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## **ATTACHMENT 7 HOW TO USE THIS CONTRACT**

The New York State (NYS) Office of General Services Procurement Services (OGS) is providing this document to assist both Contractors and Authorized Users in how to correctly use the Public Safety Communications Equipment and Services (Two-Way Radios and Satellite Phones) Contracts. These Guidelines do not relieve the Contractors and Authorized Users from complying with the Terms and Conditions of the awarded Contracts or with all applicable statutes, regulations, internal procurement guidelines, policies and procedures as well as control agency requirements. This document is subject to change by Procurement Services at any time.

### **SECTION 1: GENERAL CONTRACT INFORMATION**

#### **1.1 SCOPE**

The intent of these Contracts is to streamline the procurement of Public Safety Communications Equipment and Services for Authorized Users of NYS OGS Contracts. These contracts provide for procurement of Two-Way Radio Equipment, Installation, Integration, and Maintenance; and Satellite Phone Equipment.

Contracts are to be awarded by Lot as follows:

**LOT 1:** RADIO EQUIPMENT ONLY

**LOT 2:** RADIO EQUIPMENT AND SERVICES

**LOT 3:** SATELLITE PHONE EQUIPMENT ONLY (note: no Lot 3 awards)

The Services offered under these contracts are subject to Prevailing Wage Rate provisions of NYS Labor Law. For more information, see Section 5 – *Prevailing Wage Rate Requirements*.

A Second Tier Solicitation process is required for certain Authorized User transactions. The Contract sets forth base terms and conditions, and permits the Authorized User to customize a Second Tier Solicitation or Direct Engagement based on their specific need or transaction. The Second Tier Solicitation process requires Authorized Users to solicit at least 3 Contractors and/or 3 Resellers.

Scope is limited to all Equipment and Services included in Lots 1-3 as available in the Contract, Section 1.3 – *Scope*, and all Job Titles listed in the Contract, Section 3.12.2 – *Eligible Job Titles*.

#### **1.2 CONTRACT TERM AND EXTENSIONS**

The Contract shall have an initial term of 5 years. At the State's option, the Contract may be extended for up to 5 years, in increments as deemed to be in the best interest of the state. For complete Contract terms and extension information, see Contract, Section 3.1 – *Contract Terms and Extensions*.

#### **1.3 OGS CENTRALIZED CONTRACT TERMS AND CONDITIONS**

The Contract terms and conditions are available in its entirety on the NYS OGS website. An Authorized User must familiarize itself with these terms and conditions prior to scoping the transaction.

#### **1.4 GLOSSARY OF TERMS**

Capitalized Terms used in this Attachment shall be defined in accordance with Appendix B, *Definitions*, or as in Attachment 5 – *Glossary of Terms*.

## SECTION 2: PROCUREMENT INSTRUCTIONS

### 2.1 SECOND TIER COMPETITIONS AND DIRECT ENGAGEMENTS

This Award consists of a pre-qualified pool of non-competitively bid centralized backdrop Contracts, with Not-to-Exceed Pricing for multiple offerings of Equipment and Services. **The intent is, where practicable and feasible, for Authorized Users to seek competition among Contractors to obtain more advantageous pricing, terms, and the most economical and efficient offerings.**

Authorized Users shall establish Authorized User Agreements to procure Equipment and Services that best meet their form, function, and utility by either:

1. Conducting a competitive Second Tier Solicitation in accordance with the terms and conditions of the Contract.
2. Conducting a Direct Engagement from a single Contractor in accordance with the terms and conditions of the Contract.

The table below outlines when a Second Tier Competition or Direct Engagement is required. Authorized Users are required to document all decisions regarding use of Direct Engagements and Second Tier Competitions or Direct Engagements and in the final procurement record.

Situation	Is Second Tier Competition Required?	Procedure
Equipment with Service, or Service only purchases <b>under \$10,000</b>	No	Direct Engagement with Contractor or Reseller of choice. Authorized User must complete Reasonableness of Price Justification with procurement record.
Equipment with Service, or Service only purchases <b>equal to or over \$10,000</b>	Yes	Authorized User must solicit bids from at least 3 Contractors (and/or their Resellers, as applicable) that offer the Products and Services required by the Authorized User. Authorized User may select any mix of Contractors and/or Contractors' Resellers. For exceptions, see Section 2.1.1 – <i>Exceptions to Second Tier Competition Requirements.</i>
Equipment Only purchases <b>under \$5,000</b>	No	Direct Engagement with Contractor or Reseller of choice. Authorized User must complete Reasonableness of Price Justification with procurement record.
Equipment Only purchases <b>equal to or over \$5,000</b>	Yes	Authorized User must solicit bids from at least 3 Contractors (and/or their Resellers, as applicable) that offer the Products required by the Authorized User. Authorized User may select any mix of Contractors and/or Contractors' Resellers. For exceptions, see Section 2.1.1 – <i>Exceptions to Second Tier Competition Requirements.</i>

