

How to Use the Distributor Umbrella Contract

This document provides the Authorized User instructions on how to use the Information Technology Umbrella Contract – Distributor Based (Statewide) Contract. An Authorized User must adhere to the terms and conditions of the Contract, these How to Use the Distributor Umbrella Contract procedures, as well as the Authorized Users internal policies and procedures.

The Contract prohibits the sale and purchase of all Cloud products.

Authorized Users should not hesitate to contact the OGS Contract managers with any questions, concerns, or clarifications regarding the Contract: <https://www.ogs.ny.gov/purchase/snt/awardnotes/7360022876can.HTM>

Additional OGS procurement information is available at the New York State Procurement website: <https://nyspro.ogs.ny.gov/content/buying-101>

Please reference The New York State Procurement Guidelines for general procurement information: <http://nyspro.ogs.ny.gov/sites/default/files/uploaded/NYS%20Procurement%20Guidelines.pdf>

Section 1. General Information

1.1 CONTRACT SCOPE

The Information Technology Umbrella Contract – Distributor Based (Statewide) Contract was designed to replace the expired Miscellaneous Software Contract, Award 21961, with the addition of a Lot for Hardware. It serves as a “catch-all” contract for products not found on the Information Technology Umbrella Contract – Manufacturer Based (Statewide), or any other OGS Centralized Contract for the sale of Software and Hardware.

Contracts have been established with Contractors of IT Products under Lot 1 – Software and Lot 2 – Hardware. Under awarded Lots, Contractors can provide Products from various IT Manufacturers, including those listed on the Appendix H – Contract Rates, as well as other Manufacturers who are not listed (Refer to Section 1.5 of this document). Under awarded Lots, Contractors have the ability to offer Authorized Users the types of Products defined within each Lot in the Contract. Authorized Users have the ability to competitively solicit quotes from Contractors for Software, Hardware, and Related Services.

1.2 PROHIBITED PRODUCTS

This Contract prohibits the sale and purchase of the following Products:

- In Lot 1 – Software: Products of a Manufacturer that holds an OGS Contract for the sale of Software Products. In Lot 2 – Hardware: Products of a Manufacturer that holds an OGS Contract for the sale of Hardware Products. Please refer to the Prohibited Lists which are found on the Centralized Contract website (see link below).
- All Cloud Products regardless if the Manufacturer has an OGS Contract (see glossary definition for “Cloud” located in the Base Contract).

Both the Prohibited Lists and the Base Contract can be found on the Centralized Contract website: <https://www.ogs.ny.gov/purchase/snt/awardnotes/7360022876can.HTM>

1.3 LOT OVERVIEW

This Contract encompasses the following Lots:

Lot 1 – Software

This Lot provides Authorized Users with a mechanism to purchase Software Products, commercially available Maintenance/Support for Manufacturer’s Proprietary product line, and Related Services listed in the Manufacturer’s commercial price list. Cloud Products are excluded from this Lot.

Some Software Products only contain cloud in the name, or are On-Premises Software that contain Cloud options, and fall outside of the definition of Cloud as defined in the Contract. If a Software Product only has cloud in the name, but does not meet the definition of Cloud, it can be sold. If a Product is On-Premises with Cloud options, it can be sold, yet it is the responsibility of the Authorized Contract User to refrain from using the Cloud options, as Cloud services are not covered by the Contract.

Lot 2 – Hardware

This Lot provides Authorized Users with a mechanism to purchase Hardware Products (including new, refurbished, and remanufactured Hardware), Telecommunications Hardware, Appliances, Storage and the Hardware’s Related Ancillary.

1.4 PROHIBITED USES

Utilizing this Contract in the below noted ways is **prohibited**:

- Submitting a Purchase Order directly to a Contractor without first utilizing the RFQ process (except as provided for in Appendix B, Section 27(e)).
- Comparing prices between Contractors, then submitting a Purchase Order to the Contractor with the lowest price.
- Calling Contractors for pricing, then submitting a Purchase Order to the Contractor that quotes the lowest price.
- Purchasing products not on contract on the same Purchase Order as Contract products.

