Mini-Bid, then it shall not be available under the final Authorized User Agreement.
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2.8.4 Evaluation Tools, Criteria and Weighting

As a best practice Authorized user should finalize their evaluation tools, criteria and scoring factors prior to Mini-Bid release.

2.8.5 Contractor Insurance

Prior to entering into any Authorized User Agreement, the Authorized User must check the OGS Contract website to ensure the Tentative Awardee has submitted all the required insurance documentation to OGS and that such insurance coverage is current.

The link to the Insurance Matrix is located on The Contractor Information Page found on the OGS PBITS webpage. The matrix will only list Contractors that have yet to submit and have approved proof of their Technology Errors & Omissions and/or Crime Insurance coverage policy information that meets all contract requirements. Lot 1 and 2 Contractors were not required to submit meet these two insurance requirements until the time of their first transaction.

Any Contractor that does not appear in the matrix has met all insurance-related Contract requirements at this time.

If awarding a Mini-Bid and the Contractor is missing Technology Errors & Omissions, please notify the Contractor as well as OGS and have the Contractor submit the required insurance, prior to making a final award, to:

Ogs.sm.insrev@ogs.ny.gov

CC: OGS.sm.Pbits.Contractors@ogs.ny.gov

Section 3. EVALUATION AND AWARD OF MINI-BIDS

3.1 EVALUATION OF MINI-BIDS

- The Mini-Bid must be evaluated based on the Authorized User's pre-defined methodology as it relates to project scope described in the Mini-Bid.
- Responses which include pricing in excess of the maximum "Not-To-Exceed" price on the Contractor's pricelist (Appendix D) must be found non-responsive by the Authorized User.
- Responses which include titles/descriptions not listed in a Contractor's pricelist (Appendix D) must be found non-responsive by the Authorized User.
- **Evaluation tools cannot be created and/or altered after Bid opening.**
- All evaluation tool notes and extraneous items must be included in the Authorized User's procurement record.

3.2 NOTIFICATION OF MINI-BID RESULTS

The Authorized User must notify the tentative awardee and non-awardees of tentative Mini-Bid results in writing. This notification should also include debriefing language, availing all Contractors fair and equal treatment with respect to its opportunity for debriefing.

3.3 NEGOTIATION WITH TENTATIVE AWARDEE

If desired, the Authorized User may enter into negotiations with the tentative awardee. The negotiations should include all aspects of the original scope and ensure that both the Authorized User and Contractor have the full understanding of each other's roles and responsibilities of the Project. The Authorized User should also negotiate to obtain the best price possible for the Project.

The Authorized User and the Contractor will develop a Project Plan from this mutual understanding. The Project Plan must be documented fully, including Deliverables/milestones, timeframes, dependencies, risk mitigation, roles and responsibilities, payment points, knowledge transfer and decision points. This documentation will be attached as backup to the Authorized User Agreement. The Authorized User Agreement may be an agreement, formal letter, Purchase Order or another contractual document. It is recommended that the Authorized User Agreement be reviewed by the Authorized User legal counsel.

Negotiation and finalization of a Project Plan must be provided to the Authorized User at no charge.

3.4 AT-RISK WORK PROHIBITED

An Authorized User is cautioned that at-risk work is strictly prohibited. No work must be undertaken by the Contractor prior to receipt of the executed Authorized User Agreement.

Section 4. Contract Number

4.1 OBTAIN CONTRACT NUMBER WITH SUFFIX

Authorized Users subject to SFS processing are required to contact the OGS Procurement Services Contract Manager at PBITS.AuthorizedUsers@ogs.ny.gov prior to finalizing their Project to obtain an individual Contract identification number

specific to each awarded Mini-Bid under this Contract. Authorized Users who are not subject to SFS processing are strongly encouraged to follow the same process. The email should include the following information:

- Contractor,
- Agency Requesting Contract Number,
- Agency Contact Name,
- Agency Contact Email,
- Contract Value,
- Contract start and end date, and
- Brief Description of work to be performed.

Authorized Users of the PBITS Centralized Contract who are Subject to SFS Processing for purchases from this Contract must reference the Contract ID provided by the PBITS Contract Manager, on their requisition. The Contract ID is:

- the Authorized Users Business Unit,
- the Contract identification number the Authorized User receives from the PBITS Contract Manager, and
- the Authorized User Department ID.

For example, a Department of Transportation Contract would look like: DOT-PB665AB-1140284.