#### 2.1.1 EXCEPTIONS TO SECOND TIER COMPETITION REQUIREMENTS

Second Tier Competition is required for all Equipment only purchases of \$5,000 or more and all Equipment with Service, or Service only purchases over \$10,000 or more, except where the

following is true and supported by justification, as outlined in Section 2.2 – *Direct Engagement (Where a Second Tier Competition is Not Required)*:

1. Installing or Integrating a Proprietary Systems in a Facility where the Authorized User:
  - A. has the same Proprietary System Installed, Integrated, and Accepted in a majority (more than 50%) of its Facilities, campuses, etc.;
  - B. has Standardized on this Proprietary System; or
  - C. is expanding an existing Facility where there is an Embedded Base of this Proprietary System.
2. Maintenance of an **already established** Proprietary System.
3. Maintenance of an **already established** non-Proprietary System when supported by justification, as outlined in Section 2.2.2 – *Technical Justification for Maintenance of an Embedded Base*.

Discrepancies and Authorized User-Specific Protests pertaining to a Second Tier Competition, Direct Engagement, or an Authorized User Agreement issued under the Contract must be resolved by the issuing Authorized User and **not** by Procurement Services.

## **2.2 DIRECT ENGAGEMENT (WHERE A SECOND TIER COMPETITION IS NOT REQUIRED)**

### **2.2.1 PROCUREMENT RECORD REQUIREMENTS**

In situations where an Authorized User is not required to conduct a Second Tier Competition, Authorized Users must adhere to the following procedure:

1. Document how and why the project/scope of work falls within one of the situations where a Second Tier Solicitation is not required listed in the Second Tier Competition section of this document;
2. Request Pricing below the “Not-to-Exceed” NYS Net Pricing and Total Hourly Rates listed under the Contractor’s NYS Net Pricing pages, and if not obtainable, document the reason(s) as to why further reduction below the “Not-to-Exceed” pricing could not be extended; and
3. Obtain comparable pricing for a similar project, customer or contract from the Contractor to demonstrate reasonableness of pricing. Authorized Users must request, and Contractor must provide, proof of acceptable comparable contracts/customers, preferably awarded competitively within the last two (2) years.

To determine if a comparable contract/customer is acceptable, Authorized Users should consider the following:

1. Similar Scope of work
2. Similar facilities
3. Underlying conditions
4. Project value costing differences
5. Authorized User-specific standard design

### **2.2.2 TECHNICAL JUSTIFICATION FOR MAINTENANCE OF AN EMBEDDED BASE**

Where the Authorized User is obtaining Maintenance on an Embedded Base, the Authorized User must consider and document the following as part of its Technical Justification for its Direct Engagement with the Contractor:

1. Does the Contractor have the particular Product Line(s) which constitute the Embedded Base on their Centralized Contract (listed on the OGS Website)?

2. Did the Contractor previously Install and Integrate the System in the Authorized User's Facility?
3. Has any other Vendor performed Maintenance on this System besides the current Contractor?
  - a. If no, what are the risks/liabilities of switching from the current Contractor to a different Contractor?

### **2.3 ADDITIONAL CONTRACTOR TERMS AND CONDITIONS WITHIN AN AUTHORIZED USER AGREEMENT**

In accordance with Appendix B, *Modification of Contract Terms*, Contractors and Authorized Users are permitted to agree to additional terms and conditions within an Authorized User Agreement, provided that under no circumstances can Contractors or Authorized Users agree to terms and conditions which diminish or impair the terms and conditions of the Contract.

### **2.4 SURVIVAL OF AUTHORIZED USER AGREEMENTS**

Agreements fully executed prior to the expiration of the Centralized Contract shall survive expiration date of Contract, if applicable, based on term of the Authorized User Agreement, but shall in no event go beyond 36 months from the date of expiration of the Contract.

### **2.5 PREFERRED SOURCE REQUIREMENTS FOR AUTHORIZED USERS**

Before proceeding with their purchase, Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law, particularly § 162, regarding commodities/services provided by Preferred Source suppliers, such as the Division of Correctional Industries (Corcraft), the New York State Preferred Source Program for People who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities meet the form, function, and utility of the Authorized User and the price offered by Corcraft does not exceed a reasonable fair market price and the price offered by NYSPSP and NYSID is within 15% of prevailing market prices. If a Preferred Source does not meet an Authorized User's form, function, and utility, or the Preferred Source price is more than fair market price or 15% above prevailing market prices, then the Authorized User may use this contract.