1.5 PRICE LISTS AND COST PLUS/COST MINUS

The Appendix H – Contract Rates pages, which contain the price list for the Contract, do not contain Products or prices. Instead, they have Cost-Plus and Cost-Minus percentages listed for a variety of pre-established Manufacturers. The Cost-Plus or Cost-Minus percentages for these Manufacturers are listed under “Category 1” in both Lot 1 – Software and Lot 2 – Hardware columns.

Products from Manufacturers not listed by name on the price list can still be purchased, provided the Manufacturer does not hold another OGS Contract for the sale of Software and/or Hardware, and Products do not fall under Cloud as defined in the Contract (see Section 1.1 Contract Scope). For Manufacturers who are not listed by name, the Cost-Plus/Cost-Minus percentage will be the percentage listed as “Cost-Plus or Cost-Minus Percentage for all Manufacturers not listed above in Category 1”.

The Cost-Plus percentages cannot be increased and the Cost-Minus percentages cannot be decreased. A Cost-Plus percentage is the percentage added to the cost that the Contractor pays the Manufacturer. For example, if the Contractor buys the Product from the Manufacturer for \$100, and the Cost-Plus percentage is 5%, then the cost to the Authorized User would be \$105. A Cost-Minus percentage is the percentage subtracted from the cost the Contractor pays the Vendor. For example, if the Contractor buys the Product from the Manufacturer for \$100, and the Cost-Minus percentage is 5%, then the cost to the Authorized User will be \$95.

Section 2. Request for Quote Development

2.1 RFQ FORMAT

The Authorized User transaction shall be competitive, based on Contractor Cost-Plus or Cost-Minus bids for Products in accordance with the Contractual terms.

Authorized User must identify the corresponding Lot(s) involved and distribute the RFQ to all awarded Contractors within the Lot(s).

An RFQ template along with a financial template are available on the Centralized Contract webpage. Authorized Users are not required to use these templates and can utilize another RFQ format as long as that format includes core information from the templates (See Section 2.2 below). If an Authorized User chooses to use their own RFQ

document, it must reference Group 73600, Award 22876 Information Technology Umbrella Contracts – Distributor Based (Statewide).

2.2 MINIMUM REQUIREMENTS OF THE RFQ

While completing the RFQ Template, or developing another RFQ document, the Authorized User shall include factors such as, but not limited to:

- RFQ Title
- RFQ Number
- Authorized User Information
- Procurement Lobbying Law/Restricted Period
- Key Events/Dates
- E-Rate Eligibility
- Authorized User Terms and Conditions
- Dispute Resolution Process
- Contract SKUs
- Delivery requirements, including Product delivery date
- Necessary Related Services
- Hardware and Software environment
- Installation date
- Systems to integrate with
- Fiscal year budget/legislative deadlines
- Quote due date

OGS advises the Authorized User to set a reasonable deadline to allow the Contractors a sufficient amount of time to obtain a quote from the Manufacturer.

2.3 CONTRACT TERMS AND CONDITIONS

An Authorized User must understand the terms and conditions of the OGS Centralized Contract prior to RFQ development.

In accordance with Appendix B, Section 28, Modification of Contract Terms, an Authorized User may add additional required terms and conditions to the RFQ and resultant Authorized User Agreement if they are more favorable to the Authorized User and do not conflict with or supersede the OGS Centralized Contract terms and conditions. Examples of additional terms and conditions include:

- Inclusion of the NYS Department of Labor Prevailing Rate Schedule when utilizing a telecommunications worker to install cable;
- Expedited delivery timeframe;
- Additional incentives, such as discount for expedited payment/Procurement Card use; and
- Any additional requirements imposed by the funding source.

2.4 RELATED SERVICES

Related services are limited to the following items if listed in the Manufacturer's pricelist: Installation; Implementation; Configuration; Pre-packaged Training; and Volume License Agreement management.

Related Services cannot exceed 20% of total purchase of Products and maintenance. Related Services must be completed within 12 months from the date listed on the Purchase Order for Products. Authorized Users that purchase Related Services after initial purchase must include in the subsequent purchase's Procurement Record documentation of the Related Services purchased and cost. The Procurement Record must document that the Related Services do not exceed 20% of the cost of the total purchase.