Business Units should refer to the Guide to Financial Operations (GFO) [Chapter XI, Section 1– Procurement and Contract Management Overview and Policies](#) for additional information about procurement contracts in the SFS.

Section 5. Allowable Changes After Award

5.1 NO COST CHANGE REQUEST

The Authorized User or the Contractor may adjust a fixed-price Deliverable, without a price increase, provided the adjustment does not materially change the scope of the Deliverable. Change Requests will be authorized using the No Cost Change Request Template. Written approval is required from both the Contractor and the Authorized User regarding the no cost change request.

5.2 ENHANCEMENT REQUEST

Enhancements mean additional functionality and additional Deliverables unknown to the Authorized User at time of Mini-Bid release. As such, an Authorized User's project is permitted to include an Enhancement budget as included in the Mini-Bid (up to 10%). The total Project cost including the Enhancement budget may not exceed the Lot parameters from which the award was made. Written approval is required from both the Contractor and the Authorized User for the Enhancement request.

Enhancements will be authorized using the Enhancement Request Template, and must be noted within the Mini-Bid. The total additional cost of all Enhancements cannot exceed 10% of the original Project cost. The total project value including the Enhancement budget cannot exceed the Lot maximum value.

5.3 TRAVEL

If determined to be necessary by the Authorized User, the Authorized User may authorize the Contractor to submit a Mini-Bid that seeks separate reimbursement for travel expenses. If an Authorized user reimburses travel expenses, then the Authorized User must state the forms and conditions of travel that will be considered for reimbursement, i.e. travel, lodging, meals, per diem, etc. All rules and regulations associated with this travel can be found at <http://osc.state.ny.us/agencies/travel/travel.htm>. Travel must not be reimburse at a rate that exceeds these published rates.. All travel must be included in the Contractor's Mini-Bid response. Travel shall be paid only in conjunction with a Deliverable specified within the Authorized User Agreement and must be billed with that associated Invoice with receipts attached. If travel reimbursement is not necessary, please delete the travel line from the Mini-Bid Financial Response Template.

Section 6. DOCUMENTATION

6.1 PROCUREMENT RECORD

Authorized Users must adhere to the procedures of this Contract, their own internal procurement policies and procedures and all applicable federal, State and/or local statutes.

The following are examples of documentation that should be created and maintained by the Authorized User as part of a Procurement Record. This list is not meant to be all inclusive nor do all these items apply to all Authorized Users.

- Approved Plan To Procure (PTP);
- Approved Requisition or Purchase Order;
- DOB 1184 Attachment A or B http://www.budget.ny.gov/guide/bprm/bulletins/b-1184_revised.html;
- Bid distribution and announcements;
- Pre-bid Conference Sign-In Sheet and Transcript;
- Bid Protests and Responses;
- Justification for Rejecting Bids or Proposals;
- Blank Solicitation Document (including appendices);
- Questions & Answers;
- Evaluation Instruments;
- Completed Evaluation Score Sheets & Evaluation Summary;
- Bid Tabulation;
- Bidders List;
- Reasonableness of Price;
- Price Lists, if applicable;
- Awarded Bid;
- Proposals Received;
- If less than 3 Bids received, No-Bid/No-Reply Survey;
- Any Contractor Correspondence (e.g. clarifications);
- Rejected Bids with Justification;
- Tentative Award Notification;
- Non-Award Notification;
- Debriefing Notes, if applicable;
- Authorized User (Contract) Agreement; and
- Consultant Disclosure Form A & Form B Reporting Requirements.

6.2 OFFICE OF THE STATE COMPTROLLER

For the purchase of services available from this Contract, the Authorized User may issue a Purchase Order/Authorized User Agreement directly to the Contractor without prior approval by the Office of the State Comptroller (OSC).

OSC retains the right to post-audit any procurement, including those executed from this Contract. Authorized Users are reminded to follow all procurement guidelines.

6.3 NEW YORK STATE PROCUREMENT GUIDELINES

Authorized Users are reminded that they must adhere to the procedures of this Contract, their own internal procurement policies and procedures and all federal, State and/or local statutes, when applicable.

Additional information relating to a Best Value procurement and other procurement information is available in "The New York State Procurement Guidelines", which can be found at:

<http://nyspro.ogs.ny.gov/sites/default/files/uploaded/NYS%20Procurement%20Guidelines.pdf>.