### **2.6 DOWNSTREAM PROHIBITION**

Any and all work from these Contracts that involves developing specifications, establishing a base for other applications or otherwise gaining information that would give a Contractor an unfair competitive advantage in a future procurement may result in the Contractor being precluded from further work (downstream prohibition) due to conflicts of interest. Authorized User shall provide notification of any downstream prohibitions known at the time the RFQ is released. It is in the interest of the Authorized User and the Contractor to explore these issues during the pre-Award negotiations and review as the project progresses. See NYS Finance Law §163-a and §163(2) for additional information on the statutory prohibitions.

Non-State Agency Authorized Users may have additional statutory prohibitions.

## SECTION 3: INSTALLATION AND INTEGRATION

See Contract, Section 4 – *Installation and Integration* to review all Installation and Integration terms.

### 3.1 GENERAL PROVISIONS

#### 3.1.1 OVERVIEW AND APPLICABILITY

Authorized Users may only purchase Installation and Integration from Contractors awarded Lot 2.

#### 3.1.2 AUTHORIZED USER REQUIREMENTS FOR COMPLYING WITH NYS LAWS, CODES, RULES, AND REGULATIONS

Authorized Users must comply with all state and local building codes, rules, and regulations, and where necessary, obtain approval from the appropriate Building Manager prior to any work commencing.

Where required, Authorized Users must pay applicable NYS Department of Labor Prevailing Wage Rates and Supplemental Benefits under Article 8 of the NYS Labor Law.

#### 3.1.3 INSTALLATION AND INTEGRATION LABOR

Unless specifically requested by the Authorized User, Installation and Integration work shall be performed during Business Hours. Authorized Users and Contractors shall comply with any requirements regarding Required Shift Differentials, Overtime, Premiums, etc. during Business Hours or at any other time.

### 3.2 FRONT-END DOCUMENTS

1. For Installation and Integration projects, Authorized Users may have specific documents which address the conditions and requirements of the project. These include, but are not limited to:
  - A. Progress/Milestones for completion/payment
  - B. Staging/Mobilization requirements
  - C. Retainage
  - D. Performance/Payment Bonds for both the Contractor and (if applicable) Subcontractors
  - E. Coordination with other Contractors or Authorized User staff
  - F. As-Built document requirements.
2. When issuing a final purchase order/agreement, an Authorized User may either:
  - A. Incorporate Front-End Documents into an Authorized User Agreement; or
  - B. Affix Front-End Documents to the purchase order.
3. Once incorporated into the Authorized User Agreement or affixed to the purchase order, these Front-End Documents are part of the Agreement between the Contractor and Authorized User and are binding on the Contractor.
4. Authorized User should provide any Front-End Documents when making the initial request for a proposal from the Contractor, so the Contractor can prepare their Proposal for the Authorized User accordingly. Contractors are not permitted to charge more than the

Quantifiable Maximum Not-to-Exceed Pricing on the contract to comply with Front-End Documents.

### **3.3 SITE VISIT/WALKTHROUGH AND EXAMINATION OF SPECIFICATIONS**

Authorized Users may require Contractors to perform a site visit at the associated Installation/Integration location to become familiar with any local condition, which may in any manner affect the work to be done, as well as Equipment or Services required. See Contract, Section 4.3 – *Site Visit/Walkthrough and Examination of Specifications*.

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## **SECTION 4: MAINTENANCE**

See Contract, Section 5 – *Maintenance* to review all Maintenance terms and offerings.

### **4.1 GENERAL PROVISIONS**

1. Authorized Users may only purchase Maintenance from Contractors awarded Lot 2.
2. There are two distinct types of Maintenance: Preventative Maintenance and Remedial Maintenance. Please see Attachment 12 – *Glossary of Terms* for the definitions of each.

### **4.2 MAINTENANCE TERM**

The Maintenance terms of the Contract (i.e., those terms of the Contract related to Maintenance) will continue to be effective for a period of 5 years after the original Contract termination date and will survive the original Contract expiration and any extensions. This includes Preventative Maintenance and Remedial Maintenance, as well as ongoing moves, additions and changes of equipment, and software upgrades to the basic system.

Authorized Users must issue Purchase Orders for maintenance prior to the expiration of any Contract to ensure continuation of Maintenance past the Contract expiration for any Authorized User Agreement.

## SECTION 5: PREVAILING WAGE RATE REQUIREMENTS

### 5.1 NYS DOL PREVAILING WAGE RATES INSTRUCTIONS FOR AUTHORIZED USERS

#### 5.1.1 OVERVIEW

All Contracts under this Award are subject to the Prevailing Wage Rate provisions of NYS Labor Law. See Appendix B, *Prevailing Wage Rates - Public Works and Building Services Contracts*. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility, rejection of a Contractor's response to an Authorized User (e.g. a Second Tier Solicitation response), suspension or termination of Contract.