In order for Related Services to be purchased they must be listed on the Manufacturer's price list. Related Services may be performed by the Manufacturer or by another company, excluding any company that holds a Distributor

Umbrella Contract. All entities are limited to selling only Related Services included on the Manufacturer's price list and the Related Services cost to Contractor cannot exceed the pricing on the Manufacturer's price list.

Authorized Users may put a requirement in their RFQ that the Related Services must be performed by the Manufacturer. This requirement may only be included if the Related Services are offered by the Manufacturer.

2.5 PROJECTED SPEND AND SECURING FUTURE DISCOUNTS

OGS recommends that Authorized Users include RFQ language that allows them to hold pricing for Products that they intend to re-purchase within in the next 6 to 12 months. Authorized Users should refrain from overstating their volume needs and attempt to make accurate predictions as to realistic purchase estimates. Sample Language: *"Agency will purchase some, all or more of the quantities of the products and services detailed in the Financial Response (see Excel spreadsheet) over a twelve (12) month period from date of award, but not necessarily at one time. The Agency requires that the prices be held for twelve (12) months from the date of award."*

2.6 "OGS OR LESS"

There is no "OGS or Less" clause in the Information Technology Distributor Based Contract. That clause is relative to commodities contracts and generally does not apply to IT procurements. As stated on page 7 of The NYS Procurement Guidelines, "In addition, pursuant to State Finance Law § 163(3)(a)(v), OGS centralized commodities contracts that contain a clause known as "OGS or Less" may allow an agency to obtain needed commodities from a non-contract vendor in order to take advantage of non-contract savings that may develop in the marketplace."

Section 3. Evaluation and Award

3.1 LATE BIDS

Authorized Users reserve the right to accept late bids if it is in the best interest of the State.

3.2 LESS THAN THREE RESPONSIVE PROPOSALS RECEIVED

If less than three (3) responsive proposals are received, an Authorized User must canvass all the no-bid responses without a reason and no-replies for the reasons that the Contractor(s) did not participate and document the results of such canvass in the procurement record. Only quotes from Contractors will be considered responsive proposals; no-bids and no-replies are not responsive proposals.

Depending on the feedback of the canvass, an Authorized User will need to determine whether the RFQ specifications were drawn too narrowly so as to exclude potential responsive bidders, and whether modifications to the RFQ, along with a revised solicitation, would result in a larger pool of qualified bidders and better value to the Authorized User. The feedback may also serve to support the Authorized User's decision to proceed to with making an award.

If the Contractor does not respond to the no-bid/no-reply canvass, the Authorized User is not responsible to reach out any further. Authorized Users should make note of the no-bid/no-reply canvass for their procurement record.

3.3 EVALUATION OF QUOTES AND METHOD OF AWARD

The RFQ must be evaluated based on lowest total price. Evaluation tools cannot be altered any time after Bid opening. All evaluation tool notes and extraneous items must be included in the Authorized User's procurement record.

Authorized Users are permitted to require the Contractor to supply a copy of the Product quotes the Contractor received from the Manufacturer. If the Authorized User wants to require this of the Contractor, language stating the requirement should be added to the RFQ Template in *Section B. Authorized User Terms and Conditions*.

The RFQ must be awarded based on lowest total price.

3.4 ADDITIONAL CONTRACTOR TERMS AND CONDITIONS WITHIN AN AUTHORIZED USER AGREEMENT

As part of Contractor’s response to an Authorized User RFQ, a Contractor may propose additional terms and conditions which do not contradict or violate any of the terms and conditions of this 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 Authorized User Agreement, provided the Contractor identifies such terms and conditions in Contractor’s response to the Authorized User’s RFQ and the Authorized User accepts such additional terms and conditions.

Authorized User should carefully review any such terms and conditions proposed by the Contractor to ensure compliance with the Contract.

3.5 PASS-THROUGH TERMS AND CONDITIONS

Software and/or Hardware offered through this Contract is generally offered with “click through”, “shrink wrap” or other pass-through terms and conditions. **OGS has NOT reviewed or approved these “click through”, “shrink wrap” or other pass-through terms and conditions.** An Authorized User looking to acquire Software and/or Hardware under this Contract must review the terms and conditions associated with the Products. The Authorized User must ask if “click through”, “shrink wrap” or other pass-through terms and conditions are present, and if so, the authorized user is responsible for having its agency counsel review and approve such terms and conditions prior to ordering the Software and/or Hardware. If the terms and conditions are not acceptable to agency counsel, it is the responsibility of such agency counsel to negotiate any needed amendments.

3.6 NEGOTIATION WITH TENTATIVE AWARDEE

Based on the specifics of the Authorized User’s transaction, if desired, once tentative award has been made based on lowest cost, the Authorized User should enter into negotiations to obtain the best price possible, or to obtain additional savings.

If the Authorized User and the Contractor enter into pre-award negotiations, those negotiations must be in good faith, including, for example, realistic timeframes.

3.7 NOTIFICATION OF QUOTE RESULTS

The Authorized User shall notify the awardee and non-awardees of RFQ results.

3.8 KICK-OFF MEETING/PROJECT PLAN DISCUSSION

The Authorized User may require a kick-off meeting with the selected awardee to provide in-depth details of the Project and each other’s roles and responsibilities.

Section 4. AUTHORIZED USER RESPONSIBILITIES

4.1 PROCUREMENT LOBBYING LAW

For entities described in State Finance Law §139-j (1) (a), the requirements of the New York State Procurement Lobbying Law (State Finance Law §§139-j and 139-k) may apply to transactions under these contracts. A bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Authorized User Agreement. Refer to the following information resources for more detail on the requirements of the Procurement Lobbying Law:

<http://ogs.ny.gov/acpl/>

4.2 AT-RISK WORK PROHIBITED

Authorized Users are cautioned that at-risk work is strictly prohibited. No work is to be undertaken by the Contractor prior to receipt of the Authorized User Agreement. Additional information is available in OSC Guide to Financial Operations,FXI.2.F Timely Submittal of Contracts:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/2/F.htm>

4.3 NEW YORK STATE OFFICE OF INFORMATION TECHNOLOGY SERVICES POLICIES

Authorized Users are to review all applicable ITS Security policies found at:
<http://www.its.ny.gov/tables/technologypolicyindex.htm/security>.

4.4 OFFICE OF THE STATE COMPTROLLER

For purchases 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).

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

4.5 NEW YORK STATE PROCUREMENT COUNCIL GUIDELINES/PROCUREMENT RECORD

The following link to the New York State Procurement Council Guidelines provides additional procurement information and examples of documentation that should be created and maintained by the Authorized User as part of a procurement record:

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

4.6 PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS

Installation of IT Equipment being done under a resulting Authorized User Agreement may be subject to the prevailing wage rate provisions of the New York State Labor Law. See "Prevailing Wage Rates – Public Works and Building Services Contracts" in Appendix B, Clause 10, OGS General Specifications. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of Contractor non-responsibility and rejection of proposal.

The Prevailing Wage Case Number for this Contract is PRC# 2016007939.

The Prevailing Wage Rates for various occupations and General Provisions of Laws Covering Workers on Article 8 Public Work Contract can be accessed at the following NYS Department of Labor website:

<http://wpp.labor.state.ny.us/wpp/showFindProject.do?method=showlt>

- Insert PRC# 2016007939 in the box provided and click Submit.
- Click Wage Schedule located underneath the main header of this page. The PDF file may be searched to obtain the Prevailing Wage Rate for a specific occupation.

4.7 LIVING WAGE

An Authorized User subject to a local law establishing a "living wage", such as Section 6-109 of the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies with such local law. If the pay rate(s) for a job title(s) as set forth in Appendix H – Contract Rates is less than the local law "living wage," then the Authorized User subject to such local law cannot use this Contract for such job title(s). See Appendix B, Paragraph 60 for Legal Compliance.