For the purposes of this Award, the applicable Prevailing Wage Rate Schedule is PRC# 2018009500.

Authorized Users **must** obtain a separate PRC # for each purchase from this Award where Prevailing Wage Rates apply. The PRC # 2018009500 provided in this Attachment is for information and evaluation purposes only. The requested PRC # **must** be noted on all Authorized User Agreements issued for purchases from any Contract under this Award.

The Authorized User Total Hourly Rate (actual hourly bill rates) for each Authorized User engagement will be established in response to a particular Authorized User Agreement and will incorporate/reference the PRC # obtained by each requesting Authorized User.

To obtain an original NYS Department of Labor (DOL) Prevailing Wage Schedule PRC #, use the following link: <https://www.labor.state.ny.us/workerprotection/publicwork/PWReqforOWS.shtm> .

#### 5.1.2 LIVING WAGE LAW

An Authorized User subject to a local law, such as the "living wage" requirement as found in Section 6-109 of the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies with such local law at the time of issuance of an Authorized User Agreement to the selected Contractor. If Contractor documents that it is required to pay higher than the Prevailing Wage Rate and Supplemental Benefit as per a "Living Wage Law," it shall be allowed, after award of Contract, to propose, via the Contract update procedures, a higher rate of pay and benefits than the Prevailing Wage Rate and Supplemental Benefits, but maintaining the same Percent (%) Markup for this proposed higher pay and benefit rate as the Percent (%) Markup over the Prevailing Wage Rate and Supplemental Benefits. If a Contractor does not submit such a request and wishes to perform work for an Authorized User, it must pay the higher pay or benefits required by the Local Living Wage Law and not charge above its Total Hourly Rate.



## **SECTION 6: ADDITIONAL GUIDANCE**

### **6.1 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, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

#### **6.1.1 PURCHASING CARD ORDERS**

If the Contractor accepts orders using Purchasing Cards (see Appendix B, *Purchasing 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.

There is no minimum order on the Contract, however, Contractors may require a minimum purchase amount, limit the maximum purchase amount, or offer an additional discount for orders placed using the NYS Purchasing Card.

### **6.2 NYS STATEWIDE FINANCIAL SYSTEM**

When entering transactions into the NYS Statewide Financial System (SFS), NYS Agencies should:

1. Verify if Service Contract is for "Maintenance" or "Installation/Integration"; and
2. Note any Progress/Milestone payments or retainage included.

To avoid delays with issuing a Purchase Order in SFS, OGS recommends that Authorized Users give OGS advance notice of any anticipated unusually large purchase (>\$100,000). Notification can be made by emailing the contract manager of record.

### **6.3 AUTHORIZED AND/OR CERTIFIED TECHNICIANS**

Contractors must use Authorized Technicians to perform all Services offered in Lot 2. Additionally, Authorized Users may require the Contractor to provide a list of Certified Technicians who will be performing Installation, Integration, or Maintenance and these individual's qualifications, including, but not limited to:

- A. Number of years of experience
- B. Licenses (as applicable)
- C. Certifications (e.g. from the Manufacturer for a Product Line), as applicable

Authorized Users conducting Second Tier Solicitations may use this information for ranking purposes when the basis of award will be either Best Value or Qualification-Based Selection.

#### **6.4 AUTHORIZED USER PERFORMANCE AND PAYMENT BONDS**

There are no bonds for this Contract. However, Authorized Users may require a Performance or Payment Bond as a requirement of a Second Tier Solicitation or Direct Engagement.

#### **6.5 AUTHORIZED USER RESERVED RIGHTS**

In addition to all reserved rights retained by the State, Authorized Users reserve the right to:

- A. Verify that all Equipment has the necessary Industry Certification(s) (e.g. UL, FM, etc.);
- B. Require documentation to verify compliance with any applicable Information Security, Cyber Security, Data Breach, etc. Laws, Rules, Regulations, Guidelines, Policies, etc. (e.g. HIPPA, CJIS, etc.);
- C. Perform Vendor Responsibility Reviews on Subcontractors;
- D. Issue final and binding interpretation of specifications and requirements; and
- E. Require any other information which the Authorized User deems necessary or appropriate to allow the Authorized User to make an allowable selection and substantiate all business decisions made when utilizing the resulting Contract.

#### **6.6 POOR PERFORMANCE**

An Authorized User should notify OGS Procurement Services Customer Services promptly if the Contractor fails to meet the requirements of this Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services  
New York State Procurement Services  
38<sup>th</sup> Floor Corning Tower  
Empire State Plaza  
Albany, NY 12242  
Customer Services Coordination E-mail: [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov)  
Telephone: (518) 474-6717